**The Aarhus Convention Index**

**INTRODUCTION AND INDICATORS FOR PILOT TESTING**

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**THE AARHUS CONVENTION PILOT INDICATORS**

The Aarhus Convention[[1]](#footnote-2) Indicators (ACI) are being created by the Access Initiative and World Resources Institute, in collaboration with regional experts, to allow civil society, governments, academics, and the private sector to assess how well a country/Party protects the rights enshrined in the UNECE Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereafter “the Aarhus Convention”). These rights have been recognised by the United Nations as fundamental to sustainable development and help promote fair and equitable decision-making by improving transparency, stakeholder engagement, and accountability.

The ACI will enable researchers to benchmark the quality of a country’s laws and practices against the Aarhus Convention, an internationally recognised and legally binding standard. The information ACI produces can be used to pinpoint gaps in laws and practices, prioritise reforms and provide models, through international comparison, of good laws and practices. Together with complementary resources such as the Aarhus Convention Implementation Guide (2014),[[2]](#footnote-3) it is our intention and hope that ACI will encourage and facilitate the improvement of laws and practices to secure the critical rights enshrined in the Aarhus Convention.

The ACI is composed of two discrete sets of indicators—a legal set consisting of 86 indicators responding to eight articles of the Aarhus Convention (Articles 2 to 9), and a practice set consisting of 69 indicators responding to the same eight articles of the Convention plus the ‘regular reporting’ obligation in Article 10(2). The legal indicators seek to measure how well national laws enact[[3]](#footnote-4) obligations under the Aarhus Convention. These indicators measure enactment of Aarhus Convention obligations by way of ***national*** laws in the case of countries, or ***EU laws*** in the case of the European Union’s enactment, since the EU is a Party to the Aarhus Convention in its own right.Neitherlegal nor practice indicators have been developed in respect of Article 1, or Article 10 onwards (with the exception of the practice indicator for Article 10(2) mentioned above) of the Aarhus Convention, as these provisions do not appear to impose obligations that require enactment.

***Note on legal systems and scoring:*** The legal indicators test if the relevant law measures up to the Aarhus Convention.  A high score indicates that that law conforms to the Aarhus Convention.  That however does not necessarily mean that the law is strong within the context of the legal system of that country.  In some countries, other laws or even policies may trump, or be more authoritative, than the relevant law.  In others, the law may receive a high score but because the rule of law is weak, laws in that country may not be respected. Nevertheless, the ACI assumes that for the public to have enforceable rights to transparency, participation and access to justice, a good starting point is to ensure that those rights are recognised and clearly written down in the legal framework.

Instead of measuring the quality of enacting laws, the practice indicators assess discrete aspects of how the Aarhus Convention is being implemented in practice. Besides that main difference, the authors wish to emphasise that the practice indicators will provide a snapshot of a national level assessment (or regional level in the case of the EU), based on desktop research and the experiences and knowledge of the researcher and reviewer. In other words, scoring the practice indicators does not include extensive surveys, data analysis, or field research, though it may involve a few interviews depending on the experience of the researcher (see p.23). However, the scores given by researchers/reviewers in respect of the practice indicators will be duly explained and the explanations will be subject to multiple reviews.

# METHODOLOGY AND SCORING SYSTEM

## Legal Indicator Scoring

With one exception,[[4]](#footnote-5) each legal indicator is scored on a four-point scale, from 0 to 3, with 3 as the highest score. Each choice is guided by criteria that are required to merit that score, such that subjectivity is limited as much as possible. In developing these criteria we have drawn on “Guidelines for conformity checking (2009),”[[5]](#footnote-6) which guidelines were developed in the context of assessing the conformity of countries’ laws with instruments of EU environmental law. In general, a “0” represents complete absence of the conditions, or legal coverage referred to in the indicator. “1” represents a low level of conditions or coverage. “2” represents a medium level and “3” a high level of presence of conditions or coverage referred to in the indicator. In respect of certain indicators we have provided more than one factual permutation for a given indicator score (e.g. there could be two different factual scenarios which would merit the same score of 1, say). In such cases, researchers are to identify the relevant factual scenario and score accordingly, indicating in their comment which of the scenarios was relevant in the case of the Party in question. The scores of the indicators for each relevant provision of the Aarhus Convention will be averaged to produce a score for each assessed article. The articles for each pillar (i.e. General (incl. definitions); Access to information; Public participation; and Access to justice) will then be averaged to produce pillar scores. Finally, the average of the pillars will be used to produce the overall country/Party score.

Ultimately, if ACI moves beyond the pilot phase into a full roll-out to all Aarhus Convention Parties, the intention would be that these scores will be displayed on an interactive map on a website as well as being made available, along with sources, comments and dialogue between researchers and reviewer(s), on each country/Party page. This would represent the Aarhus Convention Index.

***Note on the scoring averages:*** ACI uses arithmetic averages a) for all articles of the Convention and b) from the values of the articles for the pillars and finally, c) for the whole Convention in all cases both for the legal and practical indicators. We note that the scores of certain indicators (e.g. in respect of definitions) will necessarily impact the range of scores that may be selected in subsequent indicators which test the enactment of provisions which rely on those definitions (e.g. once a definition determines the scope of a term too narrowly, this narrows the scope of all rules that use the same definition).

***Note on scoring ranges:*** The range of four possible scores (0 – 3) is used as a general matter because it provides a standard scoring range and captures most of the nuance in range of different possibilities for that indicator.

In addition to the scores, the researchers are required to provide the legal provisions that support the score. Finally, researchers use the comment box to provide rationales, explanations, or other clarifications which can help justify the score.

**RESPONDENT: In your view, if a Party maintains or introduces measures providing for broader access to information, more extensive public participation, and/or wider access to justice rights than the Convention requires (see Art. 3(5)), should it receive additional points by way of a dedicated indicator (as below) or it is enough to allocate the highest score in respect of each relevant indicator where this is the situation?**

## Practice Indicator Scoring

The practice indicators follow the same scoring system as the legal indicators.[[6]](#footnote-7) These indicators check for evidence of the existence and quality of a practice that is required by law. For most indicators (with a small number of exceptions which are scored on a presence/absence basis (i.e. only two options: 0 or 3)), the researcher/reviewer may choose one of four responses (which vary depending on the provision being tested): e.g. Excellent (scored 3), Good (2), Fair (1), Poor (0). Again, in respect of certain indicators we have provided more than one factual permutation for a given indicator score (e.g. there could be two different factual scenarios which would merit the same score of 1, say). Again, in such cases researchers are to identify the relevant factual scenario and score accordingly, indicating in their comment which of the scenarios was relevant in the case of the Party in question.

In respect of the practice indicators certain scenarios have been provided (see the tables of indicators below) as a ‘prompt’ or catalyst to get the researcher/reviewer thinking about potentially relevant situations (and other scenarios that such considerations might prompt); these scenarios may or may not be relevant, or may or may not have arisen, in the relevant national context – e.g. [situations which have been considered previously by the Aarhus Convention Compliance Committee](http://www.unece.org/env/pp/pubcom.html); in [Parties’ 2014 National Implementation Reports](http://www.unece.org/env/pp/reports_trc_implementation_2014.html); in the [Aarhus Implementation Guide (2014)](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf); or by the [Court of Justice of the European Union](http://curia.europa.eu/juris/recherche.jsf).

Researchers are asked to provide a justification for their score and to explain the factors they considered. Researchers and reviewers are encouraged to draw on as broad a range of sources (such as case studies, other sources of professional literature, interviews etc.) as possible in providing their suggested scores. When using such sources a balance should be carefully maintained between official, governmental sources, peer-reviewed sources, and NGO sources.

## Weighting of the Legal Indicators and Practice Indicators

The authors anticipate the creation of an Aarhus Convention Index in 2017, following the revision of the pilot indicators. Separate average scores will be calculated for each Party in respect of the Legal Indicators and Practice Indicators. These averages will then be amalgamated to give the overall score for that Party for the Aarhus Convention Index.

In doing this, a relative weighting will be given to each of the two parts of the Index (i.e. Legal and Practice) to create the final score. The relative weighting is being discussed and will be determined following the pilots.

**RESPONDENT: In your view, in amalgamating the average scores for the Legal Indicators and Practice Indicators to give an overall score for a Party, what should be the relative weighting of the Legal Indicators vs. the Practice Indicators?**

## Research and Review

There are four stages to the research and review in this pilot phase of the project, to provide adequate checks and balances that ensure accuracy, credibility and verification to the index:

1. **National Researcher:** This role is held by an environmental lawyer who is well-versed in laws and practices relating to environmental democracy in the Party being assessed. The researcher is responsible for scoring the indicators, providing the sources to justify the scores and providing relevant comments to explain the score.
2. **National Reviewer**: This role is held by an environmental lawyer who is well-versed in laws and practices relating to environmental democracy in the Party being assessed. This person critically evaluates the scores of the researcher. S/he may agree, agree and comment, or disagree with the score. Rationale must be provided.
3. **Steering Committee Reviewer**: The Steering Committee reviewer (within EMLA, UCD or WRI) reviews the researcher’s scores and comments as well as the national reviewer’s comments. In the case of a disagreement between the researcher and national reviewer, the Steering Committee reviewer may send a question back to one or both. If the disagreement persists, the Steering Committee reviewer will decide the issue with a clearly reasoned decision. The Steering Committee also provides a second review of the scores, sources, and rationale, and may raise her/his own questions to the researcher.
4. **Final Approval**: The Steering Committee reviewers will also fill this role, although the final reviewer will never be the same person as the Steering Committee reviewer for any given Party. The final reviewer checks scoring and reviews for consistency and sends any final questions back to other parties (researcher, reviewer, etc).

**Respondent: What is your view on this method of research and review? Are there alternatives to consider?**

## 

## 2015 Expert Workshop and 2016 ACI Pilot Testing

In autumn 2016, the pilot legal and practice indicators will be tested in 5 Parties to the Aarhus Convention. Potential parties for the pilot process were discussed at a workshop of experts in Dublin in July 2015, which workshop also helped to develop and refine the draft indicators here. Written comments were kindly provided subsequently by the Aarhus Secretariat and others on an earlier draft of this indicator document, which comments greatly improved the text. Any errors or inaccuracies, and the final choices re indicator design, are the Steering Committee’s (EMLA, UCD, WRI), which takes full responsibility for the text here. The final selection of Parties for pilot testing was carried out by the Steering Committee based on the availability of researchers/reviewers, amongst other factors. Pilot testing is to be carried out in the Czech Republic, Kazakhstan, Serbia, the UK, and Ukraine. As the indicators are currently in pilot form, the scores/results obtained for these countries whilst testing the pilot indicators will not be used as the basis for a published index.

# SUMMARY OF COVERAGE BY INDICATORS

| **Provision of Aarhus Convention** | **Section, Indicator** | **Comment** |
| --- | --- | --- |
| **I. General (incl. definitions):**  **(a) Definitions** | | |
| Article 1 (Objective) | - | Not an independently enactable obligation |
| Article 2(1)  Definition of “Party” | - | Not assessed |
| Article 2(2)  Definition of “Public authority” | I(a), Legal indicator 1, Practice indicator 1 |  |
| Article 2(3)  Definition of “Environmental information” | I(a), Legal indicator 2, Practice indicator 2 |  |
| Article 2(4)  Definition of “The public” | I(a), Legal indicator 3,  Practice indicator 3 |  |
| Article 2(5)  Definition of “The public concerned” | I(a), Legal indicators 4-6, Practice indicator 4 |  |
| **(b) General** | | |
| Article 3(1) | I(b), Practice indicators 8-10 (see very end of this table) | Assessed right at the end of process, as it is an overall assessment |
| Article 3(2) | I(b), Legal indicator 1, Practice indicator 1 |  |
| Article 3(3) | I(b), Legal indicator 2, Practice indicators 1 and 2 |  |
| Article 3(4) | I(b), Legal indicator 3, Practice indicator 3 |  |
| Article 3(5) | I(b), Legal indicator 4,  Practice indicator 4 | Please note the question for respondents above regarding this provision |
| Article 3(6) | - | Not really an enactable obligation |
| Article 3(7) | I(b), Legal indicator 5, Practice indicator 5 |  |
| Article 3(8) | I(b), Legal indicator 6, Practice indicator 6 |  |
| Article 3(9) | I(b), Legal indicator 7, Practice indicator 7 |  |
| **II: Access to information:**  **(a) information on request** | | |
| Article 4(1) | II(a), Legal indicator 1-2, Practice indicator 1 |  |
| Article 4(2) | II(a), Legal indicator 3, Practice indicator 2-3 |  |
| Article 4(3) | II(a), Legal indicators 4-6, Practice indicator 4-5 |  |
| Article 4(4) | II(a), Legal indicators 7-14, Practice indicator 6 |  |
| N/A | II(a), Legal indicator 15, Practice indicator 7 | Tests whether Parties have provided any exemptions from the right to obtain environmental information on request which are not envisaged by the Aarhus Convention |
| Article 4(5) | II(a), Legal indicator 4 (assessed together with Art. 4(3)(a)), Practice indicator 4 (assessed together with Art. 4(3)(a)) |  |
| Article 4(6) | II(a), Legal indicator 16, Practice indicator 8 |  |
| Article 4(7) | II(a), Legal indicators 17-19, Practice indicator 9 |  |
| Article 4(8) | II(a), Legal indicator 20, Practice indicator 10 |  |
| **(b) collection and active dissemination of information** | | |
| Art. 5(1) | II(b), Legal indicators 1-3, Practice indicators 1-2 |  |
| Art. 5(2) | II(b), Legal indicators 4-5, Practice indicator 3 |  |
| Art. 5(3) | II(b), Legal indicator 6, Practice indicator 4 |  |
| Art. 5(4) | II(b), Legal indicator 7, Practice indicator 5-6 |  |
| Art. 5(5) | II(b), Legal indicator 8, Practice indicator 7 |  |
| Art. 5(6) | II(b), Legal indicator 9, Practice indicator 8 |  |
| Art. 5(7) | II(b), Legal indicators 10-12, Practice indicator 9-11 |  |
| Art. 5(8) | II(b), Legal indicator 13, Practice indicator 12 |  |
| Art. 5(9) | II(b), Legal indicator 14, Practice indicator 13 |  |
| Art. 5(10) | - | Not assessed |
| **III. Public participation pillar**  **(a) Public participation in decisions on specific activities** | | |
| Art. 6(1) | III(a), Legal indicators 1-3, Practice indicators 1-2 |  |
| Art. 6(2) | III(a), Legal indicator 4, Practice indicator 3 |  |
| Art. 6(3) | III(a), Legal indicator 5, Practice indicator 4 |  |
| Art. 6(4) | III(a), Legal indicator 6, Practice indicator 5 |  |
| Art. 6(5) | III(a), Legal indicator 7 | No practice indicator |
| Art. 6(6) | III(a), Legal indicator 8, Practice indicator 6 |  |
| Art. 6(7) | III(a), Legal indicator 9, Practice indicator 7 |  |
| Art. 6(8) | III(a), Legal indicator 10, Practice indicator 8 |  |
| Art. 6(9) | III(a), Legal indicator 11, Practice indicator 9 |  |
| Art. 6(10) | III(a), Legal indicator 12, Practice indicator 10 |  |
| Art. 6(11) | III(a), Legal indicator 13, Practice indicator 11 |  |
| **(b) Public participation concerning plans, programmes and policies relating to the environment** | | |
| Art. 7 | III(b), Legal indicators 1-5, Practice indicators 1-4 |  |
| **(c) Public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments** | | |
| Art. 8 | III(c), Legal indicators 1-5, Practice indicators 1-2 |  |
| **IV. Access to justice pillar** | | |
| Art. 9(1) | IV, Legal indicators 1-4, Practice indicators 1-3 |  |
| Art. 9(2) | IV, Legal indicators 5-6, Practice indicators 4-6 |  |
| Art. 9(3) | IV, Legal indicator 7-8, Practice indicator 7 |  |
| Art. 9(4) | IV, Legal indicators 9-14, Practice indicators 8-12 |  |
| Art. 9(5) | IV, Legal indicator 15-16, Practice indicators 13-14 |  |
| **I. General (incl. definitions) (cont.): (b) General**  **National reporting and overall framework** | | |
| Art. 3(1) | I(b), Practice indicators 8-10 | No legal indicators (these ‘practice indicators’ are in fact more like a hybrid between legal and practice, but we have classified them as practice for the purpose of calculation) |
| Art. 10(2) | I(b), Practice indicator 11 | No legal indicator |
| **Remainder of convention** | | |
| Art. 10 onwards (with exception of national reporting in Art. 10(2) – see above) | - | These articles do not appear to impose obligations that require enactment into national law, and with the exception of the national reporting requirement in article 10(2) are not tested by practice indicators |

# AARHUS CONVENTION INDICATORS

With a view to ensuring consistency, for the purposes of both the legal indicators and the practice indicators, researchers and reviewers should consider the following in scoring the indicators: environmental protection laws as well as sectoral laws governing air and water quality, forests, biodiversity, extractive industries and environmental impact assessments,[[7]](#footnote-8) as well as the general freedom of information law(s) or the law(s) that provide for access to environmental information at national level as well as the laws concerning administrative and judicial review procedures, including costs, remedies and injunctive relief. Where they have not considered all of these laws in respect of any indicator, the researcher/reviewer should say so and explain the reason.

## Guidelines for assessing legal indicators

In respect of each legal indicator, the researcher should include **in the first line of the comments box** a general assessment of enactment at the Party level, using the following typology:

* Literal enactment

No enactment error(s)

* Effective enactment
* Enactment which goes further than required
* Not enacted at all
* Incomplete enactment
* Incorrect enactment Enactment error(s)
* Incomplete and incorrect enactment
* Ambiguous enactment
* Contradictory enactment

Use **“literal”** where the enacting provision uses exactly the same (or almost exactly the same) language as the relevant provision of the Convention. In cases of “almost exactly the same” (e.g. where the enacting legislation cross-refers to provisions of the enacting legislation rather than to provisions of the Convention, or when the enacting legislation specifies a public authority in a particular context where the Convention refers to “the public authority”), researchers should quote the Convention text and the language from the enacting legislation in the notes column in providing their reasoning for the indicator score. Use **“effective”** where the enacting provision achieves the objective of the relevant provision of the Convention but does not use the same (or almost exactly the same) language. Again, in cases of “effective” enactment researchers should quote the Convention text and the language from the enacting legislation in the notes column in providing their reasoning for the indicator score. Use **“Not enacted at all”** where there is simply a gap in enactment. Use **“incomplete”** where the relevant provision of the Convention has been only partially enacted, even if the enactment is accurate insofar as it goes. In such cases please explain which part(s) of the provision have been enacted and which have not. Use **“incorrect”** where the relevant provision of the Convention has been incorrectly enacted, and please provide an explanation of your conclusion. Use **“incomplete and incorrect”** where the enactment is both incomplete and incorrect, and please provide an explanation of your conclusion in respect of the different parts of the relevant provision of the Convention. Use **“ambiguous”** where the enacting provision is open to interpretation that could comply or not comply with the relevant provision of the Convention. Again, please explain your conclusion in this regard. Use **“contradictory”** where the Party in question has enacted legislation which contradicts the relevant provision of the Convention, i.e. where there may be a possible intention to go directly against Aarhus obligations. “Contradictory” might therefore arise in combination with other descriptions, since a Party might for example have made specific legislation, but erred, in seeking to enact a Convention obligation and *in addition* might have contradictory national legislation (this could be indicated by “Incorrect enactment” **and** “Contradictory enactment”).

In respect of certain indicators, researchers are asked to indicate whether an enactment error is **“minor”** or **“more than minor”**. “Minor” errors are those which are not very serious and would not impede (or would impede only in a very limited way) the effective implementation of the relevant provision of the Convention. The threshold for “minor” errors should be considered to be very low, since any error is likely to impede effective implementation to some extent. Researchers should in each case use their judgment to decide whether an error is minor or more than minor, and should justify their conclusion in the comments box.

Where an enactment error relates to a definition, please note in your comments which other provision(s) of the Convention are affected by this error. In the comments box for the relevant definition, please note “Articles [X, Y, Z, etc.], paragraphs [X, Y, Z, etc.] of the Convention are affected by this error” and in the comments boxes of the affected provisions please record “The enactment of this provision of the Convention is affected by an error in the enactment of definition [X]”. In such cases you should take account of the error in enacting the definition in scoring enactment of the affected provision(s). Wherever it seems obvious, the instructions will contain a reference to this interrelationship between a faulty definition and a substantial provision.

The Aarhus Convention requires Parties, as a general matter (Art. 3(1)), to establish and maintain a clear, transparent and consistent framework to implement the provisions of the Aarhus Convention. Please note that we have included dedicated indicators to test the extent to which legal enactment has served to achieve this. As such, in assessing the *other* legal indicators it is not necessary to ask yourself each time whether the enacting measure in question forms part of a clear, transparent and consistent framework to implement the provisions of the Aarhus Convention, and your scores for such other indicators should not be affected by this question.

Please also provide in the comments boxes:

* Reference to the relevant national provision(s) (i.e. name of law, article, paragraph, sub-paragraph, URL to the law if available, etc.). If there are various enacting measures, the first legal act to be cited should be the most relevant instrument enacting the Convention, but please cite all relevant provisions.
* Complete text of relevant national provision(s), in language of Party.
* Translation into English of relevant national provision(s), if available.
* In addition to referring to enacting legislation, you should where relevant base your analysis and scores on relevant decisions of judicial and administrative bodies. You should draw on these, where relevant, plus decisions of any other national, regional or international judicial or administrative bodies that are relevant to your analysis. Please cite in full in the relevant comment boxes any such decisions which you have relied upon in reaching your scores.
* Other sources to which you should refer in carrying out your research include the Aarhus Convention Implementation Guide (2014),[[8]](#footnote-9) Case Law of the Aarhus Convention Compliance Committee (2004-2011),[[9]](#footnote-10) the latest country report of your country issued to the Aarhus Secretariat before the most recent Meeting of the Parties,[[10]](#footnote-11) relevant peer-reviewed journal articles, governmental sources, and NGO sources.

