**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?**

For the comparative reasons, I would suggest to receive additional points to clearly point out that the country not only fullfil its obligations but also go further within the access to information, public participation or access to justice.

## 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?**

This methodological question should be rather discussed by the experts in sociology or other social sciences. From my layman's point of view of a lawyer, the Legal Indicators can be easily assess and would be more objective. Whereas Practice Indicators are on the one hand more importanat and influencing the practice, on the other hand flexible in time and more difficult to assess. Therefore I would give Pracitice Indicators slightly higher importance in avarage scores (e.g. 55-60%).

## 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?**

## 

I found this method of research and review perfectly suitable to ge the best possible results. Therefore I do not suggest any further alternatives or improvements.

## 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?**

I found the guidelines on legal indicators clear, with the exemption of the language of relevant national provision (should it be only English or also in the Czech language; in case of any official translation to English, Am I suppossed to translate it myself)?

## 

## 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 found the guidelines on practice indicators clear.

## 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;” | 3 = The definition is close to literal enactment, with minor differences (namely in respect to subpar c)  Act no. 123/1998 Coll., on the Right to Information on the Environment Art. 2 letter b    “b) povinnými subjekty  1. správní úřady a jiné organizační složky státu a orgány územních samosprávných celků,  2. právnické nebo fyzické osoby, které na základě zvláštních právních předpisů vykonávají v oblasti veřejné správy působnost vztahující se přímo nebo nepřímo k životnímu prostředí,  3. právnické osoby založené, zřízené, řízené nebo pověřené subjekty uvedenými v bodech 1 a 2, jakož i fyzické osoby pověřené těmito subjekty, které na základě právních předpisů nebo dohody s těmito subjekty poskytují služby, které ovlivňují stav životního prostředí a jeho jednotlivých složek (dále jen "pověřená osoba");”  Act no. 123/1998 Coll., on the Right to Information on the Environment Art. 2 letter b  “Subjects of obligations means:  1. Administrative offices and other organizational units of the state authorities and local governments,  2. legal or natural persons performing public administrative functions under special national law related directly or indirectly to the environment,  3. legal person, established, directed or authorized by the entities referred to in paragraphs 1 and 2, as well as the natural persons, that are authorised by these entities on the basis of legislation or agreements to provide services that affect the state of the environment and its individual components (e.g. water, air, etc. – author comment);” |
| 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;” | 3 = Enactment is fully in accord  Zákon č. 123/1998 Sb., o právu na informace o životním prostředí, § 2 písm. a):  a) informacemi o životním prostředí (dále jen "informace") informace v jakékoliv technicky proveditelné podobě, které vypovídají zejména o  1. stavu a vývoji životního prostředí, o příčinách a důsledcích tohoto stavu,  2. připravovaných nebo prováděných činnostech a opatřeních a o uzavíraných dohodách, které mají nebo by mohly mít vliv na stav životního prostředí a jeho složek,  3. stavu složek životního prostředí, včetně geneticky modifikovaných organismů, a o interakci mezi nimi, o látkách, energii, hluku, záření, odpadech včetně radioaktivních odpadů a dalších emisích do životního prostředí, které ovlivňují nebo mohou ovlivňovat jeho složky, a o důsledcích těchto emisí,  4. využívání přírodních zdrojů a jeho důsledcích na životní prostředí a rovněž údaje nezbytné pro vyhodnocování příčin a důsledků tohoto využívání a jeho vlivů na živé organismy a společnost,  5. vlivech staveb, činností, technologií a výrobků na životní prostředí a veřejné zdraví a o posuzování vlivů na životní prostředí,  6. správních řízeních ve věcech životního prostředí, posuzování vlivů na životní prostředí, peticích a stížnostech v těchto věcech a jejich vyřízení a rovněž informace obsažené v písemnostech týkajících se zvláště chráněných součástí přírody a dalších součástí životního prostředí chráněných podle zvláštních předpisů,  7. ekonomických a finančních analýzách použitých v rozhodování a dalších opatřeních a postupech ve věcech životního prostředí, pokud byly pořízeny zcela nebo zčásti z veřejných prostředků,  8. stavu veřejného zdraví, bezpečnosti a podmínkách života lidí, pokud jsou nebo mohou být ovlivněny stavem složek životního prostředí, emisemi nebo činnostmi, opatřeními a dohodami podle bodu 2,  9. stavu kulturních a architektonických památek, pokud jsou nebo mohou být ovlivněny stavem složek životního prostředí, emisemi nebo činnostmi, opatřeními a dohodami podle bodu 2,  10. zprávách o provádění a plnění právních předpisů v oblasti ochrany životního prostředí,  11. mezinárodních, státních, regionálních a místních strategiích a programech, akčních plánech apod., jichž se Česká republika účastní, a zprávách o jejich plnění,  12. mezinárodních závazcích týkajících se životního prostředí a o plnění závazků vyplývajících z mezinárodních smluv, jimiž je Česká republika vázána,  13. zdrojích informací o stavu životního prostředí a přírodních zdrojů;”  Act no. 123/1998 Coll., on the Right to Information on the Environment Art. 2 letter a  „Information on the state of the environment means information in any technically feasible form containing evidence of, especially  1. the state and development of the environment, of the causes and consequences of this state,  2. activities (also in preparation), measures and agreements which lead or could lead to a change of the state of the environment and its components  3. environmental components, including genetically modified organisms, and the interaction between them, information on the substances, energy, noise, radiation, waste, including radioactive waste and other emissions into the environment, which affect or may affect its components, and the consequences of these emissions,  4. the utilization of the natural resources and its consequences on the environment and also the data necessary for the evaluation of the causes and consequences of this utilization and its effects on living organisms and on society,  5. the effects of constructions, activities, technologies and products on the environment and the public health and the information about the environmental impact assessment,  6. administrative proceedings in environmental matters, environmental impact assessments, petitions and complaints relating to these matters and attending to them and also the information included in written documents relating, especially, to the protected parts of nature and other parts of the environment protected according to special regulations,  7. economic and financial analyses used in decision making in matters relating to the environment, if they were provided fully or partly from public means,  8. state of public health, safety and conditions of human life, if they are or may be affected by the condition of the environment, emissions or activities, measures and agreements under Section 2  9. state of cultural and architectural monuments, if they are or may be affected by the condition of the environment, emissions or activities, measures and agreements under Section 2  10. reports on the implementation and realization of legislation in the field of environmental protection,  11. international, state, regional and local strategies and programs, plans of action, etc., in which the Czech Republic participates and reports on their fulfillment,  12. international obligations relating to the environment and the fulfillment of commitments ensuing from international treaties by which the Czech Republic is bound,  13. sources of information about the state of the environment and the natural resources;” |
| 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;” | 3 = Enactment is fully in accord  Zákon č. 123/1998 Sb., o právu na informace o životním prostředí, § 2 písm. c):  “jednotlivým právnickým nebo fyzickým osobám, jež o ně požádaly, (dále jen "žadatel")”  Act no. 123/1998 Coll., on the Right to Information on the Environment Art. 2 letter c):  “individual legal or natural persons who requested them (hereinafter the "applicant")”  The applicant does not have to be Czech citizen, or registered group or associations.  The Czech national legislation in public participation or access to court do not define “the public”. The laws use the traditional term “anyone”. Anyone can be natural or legal persons, it does not have to be Czech citizens, the research is not sure about the associations without the legal subjectivity. However, as far as I know, Greenpeace Czech Republic was the netherland foundation without the legal subjectivity and there has been no cases questioning its right to participate because of this fact. |
| 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.” | 3 = Enactment is fully in accord  Zákon č. 100/2001 Sb., o posouzování vlivů na životní prostředí, § 3 písm. i:  i) dotčenou veřejností  1. osoba, která může být rozhodnutím vydaným v navazujícím řízení dotčena ve svých právech nebo povinnostech,  Act No. č. 100/2001 Sb., on Environmental Impact Assessment, art. 3 letter i):  “the public concerned  1. any person who may be affected in their rights and obligations by a decision given in subsequent proceedings,” |
| 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.” | 0 = Definition of “public concerned” does not include those with an interest in the environmental decision-making.  Act No. 100/2001 Sb., on Environmental Impact Assessment, art. 3 letter i):  “the public concerned  1. any person who may be affected in their rights and obligations by a decision given in subsequent proceedings,  2. legal person of private law, whose mail goal is by founding legal actions to protect the environment or public health, and whose main business is not a business or other gainful activity, which exists at least three years before the publication of information about subsequent procedure according to § 9b paragraph. 1, or before the date of the decision under § 7 para. 6 or which is supported by the signatures of at least 200 individuals,” |
| 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.” | 2 = NGOs are included (or deemed included) and there are minimal and easily fulfilled requirements  Zákon č. 100/2001 Sb., o posouzování vlivů na životní prostředí, § 3 písm. i:  “i) dotčenou veřejností  …  2. právnická osoba soukromého práva, jejímž předmětem činnosti je podle zakladatelského právního jednání ochrana životního prostředí nebo veřejného zdraví, a jejíž hlavní činností není podnikání nebo jiná výdělečná činnost, která vznikla alespoň 3 roky před dnem zveřejnění informací o navazujícím řízení podle § 9b odst. 1, případně před dnem vydání rozhodnutí podle § 7 odst. 6, nebo kterou podporuje svými podpisy nejméně 200 osob,”  Act No. č. 100/2001 Sb., on Environmental Impact Assessment, art. 3 letter i):  “the public concerned  …  2. legal person of private law, whose mail goal is by founding legal actions to protect the environment or public health, and whose main business is not a business or other gainful activity, which exists at least three years before the publication of information about subsequent procedure according to § 9b paragraph. 1, or before the date of the decision under § 7 para. 6 or which is supported by the signatures of at least 200 individuals,”  It could be discussed if the additional requirements of either 3 years existence or 200 supporting signatures for an NGOs are rather “minimal and easily fulfilled” or “demanding”. Taking into account that the time limits in which the supporting signatures must be collected seem to be sufficient in most cases, that the signatures do not have to be authorized, and compared to the example of 2000 members, the researcher tend to agree with the suggested scoring (although in specific individual cases and for specific, namely “ad hoc” local NGOs, the requirements can be demanding). |