**RESPONDENT: Are the above guidelines on legal indicators clear? Is terminology well defined?**

## 

## Guidelines for assessing practice indicators

As mentioned above, in respect of each practice indicator certain scenarios have been provided to act as a ‘prompt’ or catalyst to begin the process of considering relevant issues in settling on an appropriate score – such scenarios are taken, for example, from [Aarhus Convention Compliance Committee findings](http://www.unece.org/env/pp/pubcom.html); from [Parties’ 2014 National Implementation Reports](http://www.unece.org/env/pp/reports_trc_implementation_2014.html); from the [Aarhus Implementation Guide (2014)](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf); and from decisions of the [Court of Justice of the European Union](http://curia.europa.eu/juris/recherche.jsf).[[11]](#footnote-12) Whilst these scenarios may or may not be relevant, or may or may not have arisen in the relevant national context, they are intended to get researchers and reviewers thinking, and researchers/reviewers should please consider all the provided examples, amongst other things, as part of their work.

Researchers should check if there is an ACCC communication concerning their country/Party and take account of the outcome before the ACCC, if applicable. Researchers should do the same concerning relevant cases before the European Court of Human Rights, the CJEU and national courts/tribunals, if applicable.

Other ready sources of information which should be taken into account by researchers include decisions and annual reports of any relevant information officials (e.g. freedom of information bodies, access to information on the environment bodies) and those of ombudsmen with (usually amongst several others) an environmental portfolio.

Researchers/reviewers are asked to provide a justification for their score and to explain the factors they considered. Researchers and reviewers are encouraged to draw on as broad a range of sources as possible – as above in respect of the legal indicators - in providing their suggested scores.

Researchers should draw on their own personal experience in scoring; where this experience is insufficient to provide a score to a particular indicator, researchers should seek to interview two others with the requisite experience, and should base their score on these interview data, recording the fact of the interviews, the names/affiliations of interviewees,[[12]](#footnote-13) and the justification for the score.

RESPONDENTS: Are the above guidelines on practice indicators clear? Is terminology well defined?

## I. General pillar (incl. definitions)

### (a) Definitions - Legal indicators

| **Aarhus provision** | **Legal indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 2(2) | 1. How well has the definition of “Public authority” been enacted?   Art. 2(2) provides:  ““Public authority” means:  (a) Government at national, regional and other level;  (b) Natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment;  (c) Any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a body or person falling within subparagraphs (a) or (b) above;  (d) The institutions of any regional economic integration organization referred to in article 17 which is a Party to this Convention.  This definition does not include bodies or institutions acting in a judicial or legislative capacity;” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 2(3) | 1. How well has the definition of “Environmental information” been enacted?   Art. 2(3) provides:  “Environmental information” means any information in written, visual, aural, electronic or any other material form on:  (a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;  (b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental  agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in  environmental decision-making;  (c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above;” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 2(4) | 1. How well has the definition of “The public” been enacted?   Art. 2(4) provides:  “”The public” means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups;” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  Please be aware, for example, that some countries refer to “citizen” instead of member of the public, while others do not give rights to unregistered groups or associations.  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 2(5)  Indicator 1 | 1. Does the definition of “The public concerned” include the public affected or likely to be affected by the environmental decision-making?   Art. 2(5) provides:  ““The public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 2(5)  Indicator 2 | 1. Does the definition of “The public concerned” include the public having an interest in the environmental decision-making?   Art. 2(5) provides:  ““The public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.” | **Scoring Guide:**  3 = Literal enactment and/or enactment specifies that any natural or legal person who asks to take part has an interest (i.e. a factual interest)  2 = Minor errors or enactment specifies that only persons with a legal interest (even if not a direct financial interest) have an interest in the environmental decision-making  1 = Errors that are more than minor (e.g. enactment specifies that only those with a direct financial interest in the decision-making have an interest in the environmental decision-making  0 = Definition of “public concerned” does not include those with an interest in the environmental decision-making.  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 2(5)  Indicator 3 | Does the definition of “The public concerned” include NGOs promoting environmental protection and if so, are there any additional requirements under national law in order for an NGO to be deemed to have an interest?  Art. 2(5) provides:  ““The public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.” | **Scoring Guide:**  3 = NGOs are included (or deemed included) and there are no additional requirements  2 = NGOs are included (or deemed included) and there are minimal and easily fulfilled requirements  1 = NGOs are included (or deemed included) but there are demanding requirements, e.g. minimum 2000 members  0 = Environmental NGOs are not included or deemed to have an interest  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 2 legal indicators?

### 

### Definitions – Practice indicators

| **Aarhus provision** | **Practice indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 2(2) | 1. Breadth of interpretation of the definition of “public authority”:[[13]](#footnote-14)   Art. 2(2) provides:  ““Public authority” means:  (a) Government at national, regional and other level;  (b) Natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment;  (c) Any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a body or person falling within subparagraphs (a) or (b) above;  (d) The institutions of any regional economic integration organization referred to in article 17 which is a Party to this Convention.  This definition does not include bodies or institutions acting in a judicial or legislative capacity;” | **Scoring Guide:**  3 = Broad  2 = Medium  1 = Narrow  0 = Very narrow  Breadth of interpretation may be considered to be relatively broader when the following institutions are considered “public authority” in practice in the majority of cases: public utility companies; administrative bodies when preparing or issuing normative acts (see ref. 2 below); legislative bodies when deciding on individual cases (see ref 4 below). Where one or more of these examples is not relevant in the Party, please justify your score in full by reference to the factors you have considered. The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * any cases where public utility companies perform quasi administrative functions (e.g. collecting data for public decision-making) (ref.1) * breadth of interpretation of the term “bodies acting in a legislative capacity” in cases where administrative bodies issue or adopt normative acts (ref.2) * the CJEU’s judgment in Case C-279/12 *Fish Legal* on the interpretation of the phrase “public administrative functions under national law” for the purposes of the definition of “public authority” (ref.3) * occurrence and frequency of cases where legislative bodies decide on individual cases in “hybrid bill procedures” in order to approve major developments and exclude public participation (ref.4) * bodies acting in a “judicial/legislative capacity”: e.g. can the public in your jurisdiction obtain access to parties’ written pleadings, submissions, responses, etc, or does your jurisdiction seek to argue that such documents are held by the courts, which hold such documents in a “judicial capacity", even where the proceedings in question have ended; cf. the CJEU’s judgment in Case C-204/09 for the parallel case of “acting in a legislative capacity” where the legislative process in question has ended (ref.5)   Please justify your score and explain the factors you considered, including any not listed above. |
| Art. 2(3) | 1. Breadth of interpretation of the definition of “environmental information”[[14]](#footnote-15)   Art. 2(3) provides:  “Environmental information” means any information in written, visual, aural, electronic or any other material form on:  (a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;  (b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental  agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in  environmental decision-making;  (c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above;” | **Scoring Guide:**  3 = Broad  2 = Medium  1 = Narrow  0 = Very narrow  The interpretation of “environmental information” may be considered relatively broader when both rough data and processed data in any stage of their development are considered environmental information. A key issue is when non-environmental (e.g. water management, forestry, mining, road construction etc.) authorities handle data which is relevant from the viewpoint of any environmental elements and/or factors as mentioned in Art 2(3) of the Convention. Financial decisions that have consequences for the environment (such as supporting projects with strong environmental effects) shall be also evaluated here.  Where decisions on the interpretation of “environmental information” have been appealed, reviewed, litigated, etc., please consider only the outcome of the highest decision-maker in scoring this indicator (which may be the CJEU in respect of EU Member States).  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  The level of development of information, between rough data and elaborated content frequently causes interpretation problems. Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * breadth of interpretation of the term environmental information in the case of feasibility studies and other background materials (ref.1) * information produced or processed by non-environmental bodies, but having environmental relevance (ref.2) * decisions, agreements etc. concerning the financing of environmentally relevant projects (ref.3) * possible differentiation of raw and processed data (ref.4)   Please justify your score and explain the factors you considered, including any not listed above |
| Art. 2(4) | 1. Breadth of interpretation of the definition of “The public”   Art. 2(4) provides:  “”The public” means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups;” | **Scoring Guide:**  3 = Broad  2 = Medium  1 = Narrow  0 = Very narrow  Please be aware, for example, that some countries in practice narrow the definition of the public to “citizens”, while others do not give rights to unregistered groups or associations. |
| Art. 2(5) | 1. Breadth of interpretation of the definition of “The public concerned”   Art. 2(5) provides:  ““The public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.” | **Scoring Guide:**  3 = Broad  2 = Medium  1 = Narrow  0 = Very narrow  As a general guide for scoring, researchers should consider that, as a rule, the more additional qualifications attached to the “public concerned” in practice, the narrower the breadth of interpretation. For instance, whenever there is differential treatment between participants according to their physical proximity, the type of environmental case, the type of communities or organisations that wish to participate, etc., the lower the score should be.  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Note that this indicator is closely related to other indicators, especially under Article 6. Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * interpretation of physical proximity, especially in the case of projects with a linear route (ref.1, ref.4) * the breadth of the circle of people or communities who can be affected or their interests are at stake (ref.2) * broad enough consideration of rights such as *in rem rights*, social rights or other rights (ref.5) * how far the nature and size of the activity is taken into consideration when establishing the circle of affected persons? (ref.5) * the practice concerning foreigners (ref.3) * the practice concerning non-governmental organisations (ref.2) * introducing new, obscure categories, subdivisions of definitions etc. with nebulous meaning might qualify as a restriction in defining the public concerned (ref.6)   Please justify your score and explain the factors you considered, including any not listed above |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 2 practice indicators?

Comparing Article 2(5) (practice indicator) and Article 2(5) (legal indicator), which approach do you think is better? Three separate legal indicators were created for Article 2(5), separating out aspects of the provision; in contrast, all three elements were dealt with in a single practice indicator. Which works better in your view? Are different approaches justified for the legal and practice indicators?

### 

### (b) General provisions – Legal indicators

| **Aarhus provision** | **Legal indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 3(2)[[15]](#footnote-16) | 1. To what extent does the law oblige officials and authorities to assist and provide guidance to the public in seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters?   Art. 3(2) provides:  “Each Party shall endeavour to ensure that officials and authorities assist and provide guidance to the public in seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters.” | **Scoring Guide:**  3 = The law obliges officials and authorities to assist and provide guidance to the public in ALL of the following areas: seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters  2 = The law obliges officials and authorities to assist and provide guidance to the public in only TWO of the following areas: (a) seeking access to information, (b) in facilitating participation in decision-making, (c) in seeking access to justice in environmental matters  1 = The law obliges officials and authorities to assist and provide guidance to the public in only ONE of the following areas: (a) seeking access to information, (b) in facilitating participation in decision-making, (c) in seeking access to justice in environmental matters  0 = The law does not oblige officials and authorities to assist and provide guidance to the public in ANY of the following areas: seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 3(3) | 1. To what extent does the law oblige the Party in question to promote environmental education and environmental awareness among the public, especially on how to obtain access to information, to participate in decision-making and to obtain access to justice in environmental matters.   Art. 3(3) provides:  “Each Party shall promote environmental education and environmental awareness among the public, especially on how to obtain access to information, to participate in decision-making and to obtain access to justice in  environmental matters.” | **Scoring Guide:**  3 = The law obliges the government to promote environmental education and environmental awareness generally among the public as well as on specifically how to obtain all three of the following: (a) access to information, (b) to participate in decision-making and (c) to obtain access to justice in environmental matters.  2 = The law obliges the government to promote environmental education and environmental awareness generally among the public as well as on one or two of the following: how to (a) obtain access to information, (b) participate in decision-making and (c) obtain access to justice in environmental matters.  1 = The law obliges the government to promote environmental education and environmental awareness generally among the public, but not specifically in any of the following areas: (a) how to obtain access to information, (b) to participate in decision-making and (c) to obtain access to justice in environmental matters.  1 = The law obliges the government to promote education and awareness among the public on all three of the following: how to (a) obtain access to information, (b) participate in decision-making and (c) obtain access to justice in environmental matters, but does not oblige the government to promote environmental education and environmental awareness generally among the public.  0 = The law does not oblige the government to promote environmental education and environmental awareness among the public.  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 3(4) | 1. To what extent does the law provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection, and is the national legal system consistent with this obligation?   Art. 3(4) provides:  “Each Party shall provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection and ensure that its national legal system is consistent with this obligation.” | **Scoring Guide:**  3 = The law provides for appropriate recognition and support, and the national legal system is consistent with this obligation.  2 = The law provides for appropriate recognition or support (not both).  1 = The law provides for appropriate recognition or support (not both), but the national legal system is inconsistent with this obligation.  0 = The law does not provide for appropriate recognition or support  **In assessing “appropriate” recognition and support, please refer (amongst other things) to pp.66-67 of the** [**Aarhus Implementation Guide (2014)**](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf). Please consider especially the following parameters in the legal framework: simple/onerous registration requirements, tax advantages, fee waiver provisions, court cost exemptions, access to legal aid. A further important aspect that should be evaluated here is whether the above types of recognition/support are given to all associations, organizations and groups promoting environmental protection, or only registered ones?  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 3(5) | 1. Has the Party maintained or introduced measures providing for broader access to information, more extensive public participation in decision-making and wider access to justice in environmental matters than required by the Convention?   Article 3(5) provides:  “5. The provisions of this Convention shall not affect the right of a Party to maintain or introduce measures providing for broader access to information, more extensive public participation in decision-making and wider access to justice in environmental matters than required by this Convention.” | **Scoring Guide:**  3 = Three or more such measures have been maintained or introduced  2 = Two such measures have been maintained or introduced  1 = One such measure has been maintained or introduced  0 = No such measures have been maintained or introduced  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 3(7) | 1. To what extent does the law oblige the government to promote the application of the principles of the Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment?   Art. 3(7) provides:  “Each Party shall promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  Note that there are two key aspects to be considered here: the first aspect is whether the Party is legally required itself to promote the Convention in international forums relating to the environment. The second aspect is whether the law requires the Party to involve its own public in the preparation of its input prior to meetings of the international forum; to include members of the public (e.g. relevant NGOs) in its delegation at the international forum; to report back to its public during and after the event; and to involve the public in the implementation of the outcomes of the international forum.  Both aspects will need to have been enacted in order for a score of 3 to be awarded. If one of the aspects has not been enacted, the maximum possible score is 1.  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing). |
| Art. 3(8) | 1. To what extent does the law ensure that persons exercising their rights in conformity with the provisions of the Convention are not penalized, persecuted or harassed in any way for their involvement   Art. 3(8) provides:  “Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement. This provision shall not affect the powers of national courts to award reasonable costs in judicial  proceedings.” | **Scoring Guide:**  3 = The law contains provisions aimed at ensuring that persons exercising their rights in conformity with the provisions of the Convention are not penalized, persecuted or harassed in any way for their involvement and those provisions would likely provide effective protection to persons exercising any right set out in the Convention, those rights being interpreted broadly.  2 = The law contains provisions aimed at ensuring that persons exercising their rights in conformity with the provisions of the Convention are not penalized, persecuted or harassed in any way for their involvement and those provisions would likely provide effective protection to persons exercising the specific rights set out in article 4, 6, 7, 8 and 9 of the Convention  1 = The law contains general provision(s) aimed at ensuring that persons are not unlawfully penalized, persecuted or harassed, and these provisions would likely cover most situations of a person involved in exercising their rights under [articles 4, 6, 7, 8 and 9] of the Convention  0 = The law does not contain any provision(s) which could operate to ensure that persons exercising their rights in conformity with the provisions of the Convention are not penalized, persecuted or harassed for their involvement  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing). |
| Art. 3(9) | 1. To what extent does the law provide for the public to have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.   Art. 3(9) provides:  “Within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate  in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.” | **Scoring Guide:**  3= The law prohibits discrimination as to citizenship, nationality and domicile and, for a legal person, registered seat or effective centre of its activities with respect to each of (a) access to information, (b) public participation and (c) access to justice  2= The law prohibits discrimination as to citizenship, nationality and domicile and, for a legal person, registered seat or effective centre of its activities with respect to two of (a) access to information, (b) public participation and (c) access to justice  1= The law prohibits discrimination as to citizenship, nationality and domicile and, for a legal person, registered seat or effective centre of its activities with respect to one of (a) access to information, (b) public participation and (c) access to justice  0= The law does not prohibit discrimination as to citizenship, nationality and domicile and, for a legal person, registered seat or effective centre of its activities with respect to access to information, public participation or access to justice  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 3 legal indicators?

What do you think of the approach to the legal indicator for Article 3(5), which asks you to consider the *number* of measures which have been introduced which go beyond the requirements of the Convention? Can you think of a way that an indicator could capture the fact that not every measure that goes beyond the requirements of the Convention will be of the same significance (i.e. some will have more impact than others)?

### General provisions – Practice indicators

| **Aarhus provision** | **Practice indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 3(2)[[16]](#footnote-17)  Art 3(3), second clause | 1. Level of assistance by officials and authorities to members and organisations of the public in exercising their rights under the Aarhus Convention. Governmental efforts promoting education and awareness-raising among the public specifically on how to obtain access to information, to participate in decision-making and to obtain access to justice in environmental matters.   Art. 3(2) provides:  “Each Party shall endeavour to ensure that officials and authorities assist and provide guidance to the public in seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters.”  Art. 3(3), second clause, provides (underlined):  “Each Party shall promote environmental education and environmental awareness among the public, especially on how to obtain access to information, to participate in decision-making and to obtain access to justice in  environmental matters.” | **Scoring Guide:**  3 = Excellent  2 = Good  1 = Fair  0 = Poor or non-existent  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Please note that capacity building[[17]](#footnote-18) (CB) is a key indicator. Without communities and individuals who are able and willing to use them, the three pillars of environmental democracy will not work.  When deciding the score for this indicator please consider especially the CB quality of selected relevant homepages, leaflets/flyers and other materials aimed at supporting Aarhus Convention rights. Also the existence and effectiveness of officials dealing partly or wholly with CB should be evaluated here. Take into consideration *inter alia*:   * as a minimum requirement the homepage of the environmental authorities should be of an acceptable quality (well structured, regularly updated etc.)(ref.1, ref.2) * information officers available (an equally good solution could be proper information training for, and availability of, ‘regular’ environmental officials) (ref.1, ref.5, ref.6, ref.9) * proper training, guidance documents, circulars etc. for officials about public participation (ref.3, ref.4) * general use of electronic mailing, phone, Facebook etc. by environmental authorities for enhancing public participation (ref.6, ref.8, ref.11) * guides, manuals, easy to understand descriptions of public participation available to members and organisations of the public * all kinds of assistance and information within the circle of capacity building are for free (ref.12)   Please justify your score and explain the factors you considered |
| Art. 3(3), first clause | 1. Governmental efforts concerning, as a general matter, promoting environmental education and awareness raising among the public[[18]](#footnote-19)   Art. 3(3), first clause, provides (underlined):  “Each Party shall promote environmental education and environmental awareness among the public, especially on how to obtain access to information, to participate in decision-making and to obtain access to justice in  environmental matters.” | **Scoring guide**  3 = Excellent  2 = Good  1 = Fair  0 = Poor or non-existent  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Please consider, where relevant, inter alia:   * what kind of specialised environmental administrative organisations, departments etc. deal with the research, development, support, management etc. of environmental education and awareness raising? (ref.1, ref.2, ref.9, ref.11) * how far environmental education is integrated into the regular curricula at several levels of the education system (ref.2, ref.5) * are there green school projects (such as forest school, clean up campaigns, ‘open school’ curricula, etc.) with proper organisational, financial and methodological support? (ref.2, ref.13) * is there proper cooperation between the relevant ministries and other governmental bodies in the field of environmental education and awareness raising (with the participation of departments responsible for education, culture, agriculture etc.)? (ref.2, ref.3) * frequency and success (coverage in the media, number of visitors, positive professional feedback etc.) of environmental awareness raising projects (ref.4, ref.6, ref.7, ref.8, ref.13) * how far civil society organisations are involved in environmental education and awareness raising? (ref.7, ref.10, ref.11)   Please justify your score and explain the factors you considered |
| Art. 3(4) | 1. Governmental efforts to provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection   Art. 3(4) provides:  “Each Party shall provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection and ensure that its national legal system is consistent with this obligation.” | **Scoring guide**  3 = Excellent  2 = Good  1 = Fair  0 = Poor or non-existent  Conditions for achieving legal status in practice, bureaucratic or restrictive registration processes and other forms of state control over NGOs are important considerations for scoring here. A high level of state financing of NGOs is not always a sign of excellent performance, especially when the financing depends on political, economic or other extraneous interests, rather than the environmental performance of the NGOs. Any country whose legal practice contains occurrences of penalization, persecution or harassment of persons exercising their rights in conformity with the provisions of the Convention should score a 0 for this indicator.  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * the level of active and passive (upon their request only) involvement of NGOs in dialogue with governmental bodies and into relevant governmental programs, activities (ref.1, ref.5, ref.12, ref.14), including government delegations for international processes. * the level of institutionalisation and financing of the involvement of NGOs (such as framework agreements, standing participation in relevant committees) (ref.2, ref.3, ref.4, ref.9, ref.15) * direct financing of environmental NGOs through project based or operational support (ref.3, ref.4, ref.10, ref.13) * differentiation of participating NGOs (is it objective or arbitrary, based on professional or rather political considerations, is transparency of financial support ensured? etc.) (ref.6) * legal status of environmental NGOs in the practice of registration courts and other relevant bodies (freedom of forming, possible administrative burdens, complication of registration, possible re-registration campaigns, tax status, foreign relations etc.) (ref.7, ref.8, ref.11)   Please justify your score and explain the factors you considered |
| Art. 3(5) | 1. In practice, does the Party provide for broader access to information, more extensive public participation in decision-making or wider access to justice in environmental matters than is required by the Convention?   Article 3(5) provides:  “5. The provisions of this Convention shall not affect the right of a Party to maintain or introduce measures providing for broader access to information, more extensive public participation in decision-making and wider access to justice in environmental matters than required by this Convention.” | **Scoring Guide:**  3 = Always or almost always  2 = Frequently  1 = Rarely  0 = Never |
| Art. 3(7) | 1. In practice, how is the government’s performance in terms of promoting the application of the principles of the Aarhus Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment?   Art. 3(7) provides:  “Each Party shall promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment.” | **Scoring guide**  3 = Excellent  2 = Good  1 = Fair  0 = Poor or non-existent  While they by no means reflect the wide range of international processes and organizations within the scope of article 3(7), as a proxy to evaluate this indicator, please assess the extent to which the Party:   1. Promoted the application of the principles of the Aarhus Convention in the UNFCCC process, including at both the national and international levels before, during and after UNFCCC meetings. 2. Promoted the application of the principles of the Aarhus Convention in UNEA, including UNEP’s recent consultation exercise regarding its new access to information policy and stakeholder engagement policy.   Please refer to the Almaty Guidelines for guidance on some ways that Parties may promote the principles of the Convention in international processes.  Please justify your score and explain the factors you considered. |
| Art. 3(8) | 1. The performance of the Party in terms of ensuring that persons exercising their rights in conformity with the provisions of the Aarhus Convention are not penalized, persecuted or harassed by State organisations or by third persons in any way for their involvement   Art. 3(8) provides:  “Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement. This provision shall not affect the powers of national courts to award reasonable costs in judicial  proceedings.” | **Scoring guide**  3 = Excellent  2 = Good  1 = Fair  0 = Poor or non-existent  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  The score should, inter alia, reflect how effectively the state system prevents (or rather encourages) SLAPP cases or costly media campaigns against public participation in environmental matters. The efforts of such institutions as the ombudsman or public attorneys might play important roles in this protective work. In addition to these factors, all kinds of misuse of State powers (e.g. handpicked tax and revenue office investigations, arbitrary arrest, imposition of fines, incarceration and deportation of environmental activists etc.) belong within the scope of this indicator. Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * the occurrence of strategic lawsuits against public participation (SLAPP cases) or other similar legal manoeuvres initiated against NGOS, local communities or individuals, where legal tools are misused/abused in order to retaliate in respect of public participation, or intimidate the public from participating (ref.1, ref.5) * the practice of the ombudsman or other similar bodies (prosecutors, auditing offices etc.), if any, in such cases (ref.2) * the typical reaction of the government to civil disobedience actions? (ref.3) * are any whistleblower protection rules applied effectively? are there in practice instances of conflicts of interest when environmental complaints are handled? (ref.4, ref.6) * is the pursuit of legal costs applied in such a way as to penalise or harass those who used their participation rights? (ref.7) * use of the media to harass or insult those who exercise their participation rights (ref.8)   Please justify your score and explain the factors you considered. |
| Art. 3(9) | 1. Are there occurrences of discrimination against participants on the basis of citizenship, nationality or domicile or, in the case of a legal person, on the basis of where it has its registered seat or an effective centre of its activities?   Art. 3(9) provides:  “Within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate  in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.” | **Scoring guide**  3 = Never (insofar as aware)  2 = Very rarely (no more than 1 example in past 5 years)  1 = Sometimes (between 2 and 4 examples in past 5 years)  0 = Often (5 or more examples in past 5 years)  We suppose that the scandalous events of discrimination leave their traces in the media, community media and the collective memory of the green NGO community. However, discrimination can be more nuanced than this. It may not be intentional and may not be always reported in the media. For example, authorities may refuse to respond to a request for access to information sent from overseas by a foreign citizen, because they are not aware that art 3(9) means that this rights must be provided to everyone, no matter where in the world they are.  As an example of discrimination in public participation, persons across borders may not be notified of a project that may have transboundary impacts, and thus may miss out on their chance to participate in the decision-making, or the main documents may not be translated into their language, so they cannot effectively participate. Furthermore, the hearing in respect of such a project may be held in the main capital, such that persons across the border have difficulty travelling there.  These may not be “deliberate” discrimination occurrences, but they still effectively prevent those members of the public concerned from participating.  The reference cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Take into consideration, for example:   * occurrences of discrimination based on nationality, language etc. (ref.1)   Please justify your score and explain the factors you considered. |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 3 practice indicators? Do you think that the “sample” approach (UNFCCC, UNEA) works well for the practice indicator for Article 3(7) or do you think that the areas of research should not be delimited in this way?

## 

## II. Access to information pillar

### (a) Information on request – Legal indicators

| **Aarhus provision** | **Legal indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 4(1)(a) | 1. How well has Art. 4(1)(a) been enacted?   Art. 4(1)(a) provides:  “1. Each Party shall ensure that, subject to the following paragraphs of this article, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information:  **(a) Without an interest having to be stated;**  (b) In the form requested unless:  (i) It is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form; or  (ii) The information is already publicly available in another form.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 4(1)(b) | 1. How well has Art. 4(1)(b) been enacted?   Art. 4(1)(b) provides:  “1. Each Party shall ensure that, subject to the following paragraphs of this article, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information:  (a) Without an interest having to be stated;  **(b) In the form requested unless:**  **(i) It is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form; or**  **(ii) The information is already publicly available in another form.”** | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 4(2) | 1. How well has Art. 4(2) been enacted?     “The environmental information referred to in paragraph 1 above [i.e. Art. 4(1)] shall be made available as soon as possible and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request. The applicant shall be informed of any extension and of the reasons justifying it.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 4(3)(a) and 4(5) | 1. How well have Art. 4(3)(a) and 4(5) been enacted?   Art. 4(3)(a) provides:  “A request for environmental information may be refused if:   1. The public authority to which the request is addressed does not hold the environmental information requested;”   Art. 4(5) provides:  “Where a public authority does not hold the environmental information requested, this public authority shall, as promptly as possible, inform the  applicant of the public authority to which it believes it is possible to apply for the information requested or transfer the request to that authority and inform the applicant accordingly.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  These two provisions are assessed together here given their interrelationship.  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 4(3)(b) | 1. How well has Art. 4(3)(b) been enacted?   Art. 4(3)(b) provides:  “A request for environmental information may be refused if:  (b) The request is manifestly unreasonable or formulated in too general a manner;” | **Scoring Guide:**  3 = Enactment provides a narrower exception than the Convention provision  2 = Enactment is fully in accord  1= Minor errors  0 = Errors that are more than minor  For present purposes, and in light of the text associated with a score of 3, enacting a provision that is narrower than the exception contained in the Convention should not be regarded as an error.  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 4(3)(c) | 1. How well has Art. 4(3)(c) been enacted?   Art. 4(3)(c) provides:  “A request for environmental information may be refused if:  (c) The request concerns material in the course of completion or concerns internal communications of public authorities where such an exemption  is provided for in national law or customary practice, taking into account the public interest served by disclosure.” | **Scoring Guide:**  3 = Enactment provides a narrower exception than the Convention provision  2 = Enactment is fully in accord  1= Minor errors  0 = Errors that are more than minor  For present purposes, and in light of the text associated with a score of 3, enacting a provision that is narrower than the exception contained in the Convention should not be regarded as an error.  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 4(4)(a) | 1. How well has Art. 4(4)(a) been enacted?   Art. 4(4)(a) provides:  “A request for environmental information may be refused if the disclosure would adversely affect:  (a) The confidentiality of the proceedings of public authorities, where such confidentiality is provided for under national law;  [...]  The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking  into account whether the information requested relates to emissions into the environment.” | **Scoring Guide:**  3 = Enactment provides a narrower exception than the Convention provision  2 = Enactment is fully in accord  1= Minor errors  0 = Errors that are more than minor  For present purposes, and in light of the text associated with a score of 3, enacting a provision that is narrower than the exception contained in the Convention should not be regarded as an error.    Please note that if the national legal framework does not require the grounds for refusal to be “interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment,” this will be a “more than minor” error.  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 4(4)(b) | 1. How well has Art. 4(4)(b) been enacted?   Art. 4(4)(b) provides:  “A request for environmental information may be refused if the disclosure would adversely affect:  (b) International relations, national defence or public security;  [...]  The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking  into account whether the information requested relates to emissions into the environment.” | **Scoring Guide:**  3 = Enactment provides a narrower exception than the Convention provision  2 = Enactment is fully in accord  1= Minor errors  0 = Errors that are more than minor  For present purposes, and in light of the text associated with a score of 3, enacting a provision that is narrower than the exception contained in the Convention should not be regarded as an error.  Please note that if the national legal framework does not require the grounds for refusal to be “interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment,” this will be a “more than minor” error.  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 4(4)(c) | 1. How well has Art. 4(4)(c) been enacted?   Art. 4(4)(c) provides:  “A request for environmental information may be refused if the disclosure would adversely affect:  (c) The course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;  [...]  The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking  into account whether the information requested relates to emissions into the environment.” | **Scoring Guide:**  3 = Enactment provides a narrower exception than the Convention provision  2 = Enactment is fully in accord  1= Minor errors  0 = Errors that are more than minor  For present purposes, and in light of the text associated with a score of 3, enacting a provision that is narrower than the exception contained in the Convention should not be regarded as an error.  Please note that if the national legal framework does not require the grounds for refusal to be “interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment,” this will be a “more than minor” error.  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 4(4)(d) | 1. How well has Art. 4(4)(d) been enacted?   Art. 4(4)(d) provides:  “A request for environmental information may be refused if the disclosure would adversely affect:  (d) The confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest. Within this framework, information on emissions which is relevant for the protection of the environment shall be disclosed;  [...]  The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking  into account whether the information requested relates to emissions into the environment.” | **Scoring Guide:**  3 = Enactment provides a narrower exception than the Convention provision  2 = Enactment is fully in accord  1= Minor errors  0 = Errors that are more than minor  For present purposes, and in light of the text associated with a score of 3, enacting a provision that is narrower than the exception contained in the Convention should not be regarded as an error.  Please note that if the national legal framework does not require the grounds for refusal to be “interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment,” this will be a “more than minor” error.  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 4(4)(e) | 1. How well has Art. 4(4)(e) been enacted?   Art. 4(4)(e) provides:  “A request for environmental information may be refused if the disclosure would adversely affect:  (e) Intellectual property rights;  [...]  The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking  into account whether the information requested relates to emissions into the environment.” | **Scoring Guide:**  3 = Enactment provides a narrower exception than the Convention provision  2 = Enactment is fully in accord  1= Minor errors  0 = Errors that are more than minor  For present purposes, and in light of the text associated with a score of 3, enacting a provision that is narrower than the exception contained in the Convention should not be regarded as an error.  Please note that if the national legal framework does not require the grounds for refusal to be “interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment,” this will be a “more than minor” error.  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 4(4)(f) | 1. How well has Art. 4(4)(f) been enacted?   Art. 4(4)(f) provides:  “A request for environmental information may be refused if the disclosure would adversely affect:  (f) The confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for in national law;  [...]  The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking  into account whether the information requested relates to emissions into the environment.” | **Scoring Guide:**  3 = Enactment provides a narrower exception than the Convention provision  2 = Enactment is fully in accord  1= Minor errors  0 = Errors that are more than minor  For present purposes, and in light of the text associated with a score of 3, enacting a provision that is narrower than the exception contained in the Convention should not be regarded as an error.  Please note that if the national legal framework does not require the grounds for refusal to be “interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment,” this will be a “more than minor” error.  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 4(4)(g) | 1. How well has Art. 4(4)(g) been enacted?   Art. 4(4)(g) provides:  “A request for environmental information may be refused if the disclosure would adversely affect:  (g) The interests of a third party which has supplied the information requested without that party being under or capable of being put under a legal  obligation to do so, and where that party does not consent to the release of the material;  [...]  The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking  into account whether the information requested relates to emissions into the environment.” | **Scoring Guide:**  3 = Enactment provides a narrower exception than the Convention provision  2 = Enactment is fully in accord  1= Minor errors  0 = Errors that are more than minor  For present purposes, and in light of the text associated with a score of 3, enacting a provision that is narrower than the exception contained in the Convention should not be regarded as an error.  Please note that if the national legal framework does not require the grounds for refusal to be “interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment,” this will be a “more than minor” error.  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 4(4)(h) | 1. How well has Art. 4(4)(h) been enacted?   Art. 4(4)(h) provides:  “A request for environmental information may be refused if the disclosure would adversely affect:  (h) The environment to which the information relates, such as the breeding sites of rare species.  The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking  into account whether the information requested relates to emissions into the environment.” | **Scoring Guide:**  3 = Enactment provides a narrower exception than the Convention provision  2 = Enactment is fully in accord  1= Minor errors  0 = Errors that are more than minor  For present purposes, and in light of the text associated with a score of 3, enacting a provision that is narrower than the exception contained in the Convention should not be regarded as an error.  Please note that if the national legal framework does not require the grounds for refusal to be “interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment,” this will be a “more than minor” error.  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| N/A | 1. Does the law provide for any situations in which a request for environmental information may be refused which are not contemplated by Art. 4(3) or 4(4) of the Aarhus Convention? | **Scoring Guide:**  3 = No  0 = Yes  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 4(6) | 1. How well has Art. 4(6) been enacted?   Art. 4(6) provides:  “Each Party shall ensure that, if information exempted from disclosure under paragraphs 3 (c) and 4 above [i.e. Art. 4(3)(c) and 4(4)] can be separated out without prejudice to the confidentiality of the information exempted, public authorities make available the remainder of the environmental information that has been requested.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 4(7), first sentence | 1. How well has the first sentence of Art. 4(7) been enacted?   The first sentence of Art. 4(7) provides:  “A refusal of a request shall be in writing if the request was in writing or the applicant so requests.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 4(7), second sentence | 1. How well has the second sentence of Art. 4(7) been enacted?   The second sentence of Art. 4(7) provides:  “A refusal shall state the reasons for the refusal and give information on access to the review procedure provided for in accordance with article 9.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 4(7), third and fourth sentences | 1. How well have the third and fourth sentences of Art. 4(7) been enacted?   The third and fourth sentences of Art. 4(7) provide:  “The refusal shall be made as soon as possible and at the latest within one month, unless the complexity of the information justifies an extension of this period up to two months after the request. The applicant shall be informed of any extension and of the reasons justifying it. | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 4(8) | 1. How well has Art. 4(8) been enacted?   Art. 4(8) provides:  “Each Party may allow its public authorities to make a charge for supplying information, but such charge shall not exceed a reasonable amount.  Public authorities intending to make such a charge for supplying information shall make available to applicants a schedule of charges which may be levied, indicating the circumstances in which they may be levied or waived and when the supply of information is conditional on the advance payment of such a charge.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 4 legal indicators?

Do you agree with our approach to Art. 4(3)(a)-(c) and 4(4)(a)-(h) where we have provided that the highest score of 3 should be obtained by Parties which have enacted an exception that is narrower than the Convention provision? If you agree with this approach in general, do you agree with it in respect of all of the exceptions in question (e.g. including Art. 4(4)(h) which relates to disclosures which would adversely affect the environment to which the information relates)? Finally, what score do you think should be obtained by a Party in respect of the exceptions mentioned in Art. 4(3)(a)-(c) and 4(4)(a)-(h) where the country has not enacted the exception *at all*? Again, does your answer differ according to the exception in question (e.g. Art. 4(4)(h) may again be considered an interesting case in point, amongst others)?

### 

### Information on request – Practice indicators

| **Aarhus provision** | **Practice indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 4(1) | 1. As a general matter, how good has the Party’s performance been in practice in terms of ensuring access to environmental information in accordance with Art. 4(1)?   Art. 4(1) provides:  “1. Each Party shall ensure that, subject to the following paragraphs of this article, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information:  (a) Without an interest having to be stated;  (b) In the form requested unless:  (i) It is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form; or  (ii) The information is already publicly available in another form.” | **Scoring guide**  3 = Excellent  2 = Good  1 = Fair  0 = Poor or non-existent  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Take into account here in general the level of institutionalisation of passive (upon request) information servicing; the level of use of electronic communication; whether the country has institutionalized a records and monitoring system for compiling information request statistics and also the available statistics relating to information requests and related decisions (outcome, timeliness, format etc.) Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * availability of statistics on information requests and servicing, including research and analyses and measures taken based on them (ref.1, ref.2, ref.11, ref.12, ref.15, ref.16, ref.17, ref.18) * richness of data sources used for information servicing (ref.4, ref.19) * the role of any statistical organisations and aggregate data in information servicing (ref.8) * transforming data to provide an easier to handle information (knowledge, wisdom) (ref.10) * modalities of receiving and servicing information requests (ref.1, ref.8, ref.20, ref.21) * use of information help desks and other similar units to service environmental information requests (ref.4, ref.16) * is there an information commissioner or similar body which receives reports (e.g. annual statistics) from public authorities on information processing and servicing, perhaps also dealing with complaints from citizens (or complaints and information requests are managed by the desk officers) (ref.5, ref.13, ref.14) * establishing central body to guide the administrative organisations and officials dealing with information requests (ref.7) * protection of data owners without infringing the rights of requesters (ref.6, ref.9) * cases in which public authorities seek to insist on an interest being stated * cases in which public authorities provide information in a format that is impossible to process (e.g. PDF) in circumstances where the original is easily processable (e.g. Excel sheet), despite being asked to provide the processable version   Please justify your score and explain the factors you considered. |
| Art. 4(2)  First sentence | 1. In practice, how good is the Party’s performance in terms of complying with the first sentence of Art. 4(2)     “**The environmental information referred to in paragraph 1 above [i.e. Art. 4(1)] shall be made available as soon as possible and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request.** The applicant shall be informed of any extension and of the reasons justifying it.” | **Scoring guide**  3 = Excellent (provision of information either immediately or in considerably less than one month is typical)  2 = Good (majority of requests are serviced within the prescribed deadlines)  1 = Fair (minority of requests are serviced within the prescribed deadlines)  0 = Poor or non-existent (almost no or no requests are serviced within the prescribed deadlines); or no coherent dataset available to score this indicator\*  \*If there is no coherent dataset available to allow you to assess this indicator, please consider your own experience in practice as well as the experiences of any colleagues or interviewees. Whilst Art. 4(2) does not explicitly require the collation of such data, because it might be too burdensome on the Parties, some Parties monitor at least parts of compliance with this provision.  In scoring this indicator, authorities keeping to deadlines is not the only important factor; other important considerations would include typical or repeated traits/behaviours of the authorities e.g. at first they only respond to the request (e.g. notifying the requester that the request is accepted) and they delay the actual servicing of the requested information. The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Insofar as possible, please take into consideration *inter alia*:   * how many information requests are responded to immediately? (ref.1) * to what extent are the prescribed deadlines met? (ref.2, ref.4, ref.5) * keeping to the rules regarding the extension of deadlines (ref.3) * any time gaps between responding to the request and actual provision of the information itself (ref.5) * use of the “heavy workload” argument (ref.6) * frequency of occurrence of no answer at all to requests (ref.6)   Please justify your score and explain the factors you considered. |
| Art. 4(2)  Second sentence | 1. In practice, how good is the Party’s performance in terms of complying with the second sentence of Art. 4(2)     “The environmental information referred to in paragraph 1 above [i.e. Art. 4(1)] shall be made available as soon as possible and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request. **The applicant shall be informed of any extension and of the reasons justifying it.”** | **Scoring guide**  3 = Excellent (applicants always or almost always informed of the extension and reasons, and the reasons cited always or almost always fall within those permissible under Art. 4(2))  2 = Good (applicants normally informed of the extension and reasons, and the reasons cited normally fall within those permissible under Art. 4(2))  1 = Fair (applicants rarely informed of the extension and reasons; and where reasons are cited they rarely fall within those permissible under Art. 4(2))  0 = Poor or non-existent (applicants are typically not informed of the extension and reasons; and where reasons are cited they only very rarely fall within those permissible under Art. 4(2)); or no coherent dataset available to score this indicator\*  \*If there is no coherent dataset available to allow you to assess this indicator, please consider your own experience in practice as well as the experiences of any colleagues or interviewees. Please indicate in the comments how you came to your conclusion and the resources that were available. Whilst Art. 4(2) does not explicitly require the collation of such data, because it might be too burdensome on the Parties, some Parties monitor at least parts of compliance with this provision. |
| Art. 4(3)(a) and 4(5) | 1. Where a public authority does not hold the environmental information requested, do public authorities inform the requester promptly about the believed correct location of the information, or forward the request to the authority that may have the information, informing the applicant accordingly?   Art. 4(3)(a) provides:  “A request for environmental information may be refused if:   1. The public authority to which the request is addressed does not hold the environmental information requested;”   Art. 4(5) provides:  “Where a public authority does not hold the environmental information requested, this public authority shall, as promptly as possible, inform the  applicant of the public authority to which it believes it is possible to apply for the information requested or transfer the request to that authority and inform the applicant accordingly.” | **Scoring Guide:**  3 = Yes, always  2 = Yes, frequently  1 = No, rarely  0 = No, never  For the purpose of this indicator, please regard “promptly” as being within one week of the public authority receiving the information request  The reference cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Please note *inter alia*:   * conditions relating to the onward referral of information requests (ref.1)   Please justify your score and explain the factors you considered. |
| Art. 4(3)(b) and (c) | 1. In practice, how are these exemptions from the right to information on request typically interpreted?   Article 4(3) provides:  “(3) A request for environmental information may be refused if:  (b) The request is manifestly unreasonable or formulated in too general a manner;  (c) The request concerns material in the course of completion or concerns internal communications of public authorities where such an exemption is provided for in national law or customary practice, taking into account the public interest served by disclosure.” | **Scoring Guide:**  3 = Article 4(3)(b) is interpreted restrictively AND with respect to article 4(3)(c), there are no exemptions in national law or practice for materials in the course of completion or for internal communications of public authorities.  2 = Article 4(3)(b) is interpreted restrictively AND with respect to article 4(3)(c), there is no exemption in national law or practice for materials in the course of completion OR for internal communications of public authorities OR any such exemption is interpreted restrictively, taking into account the public interest served by disclosure  1 = Article 4(3)(b) and (c) are not interpreted restrictively in practice but in the case of Art. 4(3)(c)) the public interest served by disclosure is typically taken into account.  0 = Article 4(3)(b) and (c) are not interpreted restrictively in practice, and in the case of Art. 4(3)(c), the public interest served by disclosure is frequently not taken into account.  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Insofar as possible, please take into consideration *inter alia*:   * the practice in cases where the requested information is said to be too voluminous (ref.1, ref.5) * the practice in cases where the request is said to be formulated in too general a manner (ref.2) * the use of exemptions in connection with advice and considerations in preparatory phases of administrative decisions (Especially in the light of the principle of ensuring even procedural positions for all parties and the right to legal remedies against the whole decision, including expert opinions and other supporting materials.) (ref.3, ref.4, ref.6, ref.7, ref.8)   Please justify your score and explain the factors you considered. |
| Art. 4(4) | 1. In practice, how are these exemptions from the right to information on request typically interpreted?   Art. 4(4) provides:  “A request for environmental information may be refused if the disclosure would adversely affect:  (a) The confidentiality of the proceedings of public authorities, where such confidentiality is provided for under national law;  (b) International relations, national defence or public security;  (c) The course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;  (d) The confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest. Within this framework, information on emissions which is relevant for the protection of the environment shall be disclosed;  (e) Intellectual property rights;  (f) The confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for in national law;  (g) The interests of a third party which has supplied the information requested without that party being under or capable of being put under a legal  obligation to do so, and where that party does not consent to the release of the material;  (h) The environment to which the information relates, such as the breeding sites of rare species.  The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking  into account whether the information requested relates to emissions into the environment.” | **Scoring Guide:**  3 = Very restrictively, giving strong weight to the public interest served by disclosure and whether the information requested relates to emissions into the environment  2 = Restrictively, always or almost always taking into account the public interest served by disclosure and also whether the information requested relates to emissions into the environment.  1 = EITHER not restrictively, OR the authorities do not always or almost always take into account the public interest served by disclosure OR if the information requested relates to emissions into the environment  0 = Not restrictively and authorities do not always or almost always take into account the public interest served by disclosure or if the information requested relates to emissions into the environment.  Please note that some of the exemptions might be in connection with short term economic interests (such as business secrets), while others might - in contrast - protect the environment itself (e.g. Para (h) of Art 4(4)). Naturally, restrictions in access to information falling within this second group of issues should not be considered as indicators of a poorer practice in ensuring environmental democracy. The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing).  Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * ‘legitimate economic interests’ and confidentiality of business secrets (ref.4) * balancing the right to access environmental information and intellectual property rights (e.g. in the case of GMOs) (ref.1) * any cases where environmental impact assessment documentation, wholly or partly, is exempted from disclosure (ref.2) * the handling of information of environmental, nature protection sensibility (ref.3)   Please justify your score and explain the factors you considered. |
| N/A | 1. In practice, are requests for environmental information refused on grounds which are not contemplated by Art. 4(3) or 4(4) of the Aarhus Convention? | **Scoring Guide:**  3 = No  2 = Very rarely  1= Yes, sometimes but not on a regular basis.  0 = Yes, frequently, on a regular basis. |
| Art. 4(6) | 1. In practice, do the relevant authorities separate out information exempted from disclosure from other information (known as partial disclosure or severance)?   Art. 4(6) provides:  “Each Party shall ensure that, if information exempted from disclosure under paragraphs 3 (c) and 4 above [i.e. Art. 4(3)(c) and 4(4)] can be separated out without prejudice to the confidentiality of the information exempted, public authorities make available the remainder of the environmental information that has been requested.” | **Scoring Guide:**  3 = Yes, always  2 = Yes, frequently  1 = No, rarely  0 = No, never  Please note that separation can be interpreted broadly: the progressive, flexible practice for instance, where authorities black out names, other personal data and any other sensitive data, in order to ensure serviceable material. The reference cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Take into consideration *inter alia*:   * any examples of reluctance on the part of the relevant authorities to separate out environmental information that is not exempted from disclosure (ref.1) * failure to implement Art. 4(6) in practice and no reference to this otherwise existing legal possibility in the publicly available information materials (ref.2)   Please justify your score and explain the factors you considered. |
| Art. 4(7) | 1. Are instances of refusal provided (i) in writing (if request was in writing or applicant requests), (ii) within the prescribed time frames, (iii) with reference to the reasons for refusal and (iv) with information on access to the review procedure provided under article 9?   Art. 4(7) provides:  “A refusal of a request shall be in writing if the request was in writing or the applicant so requests. A refusal shall state the reasons for the refusal and give information on access to the review procedure provided for in accordance with article 9. The refusal shall be made as soon as possible and at the latest within one month, unless the complexity of the information justifies an extension of this period up to two months after the request. The applicant shall be informed of any extension and of the reasons justifying it.” | **Scoring Guide:**  3 = All four criteria are always or almost always met in practice  2 = All four criteria are met in the majority of cases  2 = Three of the four criteria are always or almost always met in practice.  1 = Only one or two of the four criteria are always or almost always met in practice.  1= Only in a minority of cases are all four criteria met in practice.  0 = Never or almost never are all four criteria met in practice.  Note that refusal is not a black and white issue: in practice authorities that do not wish to provide the requested information might give it only in part and ignore the other aspects of the request or after such a delay that obtaining the information is by then futile. The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * cases where the authority answers the information request only in part (ref.1) * cases where the authority does not give any substantial explanation for refusing the request (ref.1) * any references made by authorities to their “tacit agreement” or “positive silence” in seeking to defend their neglect of information requests (ref.2) * any references by authorities to actively disseminated information when seeking to explain their neglect of information requests (ref.2)   Please justify your score and explain the factors you considered. |
| Art. 4(8) | 1. Are any charges that public authorities make for supplying information reasonable and is a schedule of any such charges made available to applicants in advance, indicating the circumstances in which they be levied or waived and when advance payment is required?   Art. 4(8) provides:  “Each Party may allow its public authorities to make a charge for supplying information, but such charge shall not exceed a reasonable amount.  Public authorities intending to make such a charge for supplying information shall make available to applicants a schedule of charges which may be levied, indicating the circumstances in which they may be levied or waived and when the supply of information is conditional on the advance payment of such a charge.” | **Scoring Guide:**  3 = Authorities always or almost always either do not charge for supplying information or charge no more than a reasonable amount and a schedule of any such charges is made available in advance.    2 = In the majority of cases, authorities either do not charge or charge no more than a reasonable amount and a schedule of any such charges is made available in advance.  1 = Charges for supplying information are frequently higher than what would be reasonable OR a schedule of such charges is typically not made available in advance.  0 = Charges for supplying information are frequently higher than what would be reasonable AND a schedule of such charges is typically not made available in advance.  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * cases where authorities charge only for certain types of information (ref.1) * any differential treatment where different kinds of requesters (public bodies, corporate bodies, NGOs, private persons etc.) ask for information * free information provision as a general rule (ref.2) * relatively high price imposed even for simple copying of requested printed materials (ref.3) * The Opinion of AG Sharpston and the subsequent judgment in [Case C-71/14](http://curia.europa.eu/juris/liste.jsf?pro=&nat=or&oqp=&dates=&lg=&language=en&jur=C%2CT%2CF&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&num=C-71%252F14&td=%3BALL&pcs=Oor&avg=&page=1&mat=or&jge=&for=&cid=203778)   Please justify your score and explain the factors you considered. |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 4 practice indicators?