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

There is no definition of “public” at all in the Czech national law. However, the law use either everyone (with no further requirements) or the applicant (everyone without any requirements) in case of Act on right on environmental information.

The Legal Indicators as assessed above (especially Art. 2 (5)) evaluate only the transposition of definition. There is not evaluated whether the “public concerned” have right to participate as regulated in art. 6 (e.g. public affected or likely to be affected by the environmental decision-making is defined, but do not have any rights directly granted by act no. 100/2001 Coll., on EIA).

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### Definitions – Practice indicators

| **Aarhus provision** | **Practice indicators** | **Guidance note** |
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| 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;” | 3 = Broad  Public utility companies are considered to be the public authority. There are no cases where legislative bodies decide on individual cases in “hybrid bill procedures” in order to approve major developments and exclude public participation.  The public authority also means administrative bodies when preparing or issuing normative acts.  The legislative bodies in the Czech Republic do not decide on the individual cases.  The scoring would need more detailed justification, namely with respect to the right on access to environmental information. Jurisdiction concerning the general Act on Free Access to Information should be taken into account in this respect, despite this Act includes partially different definition of “public authority” (or more precisely “obliged body”). For example, access to parties’ written pleadings, submissions, responses, etc., held by the courts, can be restricted by application of some reasons for refusing environmental information, but not on the basis that courts, acting in judicial capacity, would not be considered as public authorities in the context of the right on access to (environmental) information. The same applies for Parliament when acting in legislative capacity. |
| 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;” | 3 = Broad  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.  The environmental data handle by the non-environmental (e.g. water management, forestry, mining, road construction etc.) authorities are still environmental information.  The decisions, agreements etc. concerning the financing of environmentally relevant projects are environmental information. |
| 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;” | 2 = Medium  The public does not have to be Czech citizen. There are no special or demanding requirements for registration of group or associations. However, unregistered groups or associations cannot exercise any rights granted to “public” under the Convention. |
| 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.” | 2 = Medium  For most investments with environmental impacts (regardless if they are subject to EIA or not) the investor needs a number of separate permits. It can be therefore said that the Czech system of environmental permitting is considerably fragmented. The most important and/or most frequent permits are issued according to the 183/2006 Coll. Building Act (namely land use permits and building permits – see part 2.1 below), 114/1992 Coll. Nature Protection Act, 254/2001 Coll. Water Protection Act, 86/2002 Coll. Air Protection Act, 76/2002 Coll. IPPC Act, 44/1988 Coll. Mining Act, 258/2001 Coll. Public Health Protection Act, 18/1997 Nuclear Act.  At the same time, there are different rules regulating which subjects have a position of a party in individual decision-making procedures according to the respective laws. General definition of a party to administrative procedure is contained in Art. 27 of the Administrative Procedure Code - Act no. 500/2004 Coll. According to this provision, position of a party of an administrative procedure is granted to  - the person(s) who submitted the request for a permit (applicant - a developer in environmental cases),  - in the procedures initiated ex officio, persons whom the decision shall create, abolish or alter their rights and duties,  - other persons concerned “as far as their rights or duties can be directly affected by the administrative decision” (based on case law – the affected rights means the property right),  - persons to whom a special act stipulated the position of a party (e.g. Act on EIA, Nature Protection Act, etc.)  There are usually no problems with the interpretation of physical proximity, especially in the case of projects with a linear route. The public concerned can be hunderds meter away from the project (in case of projects of big influence, it would be possible even 1-2 kilometrs).  For the individuals, the important limit, with respect to their participation in the relevant procedures under art. 6 and 9/2 is that usually only the *in rem rights* considered as possibly affected (as the ACCC found in C/50 case, the facts that the tenants cannot participate effectively in the procedures under article 6 of the Convention amounts to non-compliance of the Czech Republic, and there hes been no remedy taken so far in this respect). This is also related to the fact that “having an intsrest” is not considered as sufficient for getting a status of the party concerned. However, with respect to the persons with the *in rem rights*, the term “whose rights or duties can be directly affected” is interpreted relatively broadly.  For environmental NGOs it is in most cases not difficult to meet the requirements for obtaining a status of the party concerned.  The nature and size of the activity is taken into consideration when establishing the circle of affected persons.  There is no special practice concerning foreigners with the exemption of international EIA.  There are no special requirements for the registration of NGOs. The requirements for participation of NGOs are easy to fulfil.  There is no intention for introducing new, obscure categories, subdivisions of definitions etc. with nebulous meaning might qualify as a restriction in defining the public concerned. |

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?

The difference of the 3 aspects is relevant for the situation in CZ, both for legal and practice indicators. If they were assessed separately as practice indicators, I would score “broad” for NGOs, “Medium” of affected by and “very narrow” for having and interest in.

For the specific situation in the Czech Republic, a single indicator for art 2(5) also works better. I do not see the different approach for legal and practice indicator as well justified. An overall (holistic) approach, assessing the legal and practice situation altogether, is needed.

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### (b) General provisions – Legal indicators