Do you think Article 4(1) should be divided into two practice indicators (one for Art. 4(1)(a) and one for 4(1)(b)), as was the case with the legal indicators? Please provide your reasons.

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### (b) Collection and active dissemination of information – Legal indicators

| **Aarhus provision** | **Legal indicators** | **Guidance note** |
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| Art. 5(1)(a) | 1. How well has Art. 5(1)(a) been enacted?   Art. 5(1)(a) provides:  “1. Each Party shall ensure that:  (a) Public authorities possess and update environmental information which is relevant to their functions;” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 5(1)(b) | 1. How well has Art. 5(1)(b) been enacted?   Art. 5(1)(b) provides:  “1. Each Party shall ensure that:  (b) Mandatory systems are established so that there is an adequate flow of information to public authorities about proposed and existing  activities which may significantly affect the environment;” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 5(1)(c) | 1. How well has Art. 5(1)(c) been enacted?   Art. 5(1)(c) provides:  “1. Each Party shall ensure that:    (c) In the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all  information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is  disseminated immediately and without delay to members of the public who may be affected.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 5(2)(a) | 1. How well has Art. 5(2)(a) been enacted?   Art. 5(2)(a) provides:  2. Each Party shall ensure that, within the framework of national legislation, the way in which public authorities make environmental  information available to the public is transparent and that environmental information is effectively accessible, inter alia, by:  (a) Providing sufficient information to the public about the type and scope of environmental information held by the relevant public authorities,  the basic terms and conditions under which such information is made available and accessible, and the process by which it can be obtained;” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 5(2)(b) and (c) | 1. How well has Art. 5(2)(b) and (c) been enacted?   Art. 5(2)(b) and (c) provide:  “2. Each Party shall ensure that, within the framework of national legislation, the way in which public authorities make environmental  information available to the public is transparent and that environmental information is effectively accessible, inter alia, by:  (b) Establishing and maintaining practical arrangements, such as:  (i) Publicly accessible lists, registers or files;  (ii) Requiring officials to support the public in seeking access to information under this Convention; and  (iii) The identification of points of contact; and  (c) Providing access to the environmental information contained in lists, registers or files as referred to in subparagraph (b) (i) above free of  charge.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 5(3) | 1. How well has Art. 5(3) been enacted?   “3. Each Party shall ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks. Information accessible in this form should include:  (a) Reports on the state of the environment, as referred to in paragraph 4 below;  (b) Texts of legislation on or relating to the environment;  (c) As appropriate, policies, plans and programmes on or relating to the environment, and environmental agreements;  (d) Other information, to the extent that the availability of such information in this form would facilitate the application of national law implementing the Convention,  provided that such information is already available in electronic form.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 5(4) | 1. How well has Art. 5(4) been enacted?   Art. 5(4) provides:  “4. Each Party shall, at regular intervals not exceeding three or four years, publish and disseminate a national report on the state of the  environment, including information on the quality of the environment and information on pressures on the environment.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors, e.g. the report is to be provided at slightly greater intervals, say 5 years.  1 = Errors that are more than minor, e.g. the report is to be provided at greater intervals, say every 6 or more years and/or detailed information on the quality of or pressures on the environment is not required.  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 5(5) | 1. How well has Art. 5(5) been enacted?   Art. 5(5) provides:  “5. Each Party shall take measures within the framework of its legislation for the purpose of disseminating, inter alia:  (a) Legislation and policy documents such as documents on strategies, policies, programmes and action plans relating to the environment, and  progress reports on their implementation, prepared at various levels of government;  (b) International treaties, conventions and agreements on environmental issues; and  (c) Other significant international documents on environmental issues, as appropriate.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 5(6) | 1. How well has Art. 5(6) been enacted?   Art. 5(6) provides:  “6. Each Party shall encourage operators whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products, where appropriate within the  framework of voluntary eco-labelling or eco-auditing schemes or by other means.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 5(7)(a) | 1. How well has Art. 5(7) been enacted?   Art. 5(7)(a) provides:  “7. Each Party shall:  (a) Publish the facts and analyses of facts which it considers relevant and important in framing major environmental policy proposals;” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 5(7)(b) | 1. How well has Art. 5(7)(b) been enacted?   Art. 5(7)(b) provides:  “7. Each Party shall:  (b) Publish, or otherwise make accessible, available explanatory material on its dealings with the public in matters falling within the scope of this Convention;” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 5(7)(c) | 1. How well has Art. 5(7)(c) been enacted?   Art. 5(7)(c) provides:  “7. Each Party shall:  (c) Provide in an appropriate form information on the performance of public functions or the provision of public services relating to the  environment by government at all levels.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 5(8) | 1. How well has Art. 5(8) been enacted?   Art. 5(8) provides:  “8. Each Party shall develop mechanisms with a view to ensuring that sufficient product information is made available to the public in a manner which enables consumers to make informed environmental choices.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 5(9) | 1. How well has Art. 5(9) been enacted?   Art. 5(9) provides:  “9. Each Party shall take steps to establish progressively, taking into account international processes where appropriate, a coherent, nationwide system of pollution inventories or registers on a structured, computerized and  publicly accessible database compiled through standardized reporting. Such a system may include inputs, releases and transfers of a specified range of substances and products, including water, energy and resource use, from a specified range of activities to environmental media and to on-site and off-site treatment and disposal sites.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please note the following passage from the** [**Aarhus Implementation Guide (2014)**](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf) **– at p.115: “For Parties that have ratified the Protocol on PRTRs, the implementation of their obligations under the Protocol should also meet their obligations under article 5, paragraph 9. For those Parties not party to the Protocol, the Protocol nevertheless serves as an important guide to the implementation of this paragraph.”**  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 5 legal indicators?

### Collection and active dissemination of information – Practice indicators

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| --- | --- | --- |
| **Aarhus provision** | **Practice indicators** | **Guidance note** |
| Art. 5(1)(a)-(b) | 1. In practice, do public authorities possess and update environmental information which is relevant to their functions, and have mandatory systems been established that ensure the adequate flow of information to them.   Art. 5(1)(a)-(b) provides:  “1. Each Party shall ensure that:  (a) Public authorities possess and update environmental information which is relevant to their functions;  (b) Mandatory systems are established so that there is an adequate flow of information to public authorities about proposed and existing  activities which may significantly affect the environment;” | **Scoring Guide:**  3 = Mandatory systems have been established to ensure the adequate flow of information have been established across the board, and as a routine, public authorities possess and update environmental information which is relevant to their function.  2 = Most public authorities have established mandatory systems to ensure the adequate flow of information, and as a routine, most public authorities possess and update environmental information which is relevant to their function  1 = A minority of public authorities have established mandatory systems to ensure the adequate flow of information, and/or a minority of public authorities possess and update environmental information which is relevant to their function  0 = Public authorities typically have not established mandatory systems to ensure the adequate flow of information, and/or public authorities typically do not possess and update environmental information which is relevant to their function  Here the question is the existence of proper environmental information: the regular flow of timely, relevant, reliable, comparable etc. information from sources (facilities, monitoring stations, etc.) and the availability of it at the environmental and other relevant authorities. The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * whether a proper monitoring system for all environmental modalities is in place (ref.8, ref.9, ref.15) * systematic availability of EIA documentation and environmental permits as a rich source of information on the environmentally most significant projects (ref.1, ref.14) * the environmental NGO community as a source of environmental information, their role acknowledged and supported in information collection and processing (ref.2, ref.12) * the market of environmental information and the role of expert organisations and individual experts in environmental information systems (ref.10) * participation in environmental information collection and processing by authorities other than environmental ones, such as water, health, minerals and tourism, general statistical office (ref.3, ref.11, ref.13, ref.16) * “public to public” charges for information, hindering the circulation of environmental information between relevant State bodies (ref.13, ref. 16) * transparency and coordination between different data-bases, the possibility of free exchange (ref.4) * environmental information available at local/municipal level (ref.7, ref.12)   Please justify your score and explain the factors you considered. |
| Art. 5(1)(c) | 1. How effective in practice is the system of active dissemination in ‘imminent threat’ cases?   Art. 5(1)(c) provides:  “1. Each Party shall ensure that:    (c) In the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all  information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is  disseminated immediately and without delay to members of the public who may be affected.” | **Scoring Guide:**  3 = Practical measures have been taken to ensure that in the event of any imminent threat to human health or the environment, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected.  2 = Practical measures have been taken to ensure that in the event of any imminent threat to human health or the environment, the necessary information to enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated without delay to members of the public who may be affected.    1 = Practical measures have been taken so that in the event of any imminent threat to human health or the environment, information to assist the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority should be disseminated to members of the public who may be affected  0 = No practical measures have been taken or any that have been taken are insufficient to ensure that in the event of any imminent threat to human health or the environment, information to assist the public to take measures to prevent or mitigate harm arising from the threat and that is held by a public authority is disseminated to members of the public who may be affected  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Please note that the effectiveness of information provision in emergency situations is prima facie measured by prevented casualties and prevented material damage, while the indirect elements are the catastrophe preparedness and follow up (both from information dissemination angle). Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * prevalence of use of social media and Internet tools (e.g. websites, emails) in emergency situations (ref.1, ref.3) * the role and responsibilities of operators (i.e. polluters) with regard to informing the public (ref.2) * effectiveness of dissemination of risk-related information before (risk preparedness, forecasts etc.) and after (conclusions, liability etc.) emergency situations (ref.4) * relevant cases under, and preparedness in respect of, the Environmental Liability Directive framework.   Please justify your score and explain the factors you considered. |
| Art. 5(2) | 1. In practice, has the government taken practical measures to ensure that the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible, in the manner envisaged by Art. 5(2)?   Art. 5(2) provides:  2. Each Party shall ensure that, within the framework of national legislation, the way in which public authorities make environmental  information available to the public is transparent and that environmental information is effectively accessible, inter alia, by:  (a) Providing sufficient information to the public about the type and scope of environmental information held by the relevant public authorities,  the basic terms and conditions under which such information is made available and accessible, and the process by which it can be obtained;  (b) Establishing and maintaining practical arrangements, such as:  (i) Publicly accessible lists, registers or files;  (ii) Requiring officials to support the public in seeking access to information under this Convention; and  (iii) The identification of points of contact; and  (c) Providing access to the environmental information contained in lists, registers or files as referred to in subparagraph (b) (i) above free of  charge. | **Scoring Guide:**  3 = Practical measures have been taken by the government which always or almost always ensure that the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible.  2 = Practical measures have been taken by the government which in most cases ensure that the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible.  1 = Some practical measures have been taken by the government which in a minority of cases ensure that the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible.  0 = No measures have been taken or the measures taken are not effective to ensure that the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible.  However impressive the environmental information provision/collection systems may be under Indicator 1 above, this may be of limited use if the general public has little knowledge about it. The existence and effective functioning of the tools listed in Art. 5(2) b. shall be evaluated here. The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * existence of national, regional or local level meta databases for environmental information (ref.1) * use of geographic information systems in order to reveal interrelationships between different databases relevant to environmental matters, use of interactive map services and suchlike (ref.1, ref.2) * does meta data contain information on any costs of underlying data (ref.1) * the existence of networks in connection with available environmental information sources (ref.3)   Please justify your score and explain the factors you considered. |
| Art. 5(3) | 1. In practice, has the Party ensured that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks, including the information indicated in Art. 5(3)(a) to (d)?   Article 5(3) provides:  “3. Each Party shall ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks. Information accessible in this form should include:  (a) Reports on the state of the environment, as referred to in paragraph 4 below;  (b) Texts of legislation on or relating to the environment;  (c) As appropriate, policies, plans and programmes on or relating to the environment, and environmental agreements;  (d) Other information, to the extent that the availability of such information in this form would facilitate the application of national law  implementing this Convention,  provided that such information is already available in electronic form.” | **Scoring Guide:**  3 = The Party has taken practical measures to ensure that environmental information (including but not limited to the information set out in Art. 5(3)(a)-(d)) is progressively made available through electronic databases which are easily accessible to the public.  2 = The Party has taken practical measures to ensure that the environmental information set out in Art. 5(3)(a)-(d) is progressively made available through electronic databases which are easily accessible to the public.  1 = The Party has taken some practical measures to ensure that some of the environmental information set out in Art. 5(3)(a)-(d) is made available through electronic databases which are easily accessible to the public.  0 = The Party has not taken practical measures or the measures taken have not been effective to ensure that the environmental information set out in art.5(3)(a)-(d) is progressively made available through electronic databases which are easily accessible to the public.  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Please take into consideration that this indicator, as usual, measures environmental democracy, not the economic development of a given country. Therefore, in considering “easily accessible”, please determine your score without reference to the availability of relevant technology (both in large cities and in the countryside). Another aspect of “easily accessible” is arguably the availability (or otherwise) of search functions on websites allowing free text searches within the entire database. Interconnected databases, timeliness, access to documents regarding individual environmental cases, user friendly settings, and interactivity are important features amongst others.  Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * easy electronic access to fresh environmental data, with interactive support (e.g. monthly electronic newsletters, information helpdesks) (ref.1, ref.5, ref.6, ref.7) * widespread electronic access to several databases that are environmentally relevant (ref.2) * timely, real time environmental information on the Internet (ref.9) * electronic access to general type environmental documents such as plans and reports (ref.5) * direct electronic access to environmental permitting, EIA and SEA data (ref.4, ref.7) * well edited, easy to handle structures in the environmental electronic information systems (ref.3) * any data available about the number of visitors to the relevant websites? (ref.10) * in respect of texts of legislation, whether consolidated texts are available or only original unconsolidated versions   Please justify your score and explain the factors you considered. |
| Art. 5(4) | 1. Since joining the Aarhus Convention, has the Party published and disseminated a national report on the state of the environment at regular intervals not exceeding three or four years, including information on the quality of the environment and information on pressures on the environment?   Art. 5(4) provides:  “4. Each Party shall, at regular intervals not exceeding three or four years, publish and disseminate a national report on the state of the  environment, including information on the quality of the environment and information on pressures on the environment.” | **Scoring Guide:**  3 = Yes, annually  2 = Yes, biannually  1 = Yes, every three or four years  0 = No |
| Art. 5(4) | 1. How would you rate the quality and breadth of dissemination of the state of environment reports? | **Scoring Guide:**  3 = Both the quality of the report (which includes both information on the quality of, and pressures on, the environment) and the breadth of dissemination of the report are of a very high standard.  2 = Both the quality of the report (which includes both information on the quality of, and pressures on, the environment) and the breadth of dissemination of the report are good.  1 = EITHER the quality of the report (including both information on the quality of, and pressures on, the environment) OR the breadth of dissemination of the report, are good (but not both).  1= BOTH the quality of the report (including both information on the quality of, and pressures on, the environment) OR the breadth of dissemination of the report are just adequate (but not both).  0 = No reports are prepared or any reports are of very poor quality and/or very poorly disseminated.  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Please note in your comments any issues relating to content and/or breadth of dissemination: e.g.   * content issues: holistic, systematic approach in the reports, scientific quality, style, structure etc. (ref. 3, ref.4) * breadth of dissemination of such reports, amongst state, scientific and civic organisations (ref.1, ref.2)   Please justify your score and explain the factors you considered. |
| Art. 5(5) | 1. In the past 5 years, has the government disseminated international and national environmental legislation and policy documents, as well as progress reports in respect of the implementation thereof?   Art. 5(5) provides:  “5. Each Party shall take measures within the framework of its legislation for the purpose of disseminating, inter alia:  (a) Legislation and policy documents such as documents on strategies, policies, programmes and action plans relating to the environment, and  progress reports on their implementation, prepared at various levels of government;  (b) International treaties, conventions and agreements on environmental issues; and  (c) Other significant international documents on environmental issues, as appropriate.” | **Scoring Guide:**  3 = Yes, all international and national environmental legislation and policy documents drafted and adopted and also progress reports in respect of the implementation thereof  2 = Yes, the majority of applicable international and national environmental legislation and policy documents adopted and also progress reports in respect of the implementation thereof  1 = Yes, a minority of international and national environmental legislation and policy documents adopted and also progress reports in respect of the implementation thereof  0 = No, or very rarely.  Please note that spatial planning documents should be considered as ‘relating to the environment’ here, because they represent one of the most important factors that determine the environmental situation in a country or in parts of it. Please justify your score and explain the factors you considered. |
| Art. 5(6) | 1. Has the government taken practical measures to encourage operators whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products, where appropriate?   Art. 5(6) provides:  “6. Each Party shall encourage operators whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products, where appropriate within the framework of voluntary eco-labelling or eco-auditing schemes or by other means.” | **Scoring Guide:**  3 = Yes, and all or almost all operators whose activities have a significant impact on the environment do indeed regularly inform the public of the environmental impact of their activities and products  2 = Yes, and the majority of operators whose activities have a significant impact on the environment do indeed regularly inform the public of the environmental impact of their activities and products  1 = Yes, and a minority of operators whose activities have a significant impact on the environment do indeed regularly inform the public of the environmental impact of their activities and products  0 = No, no practical measures have been taken by the Party OR operators whose activities have a significant impact on the environment rarely or never inform the public of the environmental impact of their activities and products  According to the experiences of early PRTR and TRI (Toxic Release Inventory) models, direct company-community communication is really effective in decreasing the dangers and the use in general of certain dangerous chemicals. However, this seldom takes place, therefore a solid long running governmental effort to encourage this communication, even with only sporadic occurrence of such communication in practice deserves a high score. Substantial information given to the concerned public via Internet should be also taken into consideration. Objective, interactive communication between operators and the concerned public deserves an even higher score. The reference cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)   * the practice in respect of active environmental information dissemination by state-owned companies and their subsidiaries (ref.1)   Please justify your score and explain the factors you considered. |
| Art. 5(7)(a) | 1. Does the Party publish the facts and analyses of facts which it considers relevant and important in framing major environmental policy proposals?   Art. 5(7)(a) provides:  7. Each Party shall:  (a) Publish the facts and analyses of facts which it considers relevant and important in framing major environmental policy proposals; | **Scoring guide:**  3 = Yes, in the case of all or almost all major environmental policy proposals  2 = Yes, in the case of a majority of environmental policy proposals  1 = Yes, in the case of a minority of environmental policy proposals  0 = No, never  Please justify your score and explain the factors you considered. |
| Art. 5(7)(b) | 1. Does the Party publish data on an annual (or more regular) basis relating to access to environmental information requests (e.g. how many were received, how many satisfied, how many refused, which exemptions were used, etc),[[19]](#footnote-20) collected at a national level?   Art. 5(7)(b) provides:  7. Each Party shall:  (b) Publish, or otherwise make accessible, available explanatory material on its dealings with the public in matters falling within the scope of this Convention; | **Scoring Guide:**  3 = Yes  2 = While such data are published, they are only published every 2-3 years  1 = While such data are sometimes published, they are not collected at the national level and/or they are published only every 4+ years  0 = No such data are never published (at the national level or otherwise)  Please justify your score and explain the factors you considered. |
| Art. 5(7)(c) | 1. Does the Party provide in an appropriate form information on the performance of public functions or the provision of public services relating to the environment by government at all levels?   Art. 5(7)(c) provides:  7. Each Party shall:  (c) Provide in an appropriate form information on the performance of public functions or the provision of public services relating to the environment by government at all levels. | **Scoring guide:**  3 = Yes, in the case of all or almost all public functions/services relating to the environment by government at all levels  2 = Yes, in the case of a majority of public functions/services relating to the environment by government at all levels  2 = Yes, in the case of all or almost all public functions/services relating to the environment by government at two of the following levels: national, regional, local  1 = Yes, in the case of a minority of public functions/services relating to the environment by government at all levels  1 = Yes, in the case of a majority of public functions/services relating to the environment by government at one of the following levels: national, regional, local  0 = No, never  Please justify your score and explain the factors you considered. |
| Art. 5(8) | 1. Has the Party developed mechanisms with a view to ensuring that sufficient product information is made available to the public in a manner which enables consumers to make informed environmental choices?   Art. 5(8) provides:  “8. Each Party shall develop mechanisms with a view to ensuring that sufficient product information is made available to the public in a manner which enables consumers to make informed environmental choices.” | **Scoring Guide:**  3 = Yes, such mechanisms have been developed and sufficient product information is made available in a manner which enables consumers to make informed environmental choices.  2 = Yes, such mechanisms have been developed and for many products sufficient information is available in a manner which enables consumers to make informed environmental choices  1 = Yes, some mechanisms have been developed and for a minority of products sufficient information is available in a manner which enables consumers to make informed environmental choices  0 = No such mechanisms have been developed OR some mechanisms have been developed but they are not adequate to ensure that sufficient information is available in a manner which enables consumers to make informed environmental choices.  When scoring please take into consideration both voluntary and regulatory mechanisms. The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Please take into consideration, insofar as relevant *inter alia*:   * the role and activities of market regulatory and consumer protection organisations, including NGOs (ref.1) * ’Countries have developed a variety of mechanisms to ensure that sufficient product information is available to the public. These include both voluntary and regulatory mechanisms’ (ref.2)   Please justify your score and explain the factors you considered. |
| Art. 5(9) | 1. Operation of a nationwide system of pollution inventories or registers   Art. 5(9) provides:  “9. Each Party shall take steps to establish progressively, taking into account international processes where appropriate, a coherent, nationwide system of pollution inventories or registers on a structured, computerized and  publicly accessible database compiled through standardized reporting. Such a system may include inputs, releases and transfers of a specified range of substances and products, including water, energy and resource use, from a specified range of activities to environmental media and to on-site and off-site treatment and disposal sites.” | **Scoring Guide:**  3 = A coherent nationwide system of pollution inventories is established and maintained up-to-date on a structured, computerized and publicly accessible database compiled through standardized reporting, including inputs, releases and transfers of the substances and products and range of activities required under the PRTR Protocol, including to on-site and off-site treatment and disposal sites  2 = A coherent nationwide system of pollution inventories is established and maintained up-to-date on a structured, computerized and publicly accessible database compiled through standardized reporting. It includes inputs, releases and transfers of a specified range of substances and products, including water, energy and resource use, from a specified range of activities to environmental media and to on-site and off-site treatment and disposal sites, however it does not include all substances, products or activities required under the PRTR Protocol.  1 = A coherent nationwide system of pollution inventories has been established but is not currently up-to-date  1 = A nationwide system of pollution inventories has been established and maintained up-to-date but it is not very clear or coherent.  1 = A nationwide system of pollution inventories has been established and maintained up-to-date but it covers a very limited range of substances, products, and activities.  0 = No nationwide system of pollution inventories has yet been established.  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  PRTR (Pollutant Release and Transfer Register) systems offer a win-win solution for the relevant state regulatory bodies, the operators dealing with certain hazardous materials and the concerned local communities concerning the possession of data on hazardous materials that are necessary to manage any emergency situations successfully. However, these complicated data processing systems are not equally popular in every legal system and there are countries where the cultivation of the PRTR legal institution is definitely declining. As a sign of that, data are frequently quite old in PRTR systems, so the age range of pollution covered by the systems, e.g. how old are the latest data, could be an important feature of evaluation. Take into consideration *inter alia*:   * the scope of relevant information used in PRTR systems (ref.1) * online PRTR databases available to the general public (ref.1) * further elaboration and use of the PRTR data, such as producing public reports or easy to understand materials on hazardous materials and their possible effects (ref.2)   Please justify your score and explain the factors you considered.  **Please note the following passage from the** [**Aarhus Implementation Guide (2014)**](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf) **– at p.115: “For Parties that have ratified the Protocol on PRTRs, the implementation of their obligations under the Protocol should also meet their obligations under article 5, paragraph 9. For those Parties not party to the Protocol, the Protocol nevertheless serves as an important guide to the implementation of this paragraph.”** |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 5 practice indicators?

At the moment the practice indicator in respect of Art. 5(7)(b) tests only one specific aspect of that provision. Do you have a suggestion as to how this indicator could be reframed to cover more of Art. 5(7)(b)?

## 

## III. Public participation pillar

### (a) Public participation in decisions on specific activities – Legal indicators

| **Aarhus provision** | **Legal indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 6(1)(a) | 1. How well have Art. 6(1)(a) and Annex I been enacted?   “1. Each Party:  (a) Shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in annex I;” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  In addition to checking whether the wording of Article 6(1)(a) has been correctly enacted, it is also necessary to carefully check whether the legal framework requires all the activities in Annex I to be subject to this provision.  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 6(1)(b) | 1. How well has Art. 6(1)(b) been enacted?   “1. Each Party:  (b) Shall, in accordance with its national law, also apply the provisions of this article to decisions on proposed activities not listed in annex I which may have a significant effect on the environment. To this end, Parties shall determine whether such a proposed activity is subject to these provisions;” | **Scoring Guide:**  3 = The Party has enacted a list of activities not listed in annex I that it deems may have a significant effect on the environment and which should therefore be subject to public participation under Article 6, AND the national legislation contains a mechanism allowing for this list to be updated by secondary legislation or administrative act  2 = The Party has enacted a list of activities not listed in annex I that it deems may have a significant effect on the environment and which should therefore be subject to public participation under Article 6, BUT the national legislation does not contain a mechanism allowing for this list to be updated by secondary legislation or administrative act  1 = The Party has enacted a specific mechanism providing for the creation of a list of activities not listed in annex I that it deems may have a significant effect on the environment and which should therefore be subject to public participation under Article 6. However, no such list has been created.  0 = There is no enactment which provides for this provision to be operationalised  A score of 1 would include the situation where primary legislation has been made providing for a list of activities to be set out in secondary legislation or where primary/secondary legislation provides for the government to issue guidance on the matter, but no such legislation/guidance has been made. A score of 0 would cover the situation where there is no national legislation providing for the possibility of such a list.  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 6(1)(c) | 1. How well has Art. 6(1)(c) been enacted?   “1. Each Party:  (c) May decide, on a case-by-case basis if so provided under national law, not to apply the provisions of this article to proposed activities serving national defence purposes, if that Party deems that such application would have an adverse effect on these purposes.” | **Scoring Guide:**  3= The legal framework does not provide for proposed activities serving national defence purposes to be exempted from the provisions of article 6.  2 = Enactment is fully in accord  1 = Minor errors  0 = Errors that are more than minor  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 6(2) | 1. How well has Art. 6(2) been enacted?   Art. 6(2) provides:  “2. The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, inter alia, of:  (a) The proposed activity and the application on which a decision will be taken;  (b) The nature of possible decisions or the draft decision;  (c) The public authority responsible for making the decision;  (d) The envisaged procedure, including, as and when this information can be provided:  (i) The commencement of the procedure;  (ii) The opportunities for the public to participate;  (iii) The time and venue of any envisaged public hearing;  (iv) An indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public;  (v) An indication of the relevant public authority or any other official body to which comments or questions can be submitted and of the time schedule for transmittal of comments or questions; and  (vi) An indication of what environmental information relevant to the proposed activity is available; and  (e) The fact that the activity is subject to a national or transboundary environmental impact assessment procedure.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 6(3) | 1. How well has Art. 6(3) been enacted?   Art. 6(3) provides:  “3. The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 6(4) | 1. How well has Art. 6(4) been enacted?   Art. 6(4) provides:  “4. Each Party shall provide for early public participation, when all options are open and effective public participation can take place.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 6(5) | 1. How well has Art. 6(5) been enacted?   Art. 6(5) provides:  “5. Each Party should, where appropriate, encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 6(6) | 1. How well has Art. 6(6) been enacted?   Art. 6(6) provides:  “6. Each Party shall require the competent public authorities to give the public concerned access for examination, upon request where so required under national law, free of charge and as soon as it becomes available, to all information relevant to the decision-making referred to in this article that  is available at the time of the public participation procedure, without prejudice to the right of Parties to refuse to disclose certain information in  accordance with article 4, paragraphs 3 and 4. The relevant information shall include at least, and without prejudice to the provisions of article 4:  (a) A description of the site and the physical and technical characteristics of the proposed activity, including an estimate of the expected residues and emissions;  (b) A description of the significant effects of the proposed activity on the environment;  (c) A description of the measures envisaged to prevent and/or reduce the effects, including emissions;  (d) A non-technical summary of the above;  (e) An outline of the main alternatives studied by the applicant; and  (f) In accordance with national legislation, the main reports and advice issued to the public authority at the time when the public concerned shall be informed in accordance with paragraph 2 above.” | **Scoring Guide:**  3 = Enactment is fully in accord, and national law does not require the public to have to make a request in order to have access to the information relevant to the decision-making.  2 = Minor errors **OR** enactment is fully in accord but the national law requires the public to have to make a request in order to have access to the information relevant to the decision-making  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 6(7) | 1. How well has Art. 6(7) been enacted?   Art. 6(7) provides:  “7. Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant,  any comments, information, analyses or opinions that it considers relevant to the proposed activity.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 6(8) | 1. How well has Art. 6(8) been enacted?   Art. 6(8) provides:  “8. Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 6(9) | 1. How well has Art. 6(9) been enacted?   Art. 6(9) provides:  “9. Each Party shall ensure that, when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance with the appropriate procedures. Each Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 6(10) | 1. How well has Art. 6(10) been enacted?   Art. 6(10) provides:  “10. Each Party shall ensure that, when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 of this article are applied mutatis mutandis, and where appropriate.” | **Scoring Guide:**  3 = The legal framework requires a**ll** reconsiderations or updates of operating conditions for activities referred to in paragraph 1 to be subject to a public participation procedure meeting **all** the requirements of paragraphs 2 to 9.  2 = The legal framework requires reconsiderations or updates of operating conditions for activities referred to in paragraph 1 to be subject to a public participation procedure meeting the requirements of paragraphs 2 to 9 “where appropriate.”  1 = The legal framework requires reconsiderations and updates of operating conditions to be subject to a public participation procedure but not a procedure meeting the requirements of paragraphs 2 to 9.  0 = The legal framework does not require reconsiderations or updates of operating conditions to be subject to a public participation procedure.  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 6(11) | 1. How well has Art. 6(11) been enacted?   Art. 6(11) provides:  “11. Each Party shall, within the framework of its national law, apply, to the extent feasible and appropriate, provisions of this article to decisions  on whether to permit the deliberate release of genetically modified organisms into the environment.” | **Scoring Guide:**  3 = **All** decisions on whether to permit the deliberate release of GMOs into the environment are subject to **all** the provisions of article 6 (i.e. no carve out for “if feasible and appropriate”)  2 = Decisions on whether to permit the deliberate release of GMOs into the environment are subject to the provisions of article 6 “to the extent feasible and appropriate”.  1 = The legal framework requires decisions on whether to permit the deliberate release of GMOs into the environment to be subject to a public participation procedure but most of the provisions of article 6 are not enacted with respect to such decision-making.  0 = The legal framework does not require decisions on whether to permit the deliberate release of GMOs into the environment to be subject to a public participation procedure  **In scoring this provision, you should have regard to (amongst other things) the** [**Lucca Guidelines**](http://www.unece.org/fileadmin/DAM/env/pp/documents/gmoguidelinesenglish.pdf)**. Since the GMO amendment is not yet in force you do not need to consider it for the purposes of this exercise.**  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 6 legal indicators?

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### Public participation in decisions on specific activities – Practice indicators