| **Aarhus provision** | **Legal indicators** | **Guidance note** |
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| 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.” | 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  The provision of Art 4, paragraph 1 of Act No. 500/2004 Coll., Administrative Procedure Code, stipulates the obligation of officials to act politely when exercising their powers and to be willing to help the concerned persons as far as possible. The same provision also stipulates the obligation of administrative authorities to provide reasonable guidance to the concerned persons about their rights and obligations.  Act No. 312/2002 Coll., on Officials of Local Government Units regulates the obligations of regional and municipal officials, which include the obligation to provide information about the activities of the authority to the extent stipulated by other regulations, and the basic requirements for discharging the office of an official. The Service Act (No. 234/2014 Coll.) regulates similar obligations on the level of state authorities.  The above mentioned provisions focus only to areas of seeking access to information, and facilitating participation in decision-making, but not to seeking access to justice in environmental matters. There is also no other legal provision which would require officials and authorities provide guidance to the public in the area of seeking access to justice in environmental matters.  In respect to guidance to the public in the area of seeking access to information, also art. 10a/1 of the Act no. 123/1998 Coll., on Act on the Right to Information on the Environment, can be quoted, according to which “the obliged subjects … shall create necessary technical and other terms for active provision of the information”. |
| 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.” | 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.  The provision of art 13 of Act No. 123/1998 Coll., on the Right to Environmental Information regulates the obligation to support environmental education and training on the nationwide and regional level. The Ministry of Environment draws up the State Programme of Environmental Education and Training. The research is not aware about existence of any specific regulation to promote public awareness of 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. |
| 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:**  2 = The law provides for appropriate recognition or support (not both).  The constitutional order of the Czech Republic includes the Charter of Fundamental Rights and Freedoms which stipulates the right to the freedom of association (Art 20).  On 1 January 2014 the new Civil Code (No. 89/2012 Coll., starting art 214) regulates numerous aspects of operation of those entities in much greater detail. Not only there is a formal change – return to the traditional designation “society” (*spolek*) but the new legal arrangement also brings a significant advancement in quality. The rules of operation of societies, their purpose and internal organization are set out more precisely. Data about societies shall be entered in a public register of societies. Another novelty is that any legal entity, including a society, may be granted the status of a public benefit entity. The currently existing public benefit companies will keep their legal form but no new public benefit companies will be founded. A new legal form in the non-profit sector will be institutions (*ústavy*).  The registration requirements are simple and for free (there is fee waiver provision). The organizations have tax advantages (e.g. the donors) and sometimes they can get court cost exemptions (not as a rule, exemption usually get the grass-root NGOs). The financial support of non-governmental non-profit organizations active in the area of environmental protection comes from several sources (national one – mostly Ministry of Environment, regional one, EU funds, etc).As far as researcher know, there is no recognition or support for non-registered NGOs.  As for the support, the only (indirect) support mechanism established by law is, in my opinion, tax relief for the NGOs. Taking into account that there is no possibility of recognition and supoport for unregistered groups promoting environmental protection, the researcher considered scoring rather 2 than 3 (however, the formulation is not be exactly accurate in this case). |
| 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.” | 1 = One such measure has been maintained or introduced  Act No. 114/1992 Coll., on Nature and Landscape Protection, art 70 provides all environmental NGOs with the right to access to information and participation in all procedures possibly affecting the nature or landscape protection (not only with regard to activities under art. 6 of the Convention/ the EIA projects, but all type of activities, e.g. cutting the trees in the city). |
| 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.” | 0 = Has not been enacted at all  At present there are no single binding rules regulating the participation of representatives of NGOs in state delegations in international forums on the environment or requiring Czech republic to promote the Aarhus Convention in international forums relating to the environment. However, the Ministry of Environment informs about its activities in the area of international environmental administration on a regular basis within the scope of “Extended Departmental Coordination Group” (RRKS) that is regularly attended, apart from other parties, by representatives of the non-profit sector. When formulating national positions for summit conferences, the MoE intensively cooperates with representatives of NGOs (mainly in the form of preparatory work groups) and makes efforts to arrange their active participation in delegations (e.g. participation of NGOs in the delegation at the Conference Rio+20, participation of NGOs in INC for Minamata Convention). The Czech Republic is a Member State of the European Union which, within the scope of its decision-making processes including environmental ones, involves the public in decision-making processes. |
| 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.” | 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  The Czech Charter of Fundamental Rights and Freedoms (No. 2/1993 Coll.) stipulates the right to freedom of expression, freedom of association, right to petition, right to favourable environment including the right to information about the environment, and the right to court protection from unlawful decisions of public authorities.  Article 17 (1) The freedom of expression and the right to information are guaranteed. (2) Everyone has the right to express her opinion in speech, in writing, in the press, in pictures, or in any other form, as well as freely to seek, receive, and disseminate ideas and information irrespective of the frontiers of the State. (3) Censorship is not permitted. (4) The freedom of expression and the right to seek and disseminate information may be limited by law in the case of measures necessary in a democratic society for protecting the rights and freedoms of others, the security of the State, public security, public health, and morals. (5) State bodies and territorial self-governing bodies are obliged, in an appropriate manner, to provide information on their activities. Conditions therefore and the implementation thereof shall be provided for by law.  Article 18 (1) The right of petition is guaranteed; in matters of public or other common interest, everyone has the right, on her own or together with other individuals, to address state bodies or territorial self-governing bodies with requests, proposals, or complaints. (2) Petitions may not be misused to interfere with the independence of the courts. (3) Petitions may not be misused for the purpose of calling for the violation of the fundamental rights and freedoms guaranteed by this Charter.  Article 19 (1) The right of peaceful assembly is guaranteed. (2) This right may be limited by law in the case of assemblies held in public places, if it concerns measures necessary in a democratic society for the protection of the rights and freedoms of others, public order, health, morals, property, or the security of the state. However, an assembly shall not be made to depend on the grant of permission by a public administrative authority.  Article 20 (1) The right of association is guaranteed. Everybody has the right to associate together with others in clubs, societies, and other associations. … (3) The exercise of these rights may be limited only in cases specified by law, if it involves measures that are necessary in a democratic society for the security of the state, the protection of public security and public order, the prevention of crime, or the protection of the rights and freedoms of others. (4) Political parties and political movements, as well as other associations, are separate from the state.  Article 35 (1) Everyone has the right to a favorable environment. (2) Everyone has the right to timely and complete information about the state of the environment and natural resources. (3) No one may, in exercising her rights, endanger or cause damage to the environment, natural resources, the wealth of natural species, or cultural monuments beyond the extent set by a law.  Article 36 (1) Everyone may assert, through the prescribed procedure, her rights before an independent and impartial court or, in specified cases, before another body. (2) Unless a law provides otherwise, a person who claims that her rights were curtailed by a decision of a public administrative authority may turn to a court for review of the legality of that decision. However, judicial review of decisions affecting the fundamental rights and freedoms listed in this Charter may not be removed from the jurisdiction of courts. (3) Everybody is entitled to compensation for damage caused her by an unlawful decision of a court, other State bodies, or public administrative authorities, or as the result of an incorrect official procedure. (4) Conditions therefor and detailed provisions shall be set by law.  All those constitutional rights are implemented by a number of “ordinary” Acts. Persecuting and bullying any persons who claim such rights within the limits of the system of law is prohibited. |
| 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.” | 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  There is a general “Anti-discriminatory Act”, but its scope does not cover the areas under the Convention. According to article 3/1 o fthe Charter of Fundamental Rights and Freedoms, all fundamental rights are granted to everyone without discrimination of, i.a. nationality. But if the questions targets existence of specific provisions concerning the rights under the Aarhus convention. |

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)?

To assess the significance by 0,5 – 1 – 2 points?

### 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.” | 2 = Good  The homepage of the environmental authorities are of an acceptable quality (well structured, regularly updated etc.)  The most public authorities have information officers for handling requests for information, the answer is correct, for the bigger public authorities. However, if a specific body responsible for example for complaints/preliminary review in the sense of art. 9/1 is meant– there are, to researcher´s knowledge, no such officers.  There is sometimes proper training, guidance documents, circulars etc. especially for officials on national level about public participation. There probably are not such trainings or even guidance documents regularly available namely for the officials on regional and local level.   * There is almost not existing the usage of electronic mailing, phone, Facebook etc. by environmental authorities for enhancing public participation * There are guides, manuals, easy to understand descriptions of public participation available to members and organisations of the public. But most of them, in researcher´s opinion, prepared by the NGOs, not by public authorities.   Most kinds of assistance and information within the circle of capacity building are for free. But most of them, in researcher´s opinion, prepared by the NGOs, not by public authorities. |
| Art. 3(3), first clause | 1. Governmental efforts concerning, as a general matter, promoting environmental education and awareness raising among the public[[17]](#footnote-18)   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.” | 2 = Good  There are specialised environmental administrative organisations, departments etc. deal with the research, development, support, management etc. of environmental education and awareness raising.  The environmental education is integrated into the regular curricula at several levels of the education system (ref.2, ref.5)  There are green school projects (such as forest school, clean up campaigns, ‘open school’ curricula, etc.) with proper organisational, financial and methodological support.   * There is 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.). * There are some awareness raising projects covered in the media, with high number of visitors or with positive professional feedback etc.   The society organisations are involved in environmental education and awareness raising. |
| 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.” | 2 = Good  The NGOs are involved in dialogue with governmental bodies and into relevant governmental programs, activities (usually it is only passive involvement upon the request of NGOs). The NGOs are not usually include in government delegations for international processes.  There are no framework agreements on financing of the involvement of NGOs.  There is not so often the direct financing of environmental NGOs through project based or operational support.  The transparency of financial support is ensured, it is objective and based on on professional considerations. The NGOs are registered by th registration courts for free and without any problems. There are no high administrative burdens or need for re-registration. |
| 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.” | 1 = Rarely  There is broader public participation for NGOs in environmental permitting procedures (beyond “art. 6/EIA cases”) than required by the Convention, on the basis of the Nature Protection Act. In other cases the rights of public are often interpreted or stated narrower than required by the Convention. |
| 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.” | 0 = Poor or non-existent  Ministry of Environment does not publish any materials about promotion the application of the principles of the Aarhus Convention in the UNFCCC process or in UNEA. |
| 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.” | 2 = Good  There are no 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.  The government usually does not react in negative way to civil disobedienceactions, mostly the government pay more attention to the case as a result.  There are whistleblower protection rules. The researcher is not aware of their use in environmental matters.  The legal costs are not applied in such a way as to penalise or harass those who used their participation rights. Sometimes the media (especially local) are used to harass or insult those who exercise their participation rights.  Media are used sometimes to harass or insult those who exercise their participation rights. |
| 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.” | 3 = Never (insofar as aware) |

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?

Not at all.