| **Aarhus provision** | **Practice indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 6(1)(a) and (b) | 1. Breadth of activities falling under Article 6(1)(a) and (b) in practice   Article 6(1) provides:  “1. Each Party:  (a) Shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in annex I;  (b) Shall, in accordance with its national law, also apply the provisions of this article to decisions on proposed activities not listed in annex I which may have a significant effect on the environment. To this end, Parties shall determine whether such a proposed activity is subject to these provisions;” | **Scoring Guide:**  3 = All activities listed in annex I plus one or more activities which the Party has determined pursuant to article 6(1)(b) to be subject to article 6.  2 = All activities listed in annex I  1 = Most but not all activities listed in annex I OR all annex I activities are subjected to public participation in accordance with article 6 in practice, but the definition of each activity is interpreted narrowly.  0 = A significant number of activities listed in annex I are not subject to public participation under article 6 in practice.  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  While there is no definition in the Convention, national practice usually defines the circle of cases that may have a significant effect on the environment and hence involve public participation in the decision-making procedures thereof. The approach “any activity in respect of which significant environmental effects cannot be excluded” should be scored the highest. At the other extreme, a general practice of adopting a restrictive interpretation of the proposed activities to which the provisions of Art. 6 apply, or the use of legal and non-legal methods to avoid public participation, shall receive the lowest score.  Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * the definition of ‘permitting’ (falling under Art. 6(1)(a)) versus other types of decisions (arguably not captured) (ref.7) * using hybrid bills (legislative decisions in respect of individual issues) in order to avoid permitting and public participation responsibilities (ref.8) * how far article 6 is identified only with public participation in environmental impact assessment procedures (ref.1, ref.4, ref.5) * the discretionary power to exempt certain projects from EIA or from public participation (ref.5, ref.6, ref.9) * consideration of decision-making with regard to nuclear investments, operations and any modifications of facilities etc. (ref.2) * consideration of decision-making in connection with waters (water management authorities) and forests (belonging to the agricultural administration) with a likely significant environmental impact (ref.3)   Please justify your score and explain the factors you considered. |
| Art. 6(1)(c) | 1. Use of Article 6(1)(c) in practice   Article 6(1) provides:  “1. Each Party:  (c) May decide, on a case-by-case basis if so provided under national law, not to apply the provisions of this article to proposed activities serving national defence purposes, if that Party deems that such application would have an adverse effect on these purposes. | **Scoring Guide:**  3 = Proposed activities serving national defence purposes which may have a significant effect on the environment are always or almost always subject to participation under Article 6  2 = The power to decide not to apply Article 6 to proposed activities serving national defence purposes which may have a significant effect on the environment is sometimes exercised in practice but only if it is established that the application would have an adverse effect on national defence  1 = The power to decide not to apply Article 6 to proposed activities serving national defence purposes which may have a significant effect on the environment is always or almost exercised in practice in respect of all national defence activities narrowly defined (and without reference to actual effects)  0 = The power to decide not to apply Article 6 to proposed activities serving national defence purposes is always or almost always exercised in practice in respect of all national defence activities broadly defined (and without reference to actual effects)  In the event that your research reveals no examples of Article 6 being applied to proposed activities serving national defence purposes, please score this indicator as 0. |
| Art. 6(2) | 1. Timing, content and form of notification in practice   Art. 6(2) provides:  “2. The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, inter alia, of:  (a) The proposed activity and the application on which a decision will be taken;  (b) The nature of possible decisions or the draft decision;  (c) The public authority responsible for making the decision;  (d) The envisaged procedure, including, as and when this information can be provided:  (i) The commencement of the procedure;  (ii) The opportunities for the public to participate;  (iii) The time and venue of any envisaged public hearing;  (iv) An indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public;  (v) An indication of the relevant public authority or any other official body to which comments or questions can be submitted and of the time schedule for transmittal of comments or questions; and  (vi) An indication of what environmental information relevant to the proposed activity is available; and  (e) The fact that the activity is subject to a national or transboundary environmental impact assessment procedure.” | **Scoring Guide:**  3 = In practice, in all or almost all cases subject to article 6, the public concerned is informed, either by public notice or individually as appropriate, early in the environmental decision-making procedure, and in an adequate, timely and effective manner, inter alia, of all the information set out in subparagraphs (a)-(e) of Article 6(2).  2 = In practice, in the majority of cases subject to article 6, the public concerned is informed, either by public notice or individually, in an early, adequate, timely and effective manner, inter alia, of all the information set out in subparagraphs (a)-(e) of Article 6(2).  2= In practice, in all cases subject to article 6, the public concerned is informed, either by public notice or individually, of all the information set out in subparagraphs (a)-(e) of Article 6(2), though the notice could often be given in a more timely or effective manner,  2 = In practice, in all cases subject to article 6, the public concerned is informed, either by public notice or individually, in an adequate, timely and effective manner, though one or more of the aspects set out in subparagraphs (a)-(e) of Article 6(2) may be lacking.  1 = In practice, in a minority of cases subject to article 6, the public concerned is informed, by public notice or individually as appropriate, in an adequate, timely and effective manner, inter alia, of all the information set out in subparagraphs (a)-(e) of Article 6(2).  1 = In practice, in most cases subject to article 6, the public concerned is informed but the notice may not be early, adequate timely or effective manner, and one or more aspects set out in subparagraphs (a)-(e) of Article 6(2) may be lacking.  0 = In practice, the public concerned is rarely informed, either by public notice or individually, early in the environmental decision-making procedure, or in an adequate, timely and effective manner of the information set out in subparagraphs (a)-(e) of Article 6(2).  The score here should be decided first of all on the basis of the comprehensiveness of notification by reference to the elements listed in Art. 6(2). A further important viewpoint is whether and how effectively the authorities tend to take into consideration traits of the concerned communities (especially marginalized groups on the basis of, for example, gender, language, ethnicity or age).  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Insofar as possible and relevant, please take into consideration *inter alia*:   * whether the form of notification takes into consideration the nature and size of the project (ref.1, ref.7) * using a variety of methods of notification, both general forms (media, websites) and specific ones (targeted letters) (ref.2, ref.4, ref.5); the means of notification should fit the needs of the public concerned * adequate, timely and effective notification including all matters listed in Art. 6(2) (a-e) and all accompanying information (ref.3) * substantive and procedural information included in the notification, with bona fide attempts to attract the attention of the public concerned, with repeated and/or additional notifications, if appropriate (ref.4, ref.5, ref.6, ref.8) * cases where the developer is solely responsible for notification (ref.6)   Please justify your score and explain the factors you considered. |
| Art. 6(3) | 1. The time frames provided for public participation are   Art. 6(3) provides:  “3. The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.” | **Scoring Guide:**  3 = In all or almost all cases, the time frames for all phases are reasonable and sufficient, taking into account the nature, complexity and size of the proposed activity.  2 = Time frames for all phases are reasonable and sufficient in the **majority of cases**, taking into account the nature, complexity and size of the proposed activity.  2 = Across all cases, time frames are reasonable and sufficient for the **majority of phases**, but the time frame for one or more phase is often insufficient, taking into account the nature, complexity and size of the proposed activity.  1 = Time frames are for all phases are reasonable and sufficient in a **minority of cases**, often failing to take into account the nature, complexity and size of the proposed activity.  1= Across all cases, time frames are reasonable and sufficient in a **minority of phases**, often failing to take into account the nature, complexity and size of the proposed activity  0 = Generally unreasonable and insufficient, failing to take into account the nature, complexity and size of the proposed activity.  In considering the issue of ‘reasonable’ time-frames, please refer to pp.142-144 of the [Aarhus Implementation Guide (2014)](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf).  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * insufficient time given to participants in order to prepare and participate effectively (taking into consideration the nature, complexity, size and potential effects of the proposed activity and the volume and complexity of the documentation as well as such features as organisational procedures [e.g. time needed for consultations with members, outside experts, etc.], and whether for example a limited consultation period runs over public holidays/celebration days, etc.) (ref.2, ref.5, ref.7) * occurrence of cases where the construction (or similar steps towards realising the project or activity) have already happened by the time the parties receive their notifications (ref.1) * general arrangements for regular/frequent participants (such as mailing lists) (ref.3) * from the side of the participants: are they able and willing to meet the deadlines set? (ref.4, ref.6)   Please justify your score and explain the factors you considered. |
| Art. 6(4) | 1. Do the authorities, in practice, provide for early public participation, when all options are open and effective public participation can take place   Art. 6(4) provides:  “4. Each Party shall provide for early public participation, when all options are open and effective public participation can take place.” | **Scoring Guide:**  3 = Yes, always or almost always  2 = Yes, in a majority of cases  1 = Yes, but only in a minority of cases  0 = No, never  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Note that this indicator partly overlaps with the notification indicator, but notification does not mean in all instances the onset of the public participation procedure itself (e.g. the parties might have to wait for some meaningful information to arrive in the procedure). Please take into consideration, insofar as possible and where relevant, *inter alia*:   * all options are open vs. some parameters could still be changed, in order to enhance public acceptance of the project (ref.1, ref.4) * “providing for participation” as a genuine attempt to trigger, enhance and support public participation (ref.2) * participation in the drafting stage of basic documents in the decision-making procedure (ref.3) * open options in a tiered decision-making procedure, ensuring “early public participation” from the beginning of each new tier (ref.5, ref.6) * is public participation required in practice at the scoping and/or screening phases in EIA procedures? (ref.7)   Please justify your score and explain the factors you considered. |
| Art. 6(6) | 1. In practice, the information to which the public concerned is given access pursuant to Article 6(6) generally comprises   Art. 6(6) provides:  “6. Each Party shall require the competent public authorities to give the public concerned access for examination, upon request where so required under national law, free of charge and as soon as it becomes available, to all information relevant to the decision-making referred to in this article that  is available at the time of the public participation procedure, without prejudice to the right of Parties to refuse to disclose certain information in  accordance with article 4, paragraphs 3 and 4. The relevant information shall include at least, and without prejudice to the provisions of article 4:  (a) A description of the site and the physical and technical characteristics of the proposed activity, including an estimate of the expected residues and emissions;  (b) A description of the significant effects of the proposed activity on the environment;  (c) A description of the measures envisaged to prevent and/or reduce the effects, including emissions;  (d) A non-technical summary of the above;  (e) An outline of the main alternatives studied by the applicant; and  (f) In accordance with national legislation, the main reports and advice issued to the public authority at the time when the public concerned shall be informed in accordance with paragraph 2 above.” | **Scoring Guide:**  3 = Access to all information relevant to the decision-making (included, but not limited to the information listed in Art. 6(6)(a)-(f)) is always or almost always provided free of charge and without the need for the public to make a request.  2 = Access to all information listed in Art. 6(6)(a)-(f)) is always or almost always provided free of charge and without the need for the public to make a request.  2 = Access to all information relevant to the decision-making (included, but not limited to the information listed in Art. 6(6)(a)-(f)) is is always or almost always provided free of charge though the public may need to make a request for such access.    1 = Access to all information listed in Art. 6(6)(a)-(f)) is always or almost always provided free of charge though the public may need to make a request for such access.  1 = Access to all information listed in Art. 6(6)(a)-(f)) is always or almost always provided without the public needing to make a request for such access, though a fee may be charged for access.  1 = Access to some but not all information listed in Art. 6(6)(a)-(f)) is always or almost always provided free of charge (the public may or may not need to make a request for such access).  0=Access to no or only a minority of the information listed in Art. 6(6)(a)-(f)) is typically provided free of charge (the public may or may not need to make a request for such access).  In considering the issue of “minimum information”, please find a list of examples at para 88 of the [Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters](http://www.unece.org/fileadmin/DAM/env/pp/Publications/2015/1514364_E_web.pdf)  Please take into consideration not only the list of information but also the quality and usefulness of it. Furthermore, please consider if the information provided is balanced and presents different aspects of the proposed activity. Please justify your score and explain the factors you considered. |
| Art. 6(7) | 1. In practice, the public is enabled to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity   Art. 6(7) provides:  “7. Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant,  any comments, information, analyses or opinions that it considers relevant to the proposed activity.” | **Scoring Guide:**  3 = In all or almost all cases, the public is entitled to submit in writing or at a public hearing, any comments, information, analyses or opinions that it considers relevant to the proposed activity. In practice, hearings are routinely held for decisions to permit article 6 activities.  2 = In all or almost all cases, the public is entitled to submit in writing or at a public hearing if one is held, any comments, information, analyses or opinions that it considers relevant to the proposed activity.  1 = In all or almost all cases, the public is entitled to submit in writing or at a public hearing if one is held, comments, information, analyses or opinions but the public authority can decide not to take into account comments, information etc which it does not consider relevant to the proposed activity.  1 = In some but not all cases, the public is entitled to submit any comments, information, analyses or opinions that it considers relevant to the proposed activity.  0 = The public is rarely or never entitled to submit comments in practice on decisions to permit article 6 activities.  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * limiting the scope of possible opinions to *strictu sensu* environmental issues or even less (ref.1) * possibilities of verbal submissions of opinions at a public hearing, the scope for direct exchange with the representatives of the developer and the authorities (ref.2) * possibilities for the expression of opinions in hybrid decision-making procedures (ref.3) * any substantive or formal requirements regarding the opinions which may be submitted (such as a requirement for ‘motivated’, reasoned opinions, specific written form etc.) (ref.4, ref.6, ref.7) * potential for the developer or the developer’s experts to filter or rephrase public opinion for the authorities (ref.5)   Please justify your score and explain the factors you considered. |
| Art. 6(8) | 1. In practice, how is due account typically taken of the outcome of the public participation?   Art. 6(8) provides:  “8. Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.” | **Scoring Guide:**  3 = Public authorities always or almost always publish a response document after a public consultation, documenting the comments submitted and the authority’s response (positive or negative) with clear and sufficient reasons  2 = In the majority of cases, public authorities produce a response document including the authority’s response (positive or negative) to the comments submitted with clear and sufficient reasons  2= Public authorities always or almost always produce such a response document including the authority’s response (positive or negative) but the reasons for accepting/rejecting the comments are normally very brief or generalized (e.g. “against government policy” without explaining which policy it would be against).  1 = Public authorities produce a response document including the authority’s response (positive or negative) to the comments submitted with clear and sufficient reasons in a minority of cases  1= Public authorities often produce a response document including the authority’s response (positive or negative) but the reasons for accepting/rejecting the comments are normally very brief or generalized.  0 = Public authorities very rarely or never produce such a response document  For a discussion of such response documents, see the box on p.156 of the [Aarhus Convention Implementation Guide (2014)](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf).  Please justify your score and explain the factors you considered. |
| Art. 6(9) | 1. In practice, is the public promptly informed and are decisions provided in writing together with reasons and considerations?   Art. 6(9) provides:  “9. Each Party shall ensure that, when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance with the appropriate procedures. Each Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based.” | **Scoring Guide:**  3 = In all or almost all cases the public is promptly informed of the decision, and the full text of the decision is accessible, including an explanation of how the outcomes of the public participation were taken into account.  2= In all or almost all cases the public is promptly informed of the decision, and the full text of the decision is accessible, but frequently no explanation is provided of how the outcome of public participation was taken into account.  2 = In a majority of cases the public is promptly informed of the decision, and the full text of the decision is accessible, including an explanation of how the outcomes of the public participation were taken into account.  1= In a majority of cases, the public is informed of the decision, and the full text of the decision is accessible, including an explanation of how the outcomes of the public participation were taken into account, but this does not happen promptly.  1= In a majority of cases, the public is promptly informed of the decision, and the full text of the decision is accessible, but no explanation is provided of how the outcomes of the public participation were taken into account.  1 = In a minority of cases the public is promptly informed of the decision, and the full text of the decision is accessible, including an explanation of how the outcomes of the public participation were taken into account.  0 = Never or only very rarely is the public promptly informed of the decision, using all the mediums used to notify the public at the start of the public participation procedure, and the full text of the decision is accessible, including an explanation of how the outcomes of the public participation were taken into account.  Regarding promptitude, please see the [Aarhus Convention Implementation Guide (2014)](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf), at p.157, and also paragraph 137 of the [Maastricht Recommendations on Public Participation](https://www.unece.org/fileadmin/DAM/env/pp/Publications/2015/1514364_E_web.pdf).  Please take into consideration that the reasoning is an especially important part of the decision - first of all, because it largely determines the scope and content of any legal remedies. An example of good practice may feature reasoning that explains the factual, expert and legal bases of the decision. The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * the modalities and form of dissemination of information about the decision (ref.1) * explanations, reasoning broken down to the level of indicating responses to individual comments provided by the public (ref.1) * do the time periods for informing the public take account of relevant time frames for initiating review procedures? (ref.2)   Please justify your score and explain the factors you considered. |
| Art. 6(10) | 1. In practice, where a public authority reconsiders or updates the operating conditions for an activity referred to in Article 6(1), how frequently are the public participation provisions of the Convention applied?   Art. 6(10) provides:  “10. Each Party shall ensure that, when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 of this article are applied mutatis mutandis, and where appropriate.” | **Scoring Guide:**  3= In practice, a**ll** reconsiderations or updates of operating conditions for activities referred to in paragraph 1, are subject to public participation procedures meeting **all** the requirements of paragraphs 2 to 9.  2 = In practice, reconsiderations or updates of operating conditions for activities referred to in paragraph 1, are subject to a public participation procedure meeting the requirements of paragraphs 2 to 9“where appropriate.”  1 = In practice, reconsiderations and updates of operating conditions are subject to public participation procedures but not a procedure meeting the requirements of paragraphs 2 to 9.  0 = In practice, reconsiderations or updates of operating conditions are not subject to public participation procedures.  Please refer to page 159 of the Aarhus Convention Implementation Guide (2014) regarding the “and where appropriate” language of Art. 6(10).  Please consider that time in environmental matters is often an important factor, because as time goes on projects might turn out to have unexpected environmental effects or simply the knowledge about these effects develops; therefore, even if the operation of the activity has not changed, the reconsideration or updating of its operating conditions might raise substantial new issues.  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * the relevance of changes in the legal environment in respect of the activity/project (such as new binding conditions and deadlines – therefore time lags in themselves might amount to significant modification even without any modification in the technical plan) (ref.1) * whether full (or partial) access to participation is given in the case of reconsiderations or updates of operating conditions (ref.1) * the question of “where appropriate” and the size of the facility and the level of public interest in it (ref.1) * any applications of the CJEU’s judgments in Cases C-275/09 Brussels airport and/or C-121/11 Pro-Braine, to the effect that the mere renewal of an existing permit to operate a project cannot, in the absence of any works or interventions involving alterations to the physical aspect of the site, be classified as a ‘project’ for the purposes of the EIA Directive, with the result that public participation obligations are not applied (ref.2)   Please justify your score and explain the factors you considered. |
| Article 6(11) | 1. How well has Art. 6(11) been applied in practice?   Art. 6(11) provides:  “11. Each Party shall, within the framework of its national law, apply, to the extent feasible and appropriate, provisions of this article to decisions  on whether to permit the deliberate release of genetically modified organisms into the environment.” | **Scoring guide:**  **3=** In practice, **all** decisions on whether to permit the deliberate release of GMOs into the environment have been subject to public participation procedures that comply with **all** the provisions of article 6 (i.e. no carve out for “if feasible and appropriate”)  2 = In practice, decisions on whether to permit the deliberate release of GMOs into the environment have been subject to public participation procedures that comply with the provisions of article 6 “to the extent feasible and appropriate”.  1 = In practice, decisions on whether to permit the deliberate release of GMOs into the environment have been subject to a public participation procedure but most of the provisions of article 6 were not applied with respect to such decision-making.  0 = In practice, decisions on whether to permit the deliberate release of GMOs into the environment have not been subject to a public participation procedure  Where this has never arisen on the facts, i.e. the Party has not in practice considered permitting the deliberate release of a genetically modified organism into the environment, please note this fact in your comment and do not provide a score. If we do not obtain a score for each Party, the results of this indicator will be ‘hived off’ (i.e. will not count towards the overall score), and will be considered separately in the report. |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 6 practice indicators?

The practice indicator for Article 6(7) refers in its scoring guide to the entitlement to participate. A related issue is the arrangements (if any) authorities make for public participation, including inter alia the consideration (if any) they give for traits of concerned communities (especially marginalized groups either on the basis of, for example, gender, language, ethnicity or age). Do you think these aspects should be assessed? If so, in respect of which provision (Art. 6(7), 3(2), somewhere else)?

### (b) Public participation concerning plans, programmes and policies relating to the environment – Legal indicators

| **Aarhus provision** | **Legal indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 7, first sentence  Indicator 1 | 1. How well has the phrase “the preparation of plans and programmes relating to the environment” been enacted?   The first sentence provides:  “Each Party shall make appropriate practical and/or other provisions for the public to participate during **the preparation of plans and programmes relating to the environment**, within a transparent and fair framework, having provided the necessary information to the public.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  Issues to consider include:are all plans and programmes relating to the environment covered by the enactment? How is “relating to the environment” defined, e.g. what level of connection with the environment is needed (e.g. only if the plan would have a significant impact or environmental component, or any connection to the environment would be enough? Does the Party define “relating to the environment” narrowly by reference to the authority responsible for the plan/programme).  The broader the interpretation given to “the preparation of plans and programmes relating to the environment” in the enactment, the higher the score.  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 7(1), first sentence  Indicator 2 | 1. How well has “having provided the necessary information to the public” been enacted for the purpose of Article 7(1)?   The first sentence provides:  “Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, **having provided the necessary information to the public.**” | **Scoring guide**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  Please consider that enactment is fully in accord where the legislation specifically addresses the information to be provided to the public and defines “necessary information” broadly. A narrow definition of necessary information should result in a score of 1. |
| Art. 7, second sentence | 1. How well the second sentence of Art. 7 been enacted?   The second sentence provides:  “Within this framework [i.e. the framework mentioned in the first sentence], article 6, paragraphs 3, 4 and 8, shall be applied.”  Article 6(3): “The public participation procedure shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.”  Article 6(4): “Each Party shall provide for early and effective public participation, when all options are open and effective public participation can take place.”  Article 6(8): “Each Party shall ensure that in the decision-making due account is taken of the outcome of the public participation.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 7, third sentence | 1. How well has the third sentence of Art. 7 been enacted?   The third sentence provides:  “The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 7, fourth sentence | 1. How well has the fourth sentence of Art. 7 been enacted?   “To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 7 legal indicators?

The legal indicators for Article 7 (first sentence) do not address the wording “within a transparent and fair framework”. Do you think an additional legal indicator should be created to address this? Or do you think that the indicators for Article 3(1) are sufficient to cover this (NB. Art. 3(1) says “clear, transparent and consistent framework” while Art. 7 says “transparent and fair framework”)?

### 

### Public participation concerning plans, programmes and policies relating to the environment – Practice indicators

| **Aarhus provision** | **Practice indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 7  Indicator 1 | 1. In practice, are all plans and programmes relating to the environment subject to public participation during their preparation?   Article 7 provides:  “Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework, article 6, paragraphs 3, 4 and 8, shall be applied. The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.” | **Scoring Guide:**  3 = Yes, in all or almost all cases  2 = Yes, in most cases  1 = No, there are a significant number of cases where the public is given no possibility to participate during the preparation of a plan or programme relating to the environment.  0 = No, never, or rarely  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Note that in the most legal systems there are not clear definitions of plans, programmes or policies and this allows for public participation to be outmanoeuvred in some instances. This first indicator for Article 7 examines the very existence of the possibility of participation in the cases of the preparation of plans and programmes. Spatial plans should be considered plans ‘relating to the environment’ for these purposes. Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * definitional elements in respect of plans, programs and policies, such as references to the author of the document (e.g. legislative or administrative bodies or both) (ref.4)situations that operate at the boundary between Article 6 and Article 7 Aarhus (ref.1) * the situation in respect of financial, investment etc. plans (ref.7) * the use of “ouster clauses” (legislative arrangements that exclude or limit court review of certain cases) to avoid public participation obligations (ref.2) * number of major plans that are in fact the subject of substantial public discussion (ref.3) * EU level environmental policy formulation and public participation in respect thereof (ref.5) * any differences in treatment between planning procedures based on legal provisions and ‘loser’ planning procedures (e.g. unregulated phases of planning behind the scenes with no public participation) (ref.10, ref.15)   Guidance on how to identify a plan or programme relating to the environment for the purposes of article 7 is provided in paragraphs 154 and 155 of the [Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters](https://www.unece.org/fileadmin/DAM/env/pp/Publications/2015/1514364_E_web.pdf).  Please justify your score and explain the factors you considered. |
| Art. 7  Indicator 2 | 1. In practice, is the public able to prepare and participate effectively during the preparation of plans and programmes relating to the environment? In particular:   – is all necessary information provided to the public?  – is there early public participation when all options are open?  – are there reasonable timeframes that enable the public to prepare and participate effectively?  – is due account taken of the outcome of the public participation?  Article 7 provides:  “Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework, article 6, paragraphs 3, 4 and 8, shall be applied. The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.” | **Scoring Guide:**  3 = Yes, in all or almost all cases  2 = Yes, in most cases  1 = Only in a minority of cases  0 = No, never, or rarely  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  This second indicator for Article 7 examines the quality of public participation, namely if the members and organisations of the public receive notification about the start of the planning procedure in advance in due time, how the section of the public that is enabled to participate is selected, how due account is taken of the public’s opinion in the planning decision, etc.  Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * any plans made subject to referendum? (ref.6) * access to numerical data concerning public participation in strategic decision-making (ref.9, ref.12) * participation possibilities only (or greater) for handpicked parts of the public, such as a bias in favour of narrow interest groups when determining those who can participate (ref.18) * any differences in treatment between planning procedures based on legal provisions and ‘looser’ planning procedures (e.g. unregulated phases of planning behind the scenes with no public participation) (ref.10, ref.15) * possibility to participate in the preliminary (idea gathering, brainstorming etc.) phases of the general decision-making procedures (ref.11) * availability of draft plans on the Internet (ref.17) * public notice regarding the onset of the planning procedure; early participation (ref.14, ref.21, ref.23) * reasonable time given to the public to form its opinion (ref.20, ref.21, ref.22, ref.23) * genuine possibility of the public influencing the content of plans (ref.13) * public participation in the monitoring of the implementation of plans (such as progress reports) (ref.16) * form of public consultations (e.g. only electronic, or personal exchange, hearings etc.) (ref.19) * feedback from the evaluation of public comments (ref.19)   Please justify your score and explain the factors you considered. |
| Article 7  Indicator 3 | 1. In practice, are all policies relating to the environment subject to public participation during their preparation?   Article 7 provides:  “Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework, article 6, paragraphs 3, 4 and 8, shall be applied. The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.” | **Scoring Guide:**  3 = Yes, in all or almost all cases  2 = Yes, in most cases  1 = No, there are a significant number of cases where the public is given no possibility to participate during the preparation of a policy relating to the environment.  0 = No, never, or rarely  Guidance on how to identify a policy relating to the environment for the purposes of article 7 is provided in paragraphs 156 of the [Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters](https://www.unece.org/fileadmin/DAM/env/pp/Publications/2015/1514364_E_web.pdf) |
| Article 7  Indicator 4 | 1. In practice, are the opportunities for the public to participate in the preparation of policies relating to the environment effective? For example, do the opportunities meet the public participation requirements set out elsewhere in article 7 (necessary information provided to the public, reasonable timeframes, early participation when all options are open, due account taken of the outcome of participation)? | **Scoring Guide:**  3 = Yes, in all or almost all cases  2 = Yes, in most cases  1 = No, there are a significant number of cases where the opportunities for the public to participate during the preparation of a policy relating to the environment are not effective.  0 = No, never, or rarely |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 7 practice indicators?

### 

### (c) Public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments – Legal indicators

| **Aarhus provision** | **Legal indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 8, first sentence | 1. How well has the first sentence of Art. 8 been enacted?   The first sentence provides:  “Each Party shall strive to promote effective public participation at an appropriate stage, and while options are still open, during the preparation by  public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 8(a) | 1. How well has Art. 8(a) been enacted?   Art. 8(a) provides:  “To this end [i.e. the end mentioned in the first sentence of Art. 8], the following steps should be taken:  (a) Time-frames sufficient for effective participation should be fixed;” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 8(b) | 1. How well has Art. 8(b) been enacted?   Art. 8(b) provides:  “To this end [i.e. the end mentioned in the first sentence of Art. 8], the following steps should be taken:  (b) Draft rules should be published or otherwise made publicly available;” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 8(c) | 1. How well has Art. 8(c) been enacted?   Art. 8(c) provides:  “To this end [i.e. the end mentioned in the first sentence of Art. 8], the following steps should be taken:  (c) The public should be given the opportunity to comment, directly or through representative consultative bodies.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 8, final sentence | 1. How well has the final sentence of Art. 8 been enacted?   The final sentence provides:  “The result of the public participation shall be taken into account as far as possible.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 8 legal indicators?