## 

## 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.” | 3 = Enactment is fully in accord  In the Czech Republic the right to environmental information is established by Act No. 123/1998 Coll., on the Right to Environmental Information. Another Act relevant for this right is Act No. 106/1999 Coll., on Free Access to Information that generally regulates the provision of information by public authorities.  Access to information may be restricted only in cases stipulated by law, e.g. due to the protection of classified information, business secret, personal data or intellectual property.  (a) Both the above stated Acts make it possible to request information without stating the reason for such request (Art. 3 Act No. 123/1998 Coll., on the Right to Environmental Information).  The applicant need not give reasons for his application. |
| 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.”** | 3 = Enactment is fully in accord  (b) According to section 6 Act No. 123/1998 Coll., on the Right to Environmental Information, information shall be provided in the form required by the applicant.  Information may be provided in a form other than requested if the requested form constitutes an excessive burden for the public authorities. The reasons for such procedure have to be given.  The public authority can refer to information publicly available.  The public authorities shall also provide copies of documents when requested.  “Article 5  Published Information  (1) If the request is directed towards providing released information, the public authority can first, but at the latest within 15 days, instead of providing information, give the applicant information enabling him to look up and obtain the released information. This does not apply, if the applicant stated that he had no possibility of obtaining released information in another way.  (2) If the applicant insists on the released information to be provided directly, the public authority shall give him the information.  Article 6  The Way and Form of Providing Access to Information  (1) In the request the applicant can suggest a form, or way which are to be used for providing access to the information. If he requests information to be made accessible on a technical data carrier, he is obliged to cover the cost or to enclose with the request a technically usable data carrier.  (2) Unless the applicant specifies the form or way according to paragraph 1, or if such form or way cannot be used for serious reasons, such way and form of making the information accessible will be selected taking account of the fulfillment of the purpose of the application for making the information accessible and making the optimum use of it by the applicant. If there are doubts, first of all, the form and way are used which the applicant made use of for submitting the application. The reason for this procedure has to be given.” |
| 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.” | 3 = Enactment is fully in accord  According to section 7 of the Act No. 123/1998 Coll., on the Right to Environmental Information, the administrative authority shall provide information within 30 days from the delivery of the request.  Article 7  The Period Within Which Access to Information shall be Provided  (1) The information shall be made available as soon as possible, at the latest within 30 days of the request, unless special circumstances justify an extension of this period, in the extreme case up to 60 days. The applicant shall be informed about such circumstances and about any extension of the period before the expiration of the 30-day period. |
| 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.” | 3 = Enactment is fully in accord  Article 4  A Request Submitted to an Authority Lacking the Relevant Competence  In case a request is submitted to a public authority which does not hold the information requested and does not have the obligation under special legislation to hold the information, the public authority has the duty to inform the applicant as promptly as possible, at the latest within 15 days from the receipt of the request, that it cannot provide the required information for to this reason. If the addressed public authority knows where to submit the request, it has to forward the application within the time limits laid down in the first sentence and shall inform the applicant. |
| 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;” | 1= Minor errors  “Article 8  Restriction of Access to Information  (1) Making the information accessible will be refused, if it is excluded by the regulations:  …  (2) Furthermore, the information may be refused, if  d) the application was formulated incomprehensibly or too generally and the applicant, although called upon to do so, did not complete it according to Section 3 par. 2 of this Law ...  (3) Furthermore, the information may be refused, if  b) the request is formulated manifestly in a provocative or obstructive way” |
| 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.” | 1= Minor errors  “Section 8  Restriction of Access to Information  (2) Furthermore, the information may be refused, if  c) the applicant demands the information provided within a preparatory proceedings (investigation) in criminal matters, or the information relates to unfinished proceedings and decisions not yet in force on offences and other administrative misdemeanors,  (3) Further, making the information accessible can be denied, if  a) it relates to data not yet processed or not yet assessed,  …  d) concerns the internal guidelines of the public authority, which relates solely to the internal running of public authority.  (8) In case of disclose information in the cases referred to in article 3 letter a) the public authority shall inform the applicant about the estimated time needed for processing or evaluation of the required data, and if the public authority does not work alone also about the identification of the subject who has done this activity.”  The relevant exception may be interpreted as more narrower, with respect to the “materials in th course of completion”. However, the national legislation does not require to take into account the public interest served by disclosure at all. |
| 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.” | 1= Minor errors  The test to require the grounds for refusal to be “interpreted in a restrictive way, taking into account the public interest served by disclosure was established by jurisprudence.  There is not such a reason for exemption.  This specific reason is not included in the national law and in this sense, the exception is narrower than the Convention provision. On the other hand, the law does not include the “public interest test”. |
| 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.” | 0—errors more than minor  “Section 8  Restriction of Access to Information  (1) Making the information accessible will be refused, if it is excluded by the regulations  a) on facts kept secret in the state interest …”  Acording to the Convention, this reason for refusal in conditional and depends in the public interest test. According to the national legislation, the reason for refusion is obligatory. Next to that, 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. |
| 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.” | 1= Minor errors  “Section 8  Restriction of Access to Information  (2) Furthermore, may be refused, if  c) the applicant demands the information provided within a preparatory proceedings (investigation) in criminal matters, or the information relates to unfinished proceedings and decisions not yet in force on offences and other administrative misdemeanors,”  The reason as such is more restrictive than in the Convention, as it applies only to criminal and administrative offences.However, 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. |
| 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.” | 1= Minor errors  “Section 8  Restriction of Access to Information  (1) Making the information accessible will be refused, if it is excluded by the regulations  d) on the protection of trade secrets.  (4) Making accessible information marked as trade secret is not a breach of a trade secret, if  a) the required information relates to the effect of the entrepreneur's operational activity on the environment,  b) there is an imminent danger to human health and the environment,  c) the required information was obtained from the means of public budgets. “  (9) If the request relates to the emissions released into the environment, the reasons for refusal according to paragraph 1 b) and d) and paragraph 2 a) and b) shall not apply. “  According to the Convention, this reason for refusal in conditional and depends in the public interest test. According to the national legislation, the reason for refusion is obligatory. Next to that, 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. \_ |
| 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.” | 1= Minor errors  “Section 8  Restriction of Access to Information  (1) Making the information accessible will be refused, if it is excluded by the regulations  c) on the protection of intellectual property”  According to the Convention, this reason for refusal in conditional and depends in the public interest test. According to the national legislation, the reason for refusion is obligatory. Next to that, 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. |
| 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.” | 0 = Errors that are more than minor  “Section 8  Restriction of Access to Information  (1) Making the information accessible will be refused, if it is excluded by the regulations  b) on the protection of personal or individual data and on the protection of personality,  (5) Providing information on the originator of an activity polluting or otherwise endangering or damaging the environment, included in a valid decision about an offence or criminal act, does not constitute a breach of the right to the protection of the personality.”  (9) If the request relates to the emissions released into the environment, the reasons for refusal according to paragraph 1 b) and d) and paragraph 2 a) and b) shall not apply  Acording to the Convention, this reason for refusal in conditional and depends in the public interest test. According to the national legislation, the reason for refusion is obligatory. Next to that, 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. |
| 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.” | 0 = Errors that are more than minor  “Section 8  Restriction of Access to Information  (2) Furthermore, may be refused , if  a) it was submitted to the public authority by a person who was not legally mandated to do so and who did not give prior written consent to making this information accessible,”  The reason as such is fully in accord, but, 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.” |
| 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.” | 1= Minor errors  “Section 8  Restriction of Access to Information  (2) Furthermore, the information may be refused, if  b) by making information accessible on the place of occurrence of especially protected species of plants, animals or minerals where there was a threat of their undue endangerment, damage or disturbance,”  The reason as such is more restrictive than in the Convention, as it only applies to specially protected areas.However, 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.” |
| 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? | 0 = Yes  “Article 8  (2) Furthermore, the information will not be made accessible, if  d) … it is an anonymous application.  (3) Further, making the information accessible can be denied, if  …  b) the application is formulated in an evidently provocative or obstructive way, …” |
| 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.” | 3 = Enactment is fully in accord  “Article 8  (6) If possible, the required information is released after excluding information with respect to which there is a reaon for refusal . The applicant shall always be informed about such an intervention and the reason for it on the information released.  (4) Similar procedure as in paragraph 3 applies in case, when the applicant does not agree on the exclusion of secret facts before releasing the information.”  (3) Unless the authority provided information within the set term or issued the decision, it is understood that it decided to refuse the information.” |
| 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.” | 3 = Enactment is fully in accord  Section 9 Act no. 123/1998 Coll, on Right on Environmental Information  The Decision about the Refusal to Release Information (1) If the release of information is refused, the public authority will issue the decision about its refusal to release the information. “  Section 14 Act no. 123/1998 Coll, on Right on Environmental Information:  The Use of the Regulations on Administrative Proceedings and Judicial Protection  (1) The regulations on administrative proceedings Law No. 500/2004 Coll., on administrative proceedings (administrative regulations).) are used in the proceedings according to Section 9 pars. 1, 3 and 4 of this Law and for the calculation of the periods.”  Art 67 par. 2 Act no. 500/2004 Coll,, Administrative Proceedings:  Decisions shall be made in writing.” |
| 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.” | 3 = Enactment is fully in accord  Section 9 Act no. 123/1998 Coll, on Right on Environmental Information  The Decision about the Refusal to Release Information (1) If the release of information is refused, the public authority will issue the decision about its refusal to release the information. “  Section 14 Act no. 123/1998 Coll, on Right on Environmental Information:  The Use of the Regulations on Administrative Proceedings and Judicial Protection  (1) The regulations on administrative proceedings Law No. 500/2004 Coll., on administrative proceedings (administrative regulations).) is used in the proceedings according to Section 9 pars. 1, 3 and 4 of this Law and for the calculation of the periods.”  Art 68 par. 3 Act no. 500/2004 Coll,, Administrative Procedure:  § 68  (1) Decision contains verdict, reasoning and instructions for participants.  (3) The reasoning shall state the reasons for the verdict or verdicts of decision, grounds for the verdict, reasoning, which an administrative body used in the evaluation and interpretation of legislation, and information about how the administration dealt with the proposals and objections of participants and their comments on the bases for the grounds of decision.  (5) The instructions for the participants will indicate whether it is possible to appeal against the decision, the period within which it is possible to do so, from which date is this period calculated, which administrative body decides on the appeal and in which administrative body the appeal is lodged.  Section 14 Act no. 123/1998 Coll, on Right on Environmental Information  The Use of the Regulations on Administrative Proceedings and Judicial Protection  (2) The decision on a refusal to provide information or on an individual part of it being secret can be challenged by court action after all regular remedial means have been exhausted.” |
| 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. | 3 = Enactment is fully in accord  Section 9 Act no. 123/1998 Coll, on Right on Environmental Information  The Decision about the Refusal to Release Information (1) This decision is issued by the authority which refused to release the information, or the authority which is superior to the juridical person which refused to release the information. This decision must be issued within 30 days from the delivery of the request.  (3) Unless the authority provided information within the set term or issued the decision, it is understood that it decided to refuse the information. “ |
| 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.” | 3 = Enactment is fully in accord  Section 10 Act no. 123/1998 Coll, on Right on Environmental Information  More Detailed Conditions of Providing Access to Information  (3) The information is made accessible, as a rule, free of charge. However, the authorities are entitled to require the compensation the amount of which must not exceed the costs of making of copies, of providing technical data carriers and the dispatch of information to the applicant.” |