### 

### Public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments – Practice indicators

| **Aarhus provision** | **Practice indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 8  Indicator 1 | 1. Are **all** draft executive regulations and other generally legally binding rules that may have a significant effect on the environment, subject to public participation?   Article 8 provides:  Each Party shall strive to promote effective public participation at an appropriate stage, and while options are still open, during the preparation by  public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment.  To this end, the following steps should be taken:  (a) Time-frames sufficient for effective participation should be fixed;  (b) Draft rules should be published or otherwise made publicly available;  (c) The public should be given the opportunity to comment, directly or through representative consultative bodies.  The result of the public participation shall be taken into account as far as possible. | **Scoring Guide:**  3 = Yes, in all or almost all cases  2 = Yes, in most cases  1 = No, there are a significant number of cases where the public is practically excluded from the procedure of preparing executive regulations and/or other generally applicable legally binding rules that may have a significant effect on the environment  0 = No, never, or rarely  Note: this includes all draft legislation/regulations at **all levels of government**, including local government and municipalities (including with respect to spatial plans where they are adopted by normative acts) that **may have a significant effect on the environment**.  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Legislative decision-making performed or prepared by public authorities might take place at several levels of the State, including municipalities. Also, there may be several stages within one procedure. Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * public participation in drafting secondary legislation (such as decrees of the Government or ministers, statutory instruments, etc.) (ref.15) * existence of regulatory impact assessment (ref.6) * public participation in respect of the drafting of local ordinances (ref.9)   Please justify your score and explain the factors you considered. |
| Art. 8  Indicator 2 | Do the public participation procedures on executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment, meet the requirements of article 8, ie:   * Time-frames sufficient for effective participation; * Draft rules published or otherwise made publicly available; * The public has opportunity to comment, directly or through representative consultative bodies * Result of public participation is taken into account as far as possible   Article 8 provides:  Each Party shall strive to promote effective public participation at an appropriate stage, and while options are still open, during the preparation by  public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment.  To this end, the following steps should be taken:  (a) Time-frames sufficient for effective participation should be fixed;  (b) Draft rules should be published or otherwise made publicly available;  (c) The public should be given the opportunity to comment, directly or through representative consultative bodies.  The result of the public participation shall be taken into account as far as possible. | **Scoring Guide:**  3 = Yes, in all or almost all cases  2 = Yes, in most cases  1 = No, there are a significant number of cases when the public is practically excluded from the procedure of preparing executive regulations and/or other generally applicable legally binding rules that may have a significant effect on the environment  0 = No, never, or rarely  Note: this includes all draft legislation/regulations at **all levels of government**, including local government and municipalities that **may have a significant effect on the environment**.  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  The quality and effectiveness of public participation in the preparation of legislative materials by public authorities depend on a line of factors, familiar from Art. 6. Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * accessibility of legislative drafts (ref.1, ref.3) * NGOs’ or expert organisations’ role as facilitators (ref.1, ref.13, ref.14) * direct consultations with advisory boards, commissions, working groups with NGO participation, accredited organisations (ref.2, ref.3, ref.7) * early participation and participation in the preliminary phases of drafting (ref.5, ref.11) * sufficient time allowed to the public for forming its opinion? (ref.4, ref.8, ref.16) * existence of regulatory impact assessment (ref.6) * “e-democracy” interactive participation modes on the Internet (ref.10, ref.15) * fairness of the participation procedure (ref.11, ref.12, ref.14, ref.17, ref.18) * significant modification of drafts after public participation (only or not only because of the participation process) (ref.4)   Please justify your score and explain the factors you considered. |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 8 practice indicators?

## 

## IV. Access to justice pillar

### Access to justice – Legal indicators

| **Aarhus provision** | **Legal indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 9(1)  First para | 1. How well has the first paragraph of Art. 9(1) been enacted?   The first paragraph provides:  “1. Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of  law or another independent and impartial body established by law.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 9(1)  Second para | 1. How well has the second paragraph of Art. 9(1) been enacted?   The second paragraph provides:  “In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an expeditious  procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and  impartial body other than a court of law.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 9(1)  Third para, 1st sentence | 1. How well has the first sentence of the third paragraph of Art. 9(1) been enacted?   The first sentence of the third paragraph provides:  “Final decisions under this paragraph 1 shall be binding on the public authority holding the information.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 9(1)  Third para, 2nd sentence | 1. How well has the second sentence of the third paragraph of Art. 9(1) been enacted?   The second sentence of the third paragraph provides:  “Reasons shall be stated in writing, at least where access to information is refused under this paragraph [i.e. Art. 9(1)].” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 9(2)  First para | 1. How well has the first paragraph of Art. 9(2) been enacted?   The first paragraph provides:  “2. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned  (a) Having a sufficient interest  or, alternatively,  (b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below [i.e. Art. 9(3)], of other relevant provisions of this Convention.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  Please note that the breadth of enactment of “sufficient interest” and “impairment of a right” is considered in the next indicator.  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 9(2)  Second para | 1. How well has the second paragraph of Art. 9(2) been enacted?   The second paragraph provides:  “What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above [i.e. Art. 9(2)(a)]. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above [i.e. Art. 9(2)(b)].” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  Please consider in scoring this indicator the breadth of any enacted definition of “sufficient interest” and “impairment of a right”. The broader the definitions, the higher the score (and vice versa).  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 9(3), Indicator 1 | 1. How well has Art. 9(3) been enacted?   Art. 9(3) provides:  “3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above [i.e. Art. 9(1) and (2)], each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  Please consider, *inter alia*, how “national law relating to the environment” has been enacted in the legal framework. Enactment will be fully in accord where the legal framework covers any national law relating to the environment (including e.g. energy, transport, infrastructure etc). An enactment that defines “national law relating to the environment” narrowly (e.g. as covering just “environmental law” narrowly conceived) should be considered as containing errors that are more than minor.  Please note that the wording “where they meet the criteria, if any, laid down in its national law” is the subject of a separate indicator below, so should not be assessed for the purpose of this indicator.  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 9(3)  Indicator 2 | 1. The criteria, if any, enacted in national law which members of the public must meet as a precondition for the purpose of Article 9(3) provide for   Art. 9(3) provides:  “3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above [i.e. Art. 9(1) and (2)], each Party shall ensure that, **where they meet the criteria, if any, laid down in its national law,** members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.” | **Scoring Guide:**  3 = Very broad access to justice (e.g. in the sense that there are no enacted criteria restricting access, or the enacted rules on standing and prior participation are such as to provide for very broad access to justice)  2 = Broad access to justice (e.g. in the sense that the enacted rules on standing and prior participation are such as to provide for broad access to justice)  1 = Restrictive access to justice (e.g. in the sense that the enacted rules on standing and prior participation are such as to provide for only restrictive access to justice)  0 = Very restrictive or non-existent access to justice (e.g. in the sense that the enacted rules on standing and prior participation are such as to provide for very restrictive or non-existent access to justice)  By “prior participation” we are referring to any rules which provide for access to justice only for those who have participated in the earlier decision-making/administrative process, or which require an argument to have been raised by a member of the public during an earlier stage in the decision-making process if it is to be raised subsequently by that member of the public. This would qualify as a major restriction in terms of access to justice, because NGOs and local communities are typically not in the position to participate in numerous first instance procedures just for the sake of preserving the right to potentially pursue a legal remedy later. |
| Art. 9(4)  1st sentence  Indicator 1 | 1. How well has the first sentence of Art. 9(4) been enacted insofar as it relates to adequate and effective remedies, including injunctive relief?   The first sentence provides:  “In addition and without prejudice to paragraph 1 above, **the procedures referred to in paragraphs 1, 2 and 3 above [i.e. Art. 9(1), (2) and (3)] shall provide adequate and effective remedies, including injunctive relief as appropriate**, and be fair, equitable, timely and not prohibitively expensive.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 9(4)  1st sentence  Indicator 2 | 1. How well has the first sentence of Art. 9(4) been enacted insofar as it relates to fair and equitable procedures?   The first sentence provides:  “In addition and without prejudice to paragraph 1 above, **the procedures referred to in paragraphs 1, 2 and 3 above [i.e. Art. 9(1), (2) and (3)] shall** provide adequate and effective remedies, including injunctive relief as appropriate, and **be fair, equitable, timely and not prohibitively expensive**.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 9(4)  1st sentence  Indicator 3 | 1. How well has the first sentence of Art. 9(4) been enacted insofar as it relates to timely procedures?   The first sentence provides:  “In addition and without prejudice to paragraph 1 above, **the procedures referred to in paragraphs 1, 2 and 3 above [i.e. Art. 9(1), (2) and (3)] shall** provide adequate and effective remedies, including injunctive relief as appropriate, and **be** fair, equitable, **timely** and not prohibitively expensive.” | **Scoring guide**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 9(4)  1st sentence  Indicator 4 | 1. How well has the first sentence of Art. 9(4) been enacted insofar as it relates to ‘not prohibitively expensive’ procedures?   The first sentence provides:  “In addition and without prejudice to paragraph 1 above, **the procedures referred to in paragraphs 1, 2 and 3 above [i.e. Art. 9(1), (2) and (3)] shall** provide adequate and effective remedies, including injunctive relief as appropriate, and **be** fair, equitable,timelyand **not prohibitively expensive**.” | **Scoring guide**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 9(4)  2nd sentence | 1. How well has the second sentence of Art. 9(4) been enacted?   The second sentence provides:  “Decisions under this article [i.e. Art. 9] shall be given or recorded in writing.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art 9(4)  3rd sentence | 1. How well has the third sentence of Art. 9(4) been enacted?   The third sentence provides:  “Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 9(5)  Indicator 1 | 1. How well has Art. 9(5) been enacted insofar as it relates to the provision of information?   Art. 9(5) provides:  “5. In order to further the effectiveness of the provisions of this article [i.e. Art. 9], each Party shall ensure that **information is provided to the public on access to administrative and judicial review procedures** and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.” | **Scoring Guide:**  3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 9(5)  Indicator 2 | 1. How well has Art. 9(5) been enacted insofar as it relates to considering the establishment of appropriate assistance mechanisms?   Art. 9(5) provides:  “5. In order to further the effectiveness of the provisions of this article [i.e. Art. 9], each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and **shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.”** | 3 = Enactment is fully in accord  2 = Minor errors  1 = Errors that are more than minor  0 = Has not been enacted at all  While the second clause of Art. 9(5) is of the form “shall consider”, this is still capable of being an enactable obligation. For example, a State could enact a national law establishing an advisory body to consider and report on the question of the establishment of appropriate assistance mechanisms.  **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 9 legal indicators?

How do you think the legal indicators for Article 9(4) (first sentence) should deal (if at all) with the following issue? In addition to enacting specific rules to tackle fairness, equity, timeliness and prohibitive expense (e.g. specific legislation on legal costs in environmental matters), arguably Parties are obliged to enact a general obligation(s) that the procedures referred to in Art. 9(4) must be fair, equitable, timely and not prohibitively expensive. Thus, it would not be enough for a party to say that its detailed court rules in practice provide for fair and equitable procedures in circumstances where there is no general, overarching obligation that such procedures must be fair and equitable. To give an example of the issue in practice: Ireland has not enacted such a general obligation, and its High Court in [An Taisce v An Bord Pleanála [2015] IEHC 604](http://www.courts.ie/Judgments.nsf/0/66689207160EAA7F80257EE00038BC45)) was therefore legally able to pronounce (wrongly) that judicial procedures do not need to be fair and equitable (notwithstanding the Aarhus Convention and EU law purporting to implement the Convention).

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### Access to justice – Practice indicators

| **Aarhus provision** | **Practice indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 9(1), first para | 1. In practice, has the Party ensured access to a review procedure before a court of law or another independent and impartial body established by law in respect of information requests?   The first paragraph of Article 9(1) provides:  “1. Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another independent and impartial body established by law.” | **Scoring Guide:**  3 = Access to a review procedure before a court or another independent and impartial body is provided for any person making a request for information within the scope of the definition of environmental information in article 2(3)  2 = Access to a review procedure before a court or another independent and impartial body is provided for any person making a request for environmental information but due to the narrow interpretation of environmental information in practice, not all environmental information requests are covered.  2 = Access to a review procedure before a court or another independent and impartial body is provided with respect to requests for environmental information but due to a narrow reading of “any person”, not all persons have access (eg foreign citizens, legal persons).  1 = Persons making information requests may have access to a review procedure, but that procedure is not independent or impartial (e.g. the review procedure is to be made to the authority that decided the information request).  0 = No, there is no access to a review procedure before either a court of law or other  body (whether impartial and independent or not) to challenge the handling of requests for environmental information.  Take note that this indicator is about the existence and breadth of application of review procedures before a court or other independent/impartial body against a decision in access to information cases, while the next indicator is about the existence *and quality* of other remedies (internal review or review by an independent and impartial body other than a court of law) where a review by court is provided for.  **Please justify your score and explain the factors you considered** |
| Art. 9(1), second para  Indicator 1 | 1. Where the Party provides for such a review by a court of law, does the Party in practice ensure access to a procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law?   The second paragraph of Article 9(1) provides:  “In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an expeditious procedure established by law that is **free of charge or inexpensive** for reconsideration by a public authority or review by an independent and impartial body other than a court of law.” | **Scoring Guide:**  3 = Access is provided to both a reconsideration by the public authority that handled the request and to an independent and impartial review body, and such access is free of charge.  2 = Access is provided to both a reconsideration by the public authority that handled the request and to an independent and impartial review body, and such access is inexpensive  2= Access is provided to an independent and impartial review body, and such access is free or inexpensive.  1 = Access is provided to a reconsideration by the public authority that handled the request, and such access is free or inexpensive.  1=Access is provided to both a reconsideration by the public authority that handled the request and to an independent and impartial review body, but such access is neither free nor inexpensive.  0 = Access has not been provided to either a reconsideration by the public authority that handled the request or to an independent and impartial review body.  Note that this indicator is not applicable in countries where access to justice in environmental information matters is ensured solely by means other than court procedures.  **Please justify your score and explain the factors you considered.** |
| Art. 9(1), second para  Indicator 2 | 1. Where the Party provides for such a review by a court of law, does the Party in practice ensure access to an **expeditious** procedure established by law for reconsideration by a public authority or review by an independent and impartial body other than a court of law?   The second paragraph of Article 9(1) provides:  “In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an **expeditious procedure** established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law.” | **Scoring Guide:**  3 = Access to a reconsideration by the public authority that handled the request *and* to a review by an independent and impartial body other than a court of law are ensured, and both procedures are expeditious.  2 = Access to an independent and impartial review procedure other than a court of law is ensured and the procedure is expeditious (but this should be scored as 1 where a prior reconsideration by the public authority that handled the request is required, and that procedure is not expeditious).  1 = Access to a reconsideration by the public authority that handled the request is ensured and the procedure is expeditious, but access has not been provided to an independent and impartial review body.  1 = Access to a reconsideration by the public authority that handled the request *and* to a review by an independent and impartial body other than a court of law are ensured, but neither procedure is expeditious.  0 = Access has not been provided to either a reconsideration by the public authority that handled the request or to an independent and impartial review body.  Note that this indicator is not applicable in countries where access to justice in environmental information matters is ensured solely by means other than court procedures.  **Please justify your score and explain the factors you considered.** |
| Art. 9(2)  Indicator 1 | 1. In practice, are the terms “sufficient interest” and “impairment of a right” interpreted consistently with the objective of giving members of the public concerned (other than environmental NGOs, which are assessed in the next indicator) wide access to justice within the scope of the Aarhus Convention?   Article 9(2) provides:  “2. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned  (a) Having a sufficient interest  or, alternatively,  (b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below [i.e. Art. 9(3)], of other relevant provisions of this Convention.  What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of  subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.  The provisions of this paragraph 2 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law. | **Scoring Guide:**  3 = Yes, in all cases  2 = Yes, in the majority of cases  1 = No, in a minority of cases  0 = No, not at all  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Please consider in scoring this indicator that whenever restrictive conditions (such as possession of directly neighbouring land or any procedural conditions) have developed in practice for the sufficient interest test or the impairment of right test, the score should be lower.  Please note that standing for NGOs in similar cases is examined by the following indicator.  Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * procedural conditions re access to justice (such as a requirement to have participated in the entirety of previous processes, which could present a financial barrier) (ref.1) * how far the direct impairment of rights is a condition of access to justice, especially in cases where the direct connection to any person is rather difficult to establish, such as wildlife protection (ref.3, ref.6, ref.8, ref.9)   **Please justify your score and explain the factors you considered.** |
| Art. 9(2), Indicator 2 | 1. In practice, are NGOs which meet the requirements referred to in article 2, paragraph 5 deemed to have a sufficient interest, and deemed to have rights capable of being impaired for the purposes of Art. 9(2)?   Article 9(2) provides:  “2. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned  (a) Having a sufficient interest  or, alternatively,  (b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law and/or another  independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject  to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below [i.e. Art. 9(3)], of other relevant provisions of this Convention.  What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of  subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.  The provisions of this paragraph 2 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law. | **Scoring Guide:**  3 = Always, in all cases and the requirements in article 2(5) are not restrictive  2= In all cases, though the requirements in article 2(5) are quite restrictive  2 = In most cases, and the requirements in article 2(5) are not restrictive  1=In most cases, though the requirements in article 2(5) are quite restrictive  1 = In a minority of cases.  0 = Rarely or never.  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Please take into consideration that when standing for an NGO is subject to additional conditions, such as certain provisions in their bylaws, certain geographical, or practical requirements, the score should be lower.  Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * procedural conditions re access to justice (such as a requirement to have participated in the entirety of previous processes, which could present a financial barrier) (ref.1) * how far the direct impairment of rights is a condition of access to justice for NGOs, especially in cases where the direct connection to any person is rather difficult to establish, such as wildlife protection (ref.3, ref.6, ref.8, ref.9) * access to justice for NGOs not directly dealing with environmental protection (focusing on topics such as human rights, public health etc.) (ref.7)   **Please justify your score and explain the factors you considered.** |
| Art. 9(2), Indicator 3 | 1. In practice, do members of the public concerned meeting the relevant conditions specified in Art 9(2) have access to a review procedure to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 [public participation in decisions on specific activities] and, where so provided for under national law and without prejudice to Art. 9(3), of other relevant provisions of the Aarhus Convention?   Article 9(2) provides:  “2. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned  (a) Having a sufficient interest  or, alternatively,  (b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law and/or another  independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject  to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below [i.e. Art. 9(3)], of other relevant provisions of this Convention.  What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.  The provisions of this paragraph 2 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law. | **Scoring Guide:**  3 = Members of the public concerned meeting the relevant conditions specified in art 9(2) in practice can challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, other provisions of the Aarhus Convention as provided for under national law. What constitutes a “decision”, “act” or “omission” subject to the provisions of article 6 Aarhus, is interpreted broadly.  2 = Members of the public concerned meeting the relevant conditions specified in Art 9(2) in practice can challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6. What constitutes a “decision”, “act” or “omission” subject to the provisions of article 6 Aarhus, is interpreted broadly.  2 = Members of the public concerned meeting the relevant conditions specified in art 9(2) in practice can challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, other provisions of the Aarhus Convention as provided for under national law. Under this scenario, “decision”, “act” or “omission” is not interpreted broadly.  1 = Members of the public concerned meeting the relevant conditions specified in art 9(2) in practice can challenge the substantive and/or procedural legality of any decision, act or omission subject to the provisions of article 6. Under this scenario, “decision”, “act” or “omission” is not interpreted broadly.  0 = Members of the public concerned are not granted access in practice to challenge the legality of decisions, acts or omissions subject to article 6.    Please note that Parties may extend access to justice beyond decisions, acts or omissions subject to Article 6 of Aarhus (e.g. extending to include article 7 or 8 or article 3(4) of Aarhus). The highest score of 3 captures this possibility.  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing).  Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:  Art 9(2) refs:   * access to alternative dispute resolution, state supervision bodies in environmental and public participation matters (such as environmental, future generation, health etc. or general ombudsman, civil or administrative prosecutors, state auditors, environmental board etc.) (ref.10, ref.11) * interpretation of what amounts to an environmental case in court practice (ref.5) * court review of individual projects that were permitted by a decision of normative/legislative nature (ref.3) * access to justice in long, tiered decision-making procedures (ref.4) * the directions and trends in the development of the court practice concerning NGO participation (ref.2) * the effect (if any) of decisions of the European Court of Justice (ref.3) * availability of data on the numbers and outcomes of legal remedies in environmental matters (ref.10, 11, 12,13)   **Please justify your score and explain the factors you considered.** |
| Art. 9(3) | 1. In practice, has the Party ensured that members of the public meeting the relevant criteria (if any), have access to administrative and/or judicial procedures to challenge acts or omissions which contravene provisions of national law relating to the environment?   Art. 9(3) provides:  “3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above [i.e. Art. 9(1) and (2)], each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.” | **Scoring Guide:**  3 = There are no or very minimal criteria laid down in national law for members of the public to have access  AND “acts” and “omissions” are interpreted broadly in practice AND “national law relating to the environment” is interpreted broadly in practice (i.e. including law regarding other sectors that may impact the environment).  2 = Members of the public have access to administrative and/or judicial procedures to challenge acts or omissions which contravene provisions of national law relating to the environment though not all the three aspects highlighted above are present.  1 = Members of the public have access to administrative and/or judicial procedures to challenge acts or omissions which contravene provisions of national law relating to the environment, however:  The criteria laid down in national law for members of the public to have access are quite restrictive  AND  “acts” and “omissions” are interpreted quite restrictively in practice  AND  “national law relating to the environment” is interpreted quite restrictively in practice.  0 = In practice, access to such procedure(s) is not provided  If there are no criteria laid down in national law for members of the public to have access, article 9(3) is effectively a quasi *actio popularis.* In line with this, in several countries it opens the possibility of legal remedies in environmental cases to anyone, irrespective of whether he or she has any personal interest in the case.  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing). Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:  Art. 9(3) refs:   * NGO participation in challenging administrative cases significant for the environment (ref.6) * general requirements for selecting those NGOs that might have standing before courts in environmental cases, such as period in existence, assets, size of the membership etc. (ref.7) * access to justice for foreign NGOs (ref.7) * interpreting national law “in a way which, to the fullest extent possible, is consistent with the objectives laid down in Article 9(3) of the Aarhus Convention” – as a way of overcoming the absence of an EU Directive on access to justice (ref.8) * “environmental case equals only EIA” (ref.3) * access to justice in the case of planning documents, especially spatial planning (e.g. Constitutional Court) (ref.7) * NGO participation in environmental criminal cases (ref.4, ref.5) * the role of ombudspersons in ensuring access to justice in environmental cases other than infringement of rights for access to information or participation (ref.8) * courts failing to deal with all parts of complaints (ref.1) * implementation of court decisions and selection of measures for such implementation in the context of “omissions” (ref.2) * interpreting national law “in a way which, to the fullest extent possible, is consistent with the objectives laid down in Article 9(3) of the Aarhus Convention” – as a way of overcoming the absence of an EU Directive on access to justice (ref.8) * any interpretation of the phrase “acts and omissions” (Art. 9(3)) to exclude “decisions” (contrast with the “any decision, act or omission” language of Art. 9(2)) * availability of data on the numbers and outcomes of legal remedies in environmental matters (ref.11, 12, 13, 14) * access to alternative dispute resolution, state supervision bodies in environmental and public participation matters (such as environmental, future generation, health etc. or general ombudsman, civil or administrative prosecutors, state auditors, environmental board etc.) (ref.11, ref.12)   **Please justify your score and explain the factors you considered.** |
| Art. 9.(4)  Indicator 1 | 1. Do procedures within the scope of article 9, paragraphs 1, 2 and 3, provide adequate and effective remedies, including injunctive relief as appropriate?   Article 9(4), first sentence provides:  “4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. | **Scoring guide**  3 = Legal remedies are adequate and effective, including injunctive relief wherever appropriate, for all procedures within the scope of article 9, paragraphs 1, 2 and 3.  2 = In the majority of cases, legal remedies for procedures within the scope of article 9, paragraphs 1, 2 and 3 are adequate and effective, including injunctive relief as appropriate.  2= Legal remedies are adequate and effective, including injunctive relief as appropriate, for most but not all procedures within the scope of article 9, paragraphs 1, 2 and 3.  1 = In the minority of cases, legal remedies for procedures within the scope of article 9, paragraphs 1, 2 and 3 are adequate and effective, including injunctive relief as appropriate  1= Legal remedies are adequate and effective, including injunctive relief as appropriate, for only a minority of procedures within the scope of article 9, paragraphs 1, 2 and 3.  0 = Legal remedies are not adequate and effective  Note that effectiveness and adequacy should be evaluated above the most direct features examined in the following indicators (fairness, equity, timeliness, and affordable). Injunctive relief may be an important proxy for this, but you can consider other features, too, such as adequate compensation or restitution, according to the Party’s legal framework or practice.  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing). Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * factors in respect of injunctive relief, such as preventing pollution (ref.1, ref.3) * injunctive relief as an effective remedy in EIA and IPPC cases (ref.2) * bonds or any other financial burdens on those persons seeking injunctive relief (ref.4)   **Please justify your score and explain the factors you considered.** |
| Art. 9.(4)    Indicator 2 | 1. Are procedures within the scope of article 9, paragraphs 1, 2 and 3, fair and equitable?   Article 9(4), first sentence provides:  “4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive.” | **Scoring guide**  3 = Access to justice for all or almost all procedures and/or cases within the scope of article 9, paragraphs 1, 2 and 3 is fair and equitable  2 = Access to justice for the majority of procedures and/or cases within the scope of article 9, paragraphs 1, 2 and 3 is fair and equitable.  1 = Only a minority of procedures and/or cases within the scope of article 9, paragraphs 1, 2 and 3 are fair and equitable.  0 = Few or no procedures and/or cases within the scope of article 9, paragraphs 1, 2 and 3 are fair and equitable.  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing). Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * due notification of all parties and sending the findings to all of them (ref.1, ref.2) * specialisation and training of judges in respect of environmental cases (ref.5) * investigation of facts by the courts upon their own initiative is possible and practical or it is fully left to the parties (ref.6) * availability of specialised legal aid (ref.10) * the role of several kinds of experts in the procedure, and ways of ensuring their unbiased, professional contribution (ref.11) * interpretation of the “fairness” as between the claimant and respondent, appreciation that complainants concern points of public interest (ref.12) * opinions, beliefs and misbeliefs of legal/professional circles concerning access to justice for NGOs, such as that this is time consuming, expensive, biased, apt for abuse, or on the positive side, problem sensitivity, specific factual and professional viewpoints channelled into the procedures etc. (ref.14)   **Please justify your score and explain the factors you considered.** |
| Art. 9.(4)    Indicator 3 | 1. Are procedures within the scope of article 9, paragraphs 1, 2 and 3 timely?   Article 9(4), first sentence provides:  “4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive.” | **Scoring guide**  3 = Access to justice for all or almost all procedures and/or cases within the scope of article 9, paragraphs 1, 2 and 3 is timely  2= Access to justice for the majority of procedures and/or cases within the scope of article 9, paragraphs 1, 2 and 3 is timely.  1 = Only a minority of procedures and/or cases within the scope of article 9, paragraphs 1, 2 and 3 are timely.  0 = Few or no procedures and/or cases within the scope of article 9, paragraphs 1, 2 and 3 are timely.  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing). Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * the average duration of court procedures, including further applications and remedies if available and the trends in respect thereof (ref.3, ref.9, ref. 13) * specialisation and training of judges in respect of environmental cases (ref.5) * investigation of facts by the courts upon their own initiative is possible and practical or it is fully left to the parties (ref.6) * opinions, beliefs and misbeliefs of legal/professional circles concerning access to justice for NGOs, such as that this is time consuming, expensive, biased, apt for abuse, or on the positive side, problem sensitivity, specific factual and professional viewpoints channelled into the procedures etc. (ref.14)   **Please justify your score and explain the factors you considered.** |
| Art. 9.(4)    Indicator 4 | 1. Are procedures within the scope of article 9, paragraphs 1, 2 and 3 not prohibitively expensive?   Article 9(4), first sentence provides:  “4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. “ | **Scoring guide**  3 = Access to justice for all or almost all procedures and/or cases within the scope of article 9, paragraphs 1, 2 and 3 is not prohibitively expensive  2= Access to justice for the majority of procedures and/or cases within the scope of article 9, paragraphs 1, 2 and 3 is not prohibitively expensive.  1= Only a minority of procedures and/or cases within the scope of article 9, paragraphs 1, 2 and 3 are not prohibitively expensive.  0 = Few or no procedures and/or cases within the scope of article 9, paragraphs 1, 2 and 3 are not prohibitively expensive.  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing). Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * the level of costs in connection with legal remedies, the practice of bearing the costs and levying of them, the application of the loser pays principle, the interpretation of the term prohibitively expensive (ref.3, ref.4, ref.7, ref.8, ref.10, ref.11, ref.12) * the average duration of court procedures, including further applications and remedies if available and the trends in respect thereof (ref.3, ref.9, ref. 13) * specialisation and training of judges in respect of environmental cases (ref.5) * availability of specialised legal aid (ref.10) * the role of several kinds of experts in the procedure, and ways of ensuring their unbiased, professional contribution (ref.11) * opinions, beliefs and misbeliefs of legal/professional circles concerning access to justice for NGOs, such as that this is time consuming, expensive, biased, apt for abuse, or on the positive side, problem sensitivity, specific factual and professional viewpoints channelled into the procedures etc. (ref.14)   **Please justify your score and explain the factors you considered.** |
| Art. 9(4)  Indicator 3 | 1. In practice, are decisions of review bodies under Article 9 given or recorded in writing and publicly accessible?   The second and third sentences of Art. 9(4) provide:  “Decisions under this article [i.e. Art. 9] shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.” | **Scoring Guide:**  3 = All decisions of such review bodies are given or recorded in writing and are publicly accessible, including *inter alia* interim decisions and decisions on costs, and all decisions include reasons.  2 = All decisions of such review bodies are given or recorded in writing and are publicly accessible, including *inter alia* interim decisions and decisions on costs, though reasons are not routinely included in the decisions.  2= The majority of decisions of such review bodies are given or recorded in writing, and are publicly accessible, including *inter alia* interim decisions and decisions on costs, and those decisions include reasons  1=The majority of decisions of such review bodies are given or recorded in writing, and are publicly accessible, including *inter alia* interim decisions and decisions on costs though reasons are not routinely included in the decisions.  1 = A minority of decisions of such review bodies are given or recorded in writing and are publicly accessible.  0 = Very few decisions of such review bodies are given or recorded in writing.  **Please justify your score and explain the factors you considered.** |
| Art. 9(5), first clause | 1. In practice, how would you rate efforts to ensure that information is provided to the public on access to administrative and judicial review procedures?   Art. 9(5) provides:  “5. In order to further the effectiveness of the provisions of this article [i.e. Art. 9], each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.” | **Scoring Guide:**  3 = Excellent  2 = Good  1 = Fair  0 = Poor  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing). Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * the user-friendliness of such information from the public’s perspective * the availability of information about lawyers, their expertise and experience, their costs, and their willingness (or otherwise) to act on a ‘no win, no fee’ basis (where applicable) * the effect of any restrictions on advertising by lawyers and law firms (e.g. what they can and cannot say) * availability of public interest environmental lawyers, and law clinics at universities (ref.1, ref.3) * environmental specialisation of judges and prosecutors (ref.2) * case studies available for the public on relevant issues (ref.3) * also see the factors listed at the bottom on p.205 of the [Aarhus Implementation Guide (2014)](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf)   **Please justify your score and explain the factors you considered.** |
| Art. 9(5), second clause | 1. In practice, has the government considered the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice, and has it acted on those considerations?   Art. 9(5) provides:  “5. In order to further the effectiveness of the provisions of this article [i.e. Art. 9], each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.” | **Scoring Guide:**  3 = Yes, and appropriate and effective assistance mechanisms are in place  2 = Yes, the government has considered this and has taken some actions in this area, though some financial and other barriers to access to justice remain.  1 = Evidence that the government has considered this pursuant to Aarhus but it has taken no action or only rather limited action and significant financial and/or other barriers remain.  0 = No evidence of consideration or action |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 9 practice indicators?

Do you think that the practice indicators for Article 9(4) should be further sub-divided such that the issues of: (i) fairness and equity; (ii) timeliness; and (iii) not prohibitively expensive are considered separately for procedures/cases within (separately) each of Article 9(1), 9(2) and 9(3)? So there would be nine practice indicators to cover Article 9(4): fairness & equity in the context of (separately) Art. 9(1), 9(2), 9(3); timeliness in the context of (separately) Art. 9(1), 9(2), 9(3); prohibitive expense in the context of (separately) Art. 9(1), 9(2), 9(3)).

## General pillar (including definitions)(cont.)

### National reporting and overall framework

Note for researchers: please assess this section last, after everything else, as it contains indicators relating to the overall framework implementing the Aarhus Convention.

| **Aarhus provision** | **Practice indicators** | **Guidance note** |
| --- | --- | --- |
| Article 10(2) | 1. Has the country/Party reported regularly on its implementation of the Aarhus Convention?[[20]](#footnote-21)   Article 10(2) provides:  “2. At their meetings, the Parties shall keep under continuous review the implementation of this Convention on the basis of regular reporting by the Parties […]” | **Scoring Guide:**  3 = Report(s) on implementation have been made for each relevant ordinary Meeting of the Parties since the later of: (i) The entry into force of the Convention for the Party or (ii) The second session of the MOP in 2005; such report(s) have always been submitted on time, and for reports since 2007 have complied with the guidance prepared by the Compliance Committee in terms of process and content  2 = Report(s) on implementation have been made for each ordinary Meeting of the Parties since the later of: (i) The entry into force of the Convention for the Party or (ii) The second session of the MOP in 2005; such report(s) have typically been submitted on time, and for reports since 2007 have broadly complied with the guidance prepared by the Compliance Committee in terms of process and content, albeit with some weaknesses  1 = Report(s) on implementation have not been made for all ordinary Meetings of the Parties since the later of: (i) The entry into force of the Convention for the Party or (ii) The second session of the MOP in 2005; OR such report(s) have been made but they have typically been submitted late, and/or for reports since 2007 they have typically been deficient in terms of complying with the guidance prepared by the Compliance Committee re process and content  0 = Report(s) on implementation have not been made for any ordinary Meeting of the Parties since the later of: (i) The entry into force of the Convention for the Party or (ii) The second session of the MOP in 2005  Page 21 of the [Aarhus Implementation Guide (2014)](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf) provides:  “With respect to reviewing implementation, article 10, paragraph 2, of the Convention requires the Parties at their meetings to keep under continuous review the implementation of the Convention on the basis of regular reporting by the Parties. The Meeting of the Parties, through decision I/8 adopted at its first session, agreed that each Party should prepare, for each ordinary meeting of the Parties, a report on the legislative, regulatory or other measures that it has taken to implement the provisions of the Convention, including their practical implementation, in accordance with the format annexed to that decision. At its fourth session (Chisinau, 29 June–1 July 2011), the Meeting of the Parties adopted a revised reporting format and requested Parties to use the revised format annexed to decision IV/4 in future reporting cycles. The Meeting of the Parties also invited Parties to follow the guidance on reporting requirements prepared by the Compliance Committee.”  The Compliance Committee’s [Guidance on Reporting Requirements (2007)](http://www.unece.org/fileadmin/DAM/env/documents/2007/pp/ece_mp_pp_wg_1_2007_L_4_e.pdf) contains information about deadlines for submitting reports, amongst other things. |
| Art. 3(1) – access to information | 1. In practice, is there a clear, transparent and consistent framework to implement the access to information pillar of the convention?   Art. 3(1) provides:  “Each Party shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the information, public participation and access-to-justice provisions in this Convention, as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention.” | **Scoring Guide:**  3= in practice, the entire framework for implementing the access to information pillar is very clear, transparent and consistent in all respects  2= in practice, most major aspects of the framework for implementing the access to information pillar is clear, transparent and consistent (though some minor aspects may be less clear or consistent).  1= in practice, the framework for implementing the access to information pillar is not very clear, transparent and not necessarily consistent.  0= in practice, the framework for implementing the access to information pillar is very unclear, not transparent, not consistent - or non-existent.  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Note that Article 3.1 is frequently referred to as an overall benchmark of the enactment and implementation of the Convention. While its first part refers to the enactment of the provisions of the Convention into the national law, the second part of this paragraph clearly refers to the necessity of introducing and maintaining proper enforcement measures, such as how easy is to find the proper agencies/public authorities, how far their competences are clear.  Please justify your score and explain the factors you considered. |
| Art. 3(1) – public participation | 1. In practice, is there a clear, transparent and consistent framework to implement the public participation pillar of the convention?   Art. 3(1) provides:  “Each Party shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the information, public participation and access-to-justice provisions in this Convention, as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention.” | **Scoring Guide:**  3= in practice, the entire framework for implementing the public participation pillar is very clear, transparent and consistent in all respects  2= in practice, most major aspects of the framework for implementing the public participation pillar is clear, transparent and consistent (though some minor aspects may be less clear or consistent).  1= in practice, the framework for implementing the public participation pillar is not very clear, transparent and not necessarily consistent.  0= in practice, the framework for implementing the public participation pillar is very unclear, not transparent, not consistent - or non-existent.  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Note that Article 3(1) is frequently referred to as an overall benchmark of the enactment and implementation of the Convention. While its first part refers to the enactment of the provisions of the Convention into the national law, the second part of this paragraph clearly refers to the necessity of introducing and maintaining proper enforcement measures, such as how easy is to find the proper agencies/public authorities, how far their competences are clear. The score shall be higher if there are specific institutions or departments at environmental authorities and at other relevant bodies that overlook, support etc. public participation.  Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:   * institutions in place that foster the culture of participation (ref.1, ref.7) * attention to local level public participation (ref.1, ref.4) institutions, including interdepartmental working groups etc. established for research and development of public participation (ref.3) * institutional, organisational measures within the judiciary in order to support more effective public participation (ref.2) * developments of public participation infrastructure more generally than environmental matters (ref. 3) * in some instances there are problems even with the correct translation of the Convention into the relevant national language (ref.5) * are the responsibilities of certain branches of government in relation to public participation understood clearly enough? (ref.6)   Please justify your score and explain the factors you considered. |
| Art. 3(1) – access to justice | 1. In practice, is there a clear, transparent and consistent framework to implement the access to justice pillar of the convention?   Art. 3(1) provides:  “Each Party shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the information, public participation and access-to-justice provisions in this Convention, as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention.” | **Scoring Guide:**  3= in practice, the entire framework for implementing the access to justice pillar is very clear, transparent and consistent in all respects  2= in practice, most major aspects of the framework for implementing the access to justice pillar is clear, transparent and consistent (though some minor aspects may be less clear or consistent).  1= in practice, the framework for implementing the access to justice pillar is not very clear, transparent and not necessarily consistent.  0= in practice, the framework for implementing the access to justice pillar is very unclear, not transparent, not consistent - or non-existent.  The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)  Note that Article 3.1 is frequently referred to as an overall benchmark of the enactment and implementation of the Convention. While its first part refers to the enactment of the provisions of the Convention into the national law, the second part of this paragraph clearly refers to the necessity of introducing and maintaining proper enforcement measures, and practical implementation measures, too, such as how easy it is to find the proper agencies/public authorities, to what extent their competences are clear, etc.  Please justify your score and explain the factors you considered. |

Do you have any comments, questions, or concerns regarding the intent, wording of the Article 10 and 3 (general pillar) practice indicators?

1. For the time being we have not dealt with the PRTR protocol or with the GMO amendment, since their status is different from the body text of the Convention and this would negatively influence the comparability of the scores. [↑](#footnote-ref-2)
2. See <http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf> [↑](#footnote-ref-3)
3. In EU terminology one might say “transpose” here (and throughout), but since the Aarhus region is much broader than the EU we have opted for the less EU-centric term “enact” (and the related terms “enacted” and “enactment”), which arguably has the benefit of being the correct term in English: see pp.63-4: <http://ec.europa.eu/translation/english/guidelines/documents/misused_english_terminology_eu_publications_en.pdf> [↑](#footnote-ref-4)
4. The exception is an indicator which tests whether Parties have provided for any exceptions from the right to obtain environmental information on request which are not envisaged by the Aarhus Convention. Here a presence (“0”) or absence (“3”) scoring system seemed most appropriate. [↑](#footnote-ref-5)
5. [Guidelines for Conformity Checking, Part II, Study Contract No 070307/2009/543947/FRA/A2 Conformity checking of measures of Member States to transpose Directives in the sector of Environment, Milieu Ltd, January 2009](https://drive.google.com/file/d/0Byc1SOzeg2lPRFM1WWF4NC03TUE4NXlDTk9oSmFNX2Z3b2VV/view?usp=sharing). [↑](#footnote-ref-6)
6. This is a key difference between the Aarhus Convention Index and the Environmental Democracy Index (EDI) – in the latter the practice indicators were not numerically scored, and the practice indicators did not impact the overall score for a country. As such, while EDI is a legal enactment index with an indication of practical implementation in certain areas, the idea here is that the ACI index scores will reflect practical experiences of environmental democracy rights on the ground. [↑](#footnote-ref-7)
7. A proper balance between environmental law in its narrower sense and the related fields of law that are not always called environmental but strongly affect the quality of the environment should be carefully maintained. Legal arrangements, institutional background and attitudes of the administrative personnel that determine the level and effectiveness of, say, public participation are often quite different in the two areas. While the ‘environmental’ branch of administration (narrowly understood) may be more supportive towards environmental democracy, other related fields of laws may show more resistance in this respect. Therefore, the results of testing the indicators may be either too positive or too negative if one or the other field of law is given a disproportionate representation in the samples examined by the country researchers. [↑](#footnote-ref-8)
8. <http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf> [↑](#footnote-ref-9)
9. <http://www.eufje.org/images/DocAarhus/Aarhus%20CC%20case-law.pdf> [↑](#footnote-ref-10)
10. [http://www.unece.org/env/pp/reports\_trc\_implementation\_2014.html](http://www.unece.org/env/pp/reports_trc_implementation_2014.html%20) [↑](#footnote-ref-11)
11. Accepting that sources must of course be treated with care. For example, the EU is itself a Party to the Aarhus Convention, and there are cases in which the jurisprudence of the EU courts has been alleged not to comply with the requirements of the Convention. As such, researchers should remain mindful throughout of the relationship between jurisprudence they cite in scoring indicators and the requirements of the Convention itself. [↑](#footnote-ref-12)
12. With the consent of such interviewees. [↑](#footnote-ref-13)
13. Note that the [Aarhus Convention Implementation Guide (2014)](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf) states, at p.46, that the definition provides “as broad coverage as possible”. [↑](#footnote-ref-14)
14. Note that the [Aarhus Convention Implementation Guide (2014)](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf) states, at p.50, that “The clear intention of the drafters [...] was to craft a definition that would be as broad in scope as possible, a fact that should be taken into account in its interpretation”. [↑](#footnote-ref-15)
15. Please note that Art. 3(1) is dealt with by way of indicators at the very end of this document, since it requires, in effect, an overall assessment. [↑](#footnote-ref-16)
16. Please note that Art. 3(1) is dealt with by way of indicators at the very end of this document, since it requires, in effect, an overall assessment. [↑](#footnote-ref-17)
17. Please see pp.62-5 of the [Aarhus Implementation Guide (2014)](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf) for a discussion of capacity building in the context of Art. 3(2) and 3(3). [↑](#footnote-ref-18)
18. That this first clause is a standalone obligation, such that the obligation to promote education and awareness raising is not limited to the matters following the word “especially”, is clear from p.64 of the [Aarhus Implementation Guide (2014)](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf). [↑](#footnote-ref-19)
19. Cf. Page 112 of the [Aarhus Convention Implementation Guide (2014)](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf). [↑](#footnote-ref-20)
20. The indicator number is 7 because this is a continuation of the general pillar from the beginning of the document, placed here at the end of the document such that the ‘overall framework’ (Art. 3(1)) is assessed right at the end of the process. [↑](#footnote-ref-21)