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)?

1. Create independent indicator for law institues going further than AC.
2. Make clear, whether it should be stated in Law or it si also possible to point out only the case law.
3. Scoring 3 – yes, I do agree. For 4(4) h I do not see any reason for assessing better the more restrictive exemption (and bigger harm for environment).
4. No exceptions at all – I would assessed as 3 with the exemption for 4 (4) h *–* I would assessed as 0 (leads to no protection of environment).

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### 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.” | 3 = Excellent  Section 9 Act no. 123/1998 Coll, on Right on Environmental Information  “The Decision about the Refusal to Release Information (3) Unless the authority provided information within the set term or issued the decision, it is understood that it decided to refuse the information. (4) Similar procedure as in paragraph 3 applies in case, when the applicant does not agree on the exclusion of secret facts before releasing the information.” This provision is really helpful in practice. It gives quick remedy to applicant in case of inactivity of public authority.  It is perfectly possible to use only the electronic communication with public authorities.  There are statistics publicly available on information requests and servicing.  There are prepared forms for public to help obtain the information.  There is no 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)  There is established central body to guide the administrative organisations and officials dealing with information requests (department of Ministry of Interior).  There is protection of data owners without infringing the rights of requesters.  The researcher do not know about the cases in which public authorities seek to insist on an interest being stated  The researcher does know 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. This case was not about access to environmental information. |
| 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.” | 2 = Good (majority of requests are serviced within the prescribed deadlines)  There is no coherent dataset available to assess this indicator. So, the researcher considers her own experience in practice as well as the experiences of any colleagues or interviewees.  Report on the experience gained in the implementation of the European Parliament and Council Directive 2003/4/EC on public access to environmental information claims that 98 % of all application meets the deadline of one month. The public authorities do not extend the deadlines in most cases. Written information requests are usually not responded to immediately. The public authorities use the whole deadline.  Following on the previous comments – under the general Act on Free Acccess to Information, the deadline for providing the information is 15 days, and the authorities also in most cases respect it, using the whole term. This shows that the typical behavior of the authorities is not to provide the information immediately, or as soon as possible, but to make use of the whole term, however long it is.  In case of occurrence of no answer at all to requests, the applicant is effectively protected by section 9 Act no. 123/1998 Coll, on Right on Environmental Information  “The Decision about the Refusal to Release Information (3) Unless the authority provided information within the set term or issued the decision, it is understood that it decided to refuse the information. (4) Similar procedure as in paragraph 3 applies in case, when the applicant does not agree on the exclusion of secret facts before releasing the information.” This provision is really helpful in practice. It gives quick remedy to applicant in case of inactivity of public authority.  Information is not provided in time only in a limited number of cases, mostly in politically sensitive issues. |
| 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.”** | 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))  There is no coherent dataset available to assess this indicator. So, the researcher considers her own experience in practice as well as the experiences of any colleagues or interviewees.  Most prescribed deadlines are met. The public authorities do not extend the deadlines in most cases. However, in case the public authority is will to extend the deadlines, it has to inform the applicant, otherwise the section 9 Act no. 123/1998 Coll, on Right on Environmental Information  “The Decision about the Refusal to Release Information (3) Unless the authority provided information within the set term or issued the decision, it is understood that it decided to refuse the information.” |
| 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.” | 1 = No, rarely  There is no coherent dataset available to assess this indicator. So, the researcher considers her own experience in practice as well as the experiences of any colleagues or interviewees.  As a section 4 of Act no. 123/1998 Coll, on Right on Environmental Information states: In case a request is submitted to a public authority which does not hold the information requested, it is its duty to inform the applicant as promptly as possible, at the latest within 15 days from the receipt of the request, that it cannot provide the required information for to this reason.” For the purpose of this indicator, “promptly”shall be regard as being within one week of the public authority receiving the information request. The public authorities in most cases use the whole time of deadline and therefore they inform the applicant within 15 days. Only rarely they inform the applicant about authority which they would believe could possess the information requested. |
| 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.” | 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  “Article 8  Restriction of Access to Information  (2) Furthermore, the information will not be made accessible, if  d) the application was formulated indistinctly or too generally and the applicant, although called upon to do so, did not complete it according to Section 3 par. 2 of this Law ...  Section 3  (2) In case of a request that is unreasonable or formulated in too general a manner, within 15 days from the receipt of the request the applicant is invited to make his request more specific. The invitation must specify in what direction the application is to be made more specific. The applicant is obliged to specify this application without needless delay, at the latest within 15 days. Unless the applicant submits a specification of his request in the required direction within 15 days of the delivery of the invitation, it is understood as he has abandoned his request.”  There are usually no problems with too voluminous informations (the problems occur with the general request for information – not environmental information. In case of too voluminous request, the request can be subject to extraordinarily extensive information search).  In cases where the request is said to be formulated in too general manner, the applicant is invited to specify his application (see Art. 8 par 2). Report on the experience gained in the implementation of the European Parliament and Council Directive 2003/4/EC on public access to environmental information claims for example that the regional government of Ústecký kraj as public authority refuses the only 2 of 106 applications as formulated in too general manner.  There is exemption only for data not yet processed or not yet assessed. There is no exemption for internal communication of public authority. The public concerned has the right to see and make a copy of all the documentation in preparatory phases of administrative decisions (including expert opinions and other supporting materials.). |
| 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.” | 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  The test of public interest is not a part of Czech act on right on environmental information or general Act on free access to information. However, the test of public interest is set by the case law and should be applied in all cases (e.g. the applicants were given the information about the salary of civil servants, because the public interest on control of usage of public funds prevails the confidentiality of personal data of civil servants).  The researcher do not know about any cases balancing the right to access environmental information and intellectual property rights (e.g. in the case of GMOs).  The environmental impact assessment documentation is fully available online.  In most cases, exemptions from the right to information on request are interpreted restrictively (or at leasts not extensively). However, according to researcher´s experience, the authorities do not always or almost always take into account the public interest served by disclosure, as this criteria is not codified in the law. The jurisprudence on this has been developed only in recent years, mostly in the scope of the general Act ob Free Access to Information and with respect to specific issues, like the salaries of public servants. Threfore, I do not think that it is a standard that in case of existence of a reason for refusal, public officials would take inrto consideration the public interest served by disclosure (contrary to whether the information requested relates to emissions into the environment – this aspect is regulated by the law, excluding possibility of application of some reasons for refusal). |
| 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? | 2 = Very rarely  There would be a few cases a year. However most of information is granted after appeal or judicial review.  In most cases, exemptions from the right to information on request are interpreted restrictively (or at leasts not extensively). However, according to my experience, the authorities do not always or almost always take into account the public interest served by disclosure, as this criteria is not codified in the law. The jurisprudence on this has been developed only in recent years, mostly in the scope of the general Act ob Free Access to Information and with respect to specific issues, like the salaries of public servants. Threfore, I do not think that it is a standard that in case of existence of a reason for refusal, public officials would take inrto consideration the public interest served by disclosure (contrary to whether the information requested relates to emissions into the environment – this aspect is regulated by the law, excluding possibility of application of some reasons for refusal). |
| 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.” | 3 = Yes, always  The separation is progressive, flexible practice for instance, where authorities black out names, other personal data and any other sensitive data, in order to ensure serviceable material. (Other situation is with the general access to information – not environmental information. In these cases, there are a few cases when the public authority provide the contracts concerning usage of public funding completely black out). |
| 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.” | 3 = All four criteria are always or almost always met in practice  The public authority either provides the refusal in writing, within the time frames, with reference to reasons and instructions on review procedure or does not react. In case, when the public authority does not react, there is an fiction of refusal of information and applicant can ask for review. This applies also in case that part of the request is omitted. |
| 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.” | 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.  The information is made accessible, as a rule, free of charge. However, the authorities are entitled to require the compensation the amount of which must not exceed the costs of making of copies, of providing technical data carriers and the dispatch of information to the applicant. The cost of carriers is published in advance. |

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.

I do not see as neccessary to divide the indicator Art. 4(1)(a) and one for 4(1)(b).

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

| **Aarhus provision** | **Legal indicators** | **Guidance note** |
| --- | --- | --- |
| 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;” | 3 = Enactment is fully in accord  Art. § 10a Act no. 123/1998 Coll, on Right on Environmental Information  “Active Disclosure  (1) Public authorities process the information relating to their competence and provide the necessary technical and other conditions for the active access to information.” |
| 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;” | 2 - Minor errors  Art. § 10a Act no. 123/1998 Coll, on Right on Environmental Information  (2) Public authorities are required to the extent provided by law to maintain and update electronic databases containing information relating to their competence.  (3) The electronic database referred to in paragraph 2 shall be accessible via devices enabling remote access.  (4) Public authorities actively disclose information, especially in a manner allowing remote access, as well as through its own editorial and publishing activity.  (5) The public authority actively disclose:  a) concepts, policies, strategies, plans and programs relating to the environment and reports on their implementation, where they are processed,  b) reports on the state of the environment, where they are processed,  c) summaries of monitoring activities which have or could have an impact on the environment and its components,  d) administrative decisions in the event that the decision follows-up an opinion on the impact assessment of the project on the environment by special regulation,  e) documents procured during the assessment of environmental impact under a special law,  f) risk assessment regarding the environment, where they are processed,  as the national law does not include general requirement that public authorities inform about “proposed and existing activities which may significantly affect the environment”. Para (5) of art. 10a of the Act refers to a number of such activities, but still in my opinion cannot be considered as full transposition. |
| 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.” | 1 - Errors that are more than minor  Art. § 10b Act no. 123/1998 Coll, on Right on Environmental Information  Disclosure of information in emergencies  “In case of emergency of public is forewarned by special legislation.”  Act no. 239/2000 Coll., on Integrated Rescue System  Act no. 240/2000 Coll., on Crisis Management  Neither of the quoted law includes the general provision of the same content as Art 5(1) c) of the Convention. |
| 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;” | 3 = Enactment is fully in accord  Art. § 10a Act no. 123/1998 Coll, on Right on Environmental Information  (6) The Ministry of the Environment actively exposes  a list of information that public authorites should have available, stating which public authority has the information.  Art. § 11c Act no. 123/1998 Coll, on Right on Environmental Information  Access to spatial data  (1) Data made available through geo-portal is publicly accessible by remote access. The public authority or other provider of spatial data made available conditions for the making data available to public as part of the metadata. |
| 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.” | 2 – Minor errors  Not all parts of the provisions are transposed (points of contact).  Art. § 10a Act no. 123/1998 Coll, on Right on Environmental Information  (2) Public authorities are required to the extent provided by law to maintain and update electronic databases containing information relating to their competence.  (3) The electronic database referred to in paragraph 2 shall be accessible via devices enabling remote access  Art. 11c Act no. 123/1998 Coll., on Right on Access to Environmental Information:  (4) search and viewing services based on data including spatial data are made available free of charge. |
| 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.” | 3 = Enactment is fully in accord  The texts of legislation is publicized to the Act on the Collection of Laws.  Section 10a Act no. 123/1998 Coll., on Right on Access to Environmental Information:  (5) The public authority actively disclose:  a) concepts, policies, strategies, plans and programs relating to the environment and reports on their implementation, where they are processed,  b) reports on the state of the environment, where they are processed,  c) summaries of monitoring activities which have or could have an impact on the environment and its components,  d) administrative decisions in the event that the decision follows-up an opinion on the impact assessment of the project on the environment by special regulation,  e) documents procured during the assessment of environmental impact under a special law,  f) risk assessment regarding the environment, where they are processed,  …  (6) The Ministry of the Environment actively discloses  b) international treaties and agreements, the European Union legislation, laws and other regulations in the field of environmental protection and reports on their implementation and performance when processed.”  Section 12 Act no. 123/1998 Coll., on Right on Access to Environmental Information:  “Report on the state of the environment  (3) No later than three months from its approval of this report must be published.” |
| 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.” | 3 = Enactment is fully in accord  Section 12 Act no. 123/1998 Coll., on Right on Access to Environmental Information:  Report on the state of the environment  (1) The Czech government discussed and approved a report on the environmental situation of the Czech Republic once a year. This report contains information mainly on the quality of the environment and information on pressures on the environment.  (2) After consideration and approval, Government of the Czech Republic submit to the report on the state of the environment to the Parliament.  (3) No later than three months from its approval of this report must be published.” |
| 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.” | 3 = Enactment is fully in accord  The texts of legislation is publicized to the Act on the Collection of Laws.  Section 10a Act no. 123/1998 Coll., on Right on Access to Environmental Information:  (5) The public authority actively disclose:  a) concepts, policies, strategies, plans and programs relating to the environment and reports on their implementation, where they are processed,  …  (6) The Ministry of the Environment actively discloses  b) international treaties and agreements, the European Union legislation, laws and other regulations in the field of environmental protection and reports on their implementation and performance when processed.” |
| 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.” | 3 = Enactment is fully in accord  There is the integrated pollution register and information system for reporting obligations (ISPOP), through which the polluters have a legal obligation to report emissions of pollutants into the environment (Act No. 25/2008 Coll., on the Integrated Pollution Register).  National program of labeling environmentally friendly products and services are governed by the technical standard ISO 14024 Environmental labels and declarations - Environmental labeling type I. Environmentally friendly product / service is therefore recognized proof of the qualities of products and services also abroad, although it applies only to products marketed Czech Republic |

| 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;” | 3 = Enactment is fully in accord  Art. § 10a Act no. 123/1998 Coll, on Right on Environmental Information  (5) The public authority actively disclose:  b) reports on the state of the environment, where they are processed,  c) summaries of monitoring activities which have or could have an impact on the environment and its components,  e) documents procured during the assessment of environmental impact under a special law,  f) risk assessment regarding the environment, where they are processed,  Information and facts important for formulating environmental policy are publicly made available mainly via the Statistical Yearbook of the Environment and Reports on State of Czech Environment (Section 12 Act no. 123/1998 Coll., on Right on Access to Environmental Information). They are available in electronic form on the website of the Ministry of Environment and CENIA. |
| --- | --- | --- |
| 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;” | 0 = Has not been enacted at all  There is no regulation or practice for publishing these type of information.  Some materials concerning the practice are published on the Government website when the Government is for example approving the position for a meeting of the Convention bodies. This is however not relevant for the legal indicator. |
| 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.” | 2 = Minor errors  Art. § 10a Act no. 123/1998 Coll, on Right on Environmental Information  (5) The public authority actively disclose:  c) summaries of monitoring activities which have or could have an impact on the environment and its components,  d) administrative decisions in the event that the decision follows-up an opinion on the impact assessment of the project on the environment by special regulation,  e) documents procured during the assessment of environmental impact under a special law,  f) risk assessment regarding the environment, where they are processed,  The Statistical Yearbook gives implementation and enforcement information, such as the number of inspections carried out or the number of enforcement actions undertaken. The general provision responding to Art 5(7)(c) is however missing |
| 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.” | 1 = Errors that are more than minor  National program of labelling environmentally friendly products and services are governed by the technical standard ISO 14024 Environmental labels and declarations - Environmental labelling type I. Environmentally friendly product / service is therefore recognized proof of the qualities of products and services also abroad, although it applies only to products marketed Czech Republic |
| 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.” | 3 = Enactment is fully in accord  The Integrated Pollution Register in the Czech Republic is introduced based on international (PRTR Protocol), EU (Regulation) and national (Act No. 25/2008 Coll., on the Integrated Pollution Register) legislation. |

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

Not at all.

### 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;” | 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  As for the transparency and coordination between different data-bases, unified information system on the environment with the necessary overlaps in competencies of other ministries (eg. agriculture, health) has so far not been arisen. Therefore there is no sufficient linking of data among different ministries. The practice is not always clear what information the public authority has available.  There is a lack of measuring facilities. As a result, a lot of information is based only on the theoretical models and not the exact empirical measurements.  The EIA documentation and environmental permits are systematically available as a rich source of information on the environmentally most significant projects.  The environmental NGO community is a source of environmental information in specific fields (e.g. chemicals), their role is sometimes acknowledged and supported in information collection and processing.  The general statistical office strongly participates in environmental information collection.  The researcher is not aware of charges for information, hindering the circulation of environmental information between relevant State bodies.  The environmental information are also available at local/municipal level. |
| 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.” | 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  After the experience with the floods of 1997, when the state was unable to effectively inform the public, the practical level of dissemination of information has improved significantly. Yet they are not always used efficiently all the possibilities for public warning (for example, in case of contamination of drinking water in Prague in 2015, city district was not able to use facebook, twitter or warn public also in foreign languages).  The operators do not inform the public directly, they fulfil their obligations via regional public authorities (Act no. 224/2015 Coll. on prevention of major accidents).  There are no relevant cases under, and preparedness in respect of, the Environmental Liability Directive framework. |
| 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. | 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.  There is national level meta database for environmental information.  The geographic information systems in order to reveal interrelationships between different databases relevant to environmental matters, use of interactive map services is existing.  The meta data contains information on any costs of underlying data.  There is still missing the single network for all kinds of environmental information sources.  Czech Environmental Information Agency (CENIA) was established by the Ministry of Environment to operate and form a unified information system on the environment including validating primary data and compilation of information synthesis.  The CENIA runs web pages with lists of different sources and registers of environmental information. The CENIA also runs the EnviHELP point, where it is possible either to search within the databases or directly ask where to find the information. |
| 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.” | 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.  There is easy electronic access to fresh environmental data, with interactive support (e.g. information helpdesks).  There is widespread electronic access to several databases that are environmentally relevant.  There is timely, real time environmental information on the Internet (see e.g. <http://portal.chmi.cz/files/portal/docs/uoco/web_generator/actual_hour_data_CZ.html> )  There is electronic access to general type environmental documents such as plans and reports.  There is direct electronic access to environmental permitting, EIA and SEA data.  The information systems are getting more and more user-friendly still not all of them are well edited or easy to handle.  For example, the Water Management Information System and contaminated sites systems have more than 500.000 visitors in year 2015 (see the Annual Report of CENIA for year 2015).  The consolidated texts of legislation are available from official and also unofficial sources. |
| 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.” | 3 = Yes, annually  The Report on State of Environment is prepared annually and made available on-line. |
| Art. 5(4) | 1. How would you rate the quality and breadth of dissemination of the state of environment reports? | 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.  The report is prepared really nicely. It is easy to understand for wide public. The researcher is not aware of any methodologic problems. The Report is available online, the Ministry of Environment tries to disseminated some interesting facts from report each year. |
| 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.” | 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  The most problematic would be the dissemination of progress reports, which are not made public as a rule.  Also the spatial planning documents are usually made available. |
| 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.” | 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  The scope of relevant information used in PRTR systems is even broader than are obligatory under the Protocol on PRTR or EU legislation.  The online PRTR database is available to the general public and it is easy to search using the different criteria.  The NGOs produce annually the public reports on biggest polluters in different regions, etc.  The researcher is not aware of any cases of direct community-company communication.  The biggest state-owned power-producing company (CEZ, a.s.) are often not willing to disseminate the information. |
| 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; | 2 = Yes, in the case of a majority of environmental policy proposals  The majority of environmental policy proposals are subject to SEA and all relevant and important facts are therefore made available publicly. |
| 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),[[18]](#footnote-19) 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; | 1 = While such data are sometimes published, they are not collected at the national level and/or they are published only every 4+ years  The data are published mostly randomly; there is no obligation to publish them. Sometimes they are published to obtain comments from the public.  According to the general Act on Free Access to Information, the public authorities are obliged to publish annual report on the number of information requests in previous year and other related facts. This however does not apply to environmental legislation provided under the regime of a specific act. |
| 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. | 2 = Yes, in the case of a majority of public functions/services relating to the environment by government at all levels  The Statistical Yearbook gives implementation and enforcement information, such as the number of inspections carried out or the number of enforcement actions undertaken. These type of information can be also find in different annual reports and on the electronic portal of the government http://portal.gov.cz/portal/obcan/. |
| 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.” | 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  There is strong role of state regulation and control of labelling. The consumer protection organisations are not so strong compare to western Europe.  There are eco-labelling scheme in the market of environmentally significant (e.g. electronic) products, energy efficiency, waste management etc. |
| 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.” | 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  The scope of relevant information used in PRTR systems is even broader than are obligatory under the Protocol on PRTR or EU legislation.  The online PRTR database is available to the general public and it is easy to search using the different criteria.  The NGOs produce annually the public reports on biggest polluters in different regions, etc. |

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)?

It seems to me too long (compare to real relevance of this article).

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## III. Public participation pillar

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

| **Aarhus provision** | **Legal indicators** | **Guidance note** |
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| 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;” | 3 = Enactment is fully in accord  With regard to some activities form Annex I, it is not fully clear that they would be in every case subject to full EIA, or just screening (as EIA directive annex II projects)  In the Czech system, the EIA procedure is not an integral part of environmental development consent (decision-making) procedures, but a separate process finalized by issuing an “EIA statement”. This “EIA statement” does not have the character of a separate permit (development consent). It is an obligatory and binding basis for subsequent decision-making procedures, which must be respected in the development consent decisions (e.g. land-use/building permit).  The regulation of public participation in the Czech law depends on various factors:  - Type of subject: NGO, owner, public  - type of procedure: EIA, land-use/building permitts  - with/without EIA  The owners of land/buildings (real estates) and NGOs meeting requirements stipulated in the EIA Act can participate in all type of proceedings with rights of a party (namely to receive information, make comments, appeal). Other members of the public can participate in the EIA process and in decision making following-up to EIA, where they can get information and make comments, but can not appeal against the decision).  The most important and/or most frequent permits are issued according to the 183/2006 Coll. Building Act (namely land use permits and building permits – see part 2.1 below), 114/1992 Coll. Nature Protection Act, 254/2001 Coll. Water Protection Act, 86/2002 Coll. Air Protection Act, 201/2012, IPPC Act, 44/1988 Coll. Mining Act, 258/2001 Coll. Public Health Protection Act, 18/1997 Nuclear Act.  At the same time, there are different rules regulating which subjects have a position of a party in individual decision-making procedures according to the respective laws. General definition of a party to administrative procedure is contained in Art. 27 of the Administrative Procedure Code - Act no. 500/2004 Coll. According to this provision, position of a party of an administrative procedure is granted to  - the person(s) who submitted the request for a permit (applicant - a developer in environmental cases),  - in the procedures initiated ex officio, persons whom the decision shall create, abolish or alter their rights and duties,  - other persons concerned “as far as their rights or duties can be directly affected by the administrative decision”,  - persons to whom a special act stipulated the position of a party.  This general provision of the Administrative Procedure Code is, at least in theory, general enough for interpretation consistent with the requirements of Art. 6, Art. 9 par 2 and Art. 9 par 3 of the Aarhus Convention. It applies – exclusively or in combination with complementing provisions of special acts in most of environmental decision making procedures (both subject to Art. 6 of the Convention ant others).  However, there are other procedures (some of them very important for the protection of environments and related rights of affected subjects), in which an exclusive and more restrictive regulation of who has position of a party applies. This concerns namely procedures according to the 183/2006 Coll. Building Act.  The Building Act includes autonomous definitions of parties of the procedures for issuing the land use and building permits (which prevents application of the general provision of the Administrative Procedure Code). According to these definitions, the only individuals who can be parties of the decision-making procedures for issuing the land use and building permits are “persons, whose property rights or another right in rem to the neighbouring buildings or grounds (accented by the communicant) may be directly affected by the permit” (i. e. “the neighbours”). Other individuals (members of the public concerned), likely to be affected by these permits in other than property rights (e.g. right for protection of the health of right for favorable environment, which are both granted by the Czech Constitution), are omitted. They cannot act as parties of the land use permit and building permit procedures. This fact prevents, firstly, the affected individuals, distinct form the property owners, from the possibility to exercise some of the rights granted by Art. 6 of the Aarhus Convention. Indeed, as described above, they can participate in the EIA procedure for an investment (which is open for everyone). By that means, they have access to information about the project and can submit their comments. However, as EIA statement is does not have a character of a permit, they cannot “participate effectively during the environmental decision-making”, as Art. 6 par 3 of the Convention requires. This part of public concerned could not either participate at all, in case of project without EIA, or can only submit their comments without status of party, in case of project with EIA. |
| 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;” | 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 (only it is not a list, but generally defined category of “projects which affect protection of the nature and landscape”)  In the Czech Reoublic, there is a possibility of public participation also in the screening stage of EIA procedure, so the activities listed in Annex II of the EIA directive, subject to screening, should be considered as activities under para 20. of Annex I of the Convention. Besides the EIA ananex II projects, there is no consistent 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.  Instead, there is a kind of “parallel system” of public participation in the proceedings concerning projects which affect protection of the nature and landscape. There is no list of such projects, the question if any project would fall under this category is decided on ad hoc basis. There are overlaps with the projects under EIA (in such case, public participation is regulated by the rules in the EIA Act).  When a project is not subject to EIA, but affects protection of the nature and landscape, NGOs can participate in (most of) relevant decicion making procedures on the basis of art. 70 of the Nature Protection Act. Most frequently, the NGOs use Art. 70 of the 114/1992 Coll. Nature Protection Act to obtain status of the parties of environmentally relevant administrative procedures. The provision is applicable not only for the procedures according to the Nature Protection Act, but for all procedures when “interests of nature conservation and landscape protection” are affected by the project (i.e. not “interests of environmental protection”, which is a broader term). This formulation makes it possible for NGOs to use the provision to become parties also of e.g. the land use permit procedures. There are similar provisions in the Water Protection Act and IPPC Act (for procedures performed according to them).  In such case, not all requirements of art. 6 and namely art. 9/2 are explicitly granted. In practice, art. 6 rights are not a big problem. With respect to art. 9/2, in theory, NGOs can only protect their procedural rights. |
| 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.” | 2 = Enactment is fully in accord  Art. 4 Act No.100/2001 Coll, on EIA: “(2) Předmětem posuzování podle tohoto zákona dále není záměr, popřípadě jeho část, o kterém rozhodne vláda v případě nouzového stavu, stavu ohrožení a válečného stavu,3) z naléhavých důvodů obrany nebo plnění mezinárodních smluv, kterými je Česká republika vázána, a v případě, kdy záměr slouží k bezprostřednímu odvrácení důsledků nebo ke zmírnění nepředvídatelné události, která by mohla vážně ohrozit zdraví, bezpečnost, majetek obyvatelstva nebo životní prostředí. O záměrech, které podléhají posuzování vlivů na životní prostředí přesahujících hranice České republiky podle § 11, tak nelze stanovit. U záměru vyloučeného podle věty první tohoto odstavce je vláda povinna  a) o tomto rozhodnutí spolu s odůvodněním informovat přiměřeně podle § 16 veřejnost,  b) zvážit možnost jiného posouzení jeho vlivu na životní prostředí za účasti veřejnosti a o výsledcích tohoto posouzení informovat podle § 16 veřejnost,  c) před vydáním rozhodnutí, popřípadě opatření podle zvláštních právních předpisů1a) informovat Evropskou komisi o důvodech vyloučení podle věty první tohoto odstavce a poskytnout jí informace zveřejněné v rámci případného posouzení podle písmene b).”  (2) The subject of assessment under this Act is also not the project, or part thereof, decided by the government in case of emergency, state of danger or war, for imperative reasons of defense or implementation of international agreements binding the Czech Republic, and if the project is used to avert immediate consequences or mitigation of unpredictable events that could seriously endanger the health, safety, property or the environment of the population. The projects, which are subject to the assessment of environmental impacts beyond the borders of the Czech Republic according to § 11, cannot be omitted from assessment. For projects excluded pursuant to the first sentence of this paragraph, the government is required  a) to inform appropriately the public of this decision and the reasons,  b) to consider the possibility of another assessment of its impact on the environment with public participation and inform the public about the results of this assessment to pursuant to § 16,  c) before issuing a decision or measure pursuant to special legal regulation inform the European Commission about the reasons for exclusion under the first sentence of this paragraph, and provide the information published in the context of a possible assessment under point b).” |
| 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.” | 3 = Enactment is fully in accord  Art. 9b Act No. 100/2001 Coll., on EIA:  § 9b  (1) Správní orgán příslušný k vedení navazujícího řízení zveřejňuje postupem podle § 25 správního řádu spolu s oznámením o zahájení řízení  a) žádost spolu s upozorněním, že se jedná o záměr posouzený podle tohoto zákona, případně záměr podléhající posuzování vlivů na životní prostředí přesahujících hranice České republiky, spolu s informací, kde lze nahlédnout do příslušné dokumentace pro navazující řízení,  b) informace o předmětu a povaze rozhodnutí, které má být v navazujícím řízení vydáno,  c) informace o tom, kde se lze seznámit s dokumenty pořízenými v průběhu posuzování, které byly zveřejněny podle § 16,  d) informace o podmínkách zapojení veřejnosti do řízení podle § 9c odst. 1 a podle zvláštních právních předpisů, kterými se rozumí především informace o místě a čase konání případného veřejného ústního jednání, o lhůtě pro uplatnění připomínek veřejnosti k záměru a o případných důsledcích zmeškání takové lhůty, informace o tom, zda a případně v jaké lhůtě může veřejnost nahlížet do podkladů rozhodnutí, o dotčených orgánech a informace o možnostech dotčené veřejnosti účastnit se navazujícího řízení podle § 9c odst. 3 a 4.  Informace se považuje za zveřejněnou vyvěšením na úřední desce správního orgánu, který navazující řízení vede. Informace musí být vyvěšena po dobu 30 dnů.”  Art. 16 Act No. 100/2001 Coll., on EIA:  Zveřejnění informací o dokumentech pořízených v průběhu posuzování a o veřejných projednáních  (1) Příslušný úřad zajistí zveřejnění informace o  a) oznámení a o tom, kdy a kde je možno do něj nahlížet,  b) místě a času konání veřejného projednání podle tohoto zákona,  c) vrácení dokumentace k přepracování nebo doplnění,  d) dokumentaci a o tom, kdy a kde je možno do ní nahlížet,  e) posudku a o tom, kdy a kde je možno do něj nahlížet,  f) oznámení koncepce a o tom, kdy a kde je možno do něj nahlížet,  g) návrhu koncepce a o tom, kdy a kde je možno do něj nahlížet,  h) konzultaci při mezistátním posuzování.  (2) Příslušný úřad dále zajistí zveřejnění závěru zjišťovacího řízení, stanoviska a stanoviska ke koncepci.  Art. 9b Act No. 100/2001 Coll., on EIA:  § 9b  (1) The administrative authority competent to conduct follow-up procedure published by the procedure under § 25 of the Administrative Code, together with the notice of initiation  a) the application along with the information that it is the project assessed under this Act or project that is subject to the assessment of environmental impacts beyond the borders of the Czech Republic, along with information on where you can consult the relevant documentation for related procedures,  b) information about the purpose and nature of the decision to be issued in subsequent proceedings,  c) information about where you can get acquainted with the documents acquired during assessments, which were published in accordance with § 16,  d) information about the conditions of public participation in proceedings under § 9c paragraph. 1 and under special laws, which mostly refers to information about the time and place of any public hearing, the time limit for applying public comments on the project and the possible consequences of missed a deadline, information about whether and to what period the public may see documents, decisions of the institutions concerned and information about how the public concerned to participate in the follow-up procedure according to § 9c paragraph. 3 and 4.  Information is deemed to be published by posting on the official board of regional public authority, which leads related procedures. Information must be posted at least for 30 days.  Art. 16 Act No. 100/2001 Coll., on EIA:  Publication of information about the documents taken during the assessment and public hearings  (1) The competent authority shall ensure that information on  a) a notice about when and where it may be seen,  b) the venue and time of the public hearing under this Act;  c) returning documentation for reworking or supplementing,  d) the documentation and on when and where it is possible to see it  e) report and about when and where it may be seen,  …  h) consultation in transboundary assessment.  (2) The competent authority shall also ensure publication of the conclusions of the inquiry proceedings, the views and opinions on the project.” |
| 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.” | 3 = Enactment is fully in accord  General timeframes are set out in Code of Administrative Proceedure but since the EIA act or other specif acts are used more often, the timeframes set out by these laws would prevail. All in all, they are sufficient (mostly 15-30 days) with the exception of the eight days time frame set out for environmental NGOs to apply for proceeding under the Act on Nature and Landscape Protection (Art. 70).  As a specific issue, a situation when an NGO needs to collect 200 supporting signatures so that it could participate in the decision-making procedures (see Art. 2.5). But also in this cases, the time frames should normally be sufficient for such NGO to participate. |
| 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.” | 3 = Enactment is fully in accord  Public participation in decision-making in the initial phases is ensured by the EIA process. Even the under-limit projects are displayed for public comments. After the EIA documentation is elaborated, it is dispplayed for comments, in case of building permits (Building Act), a public hearing is held.  In reality, the fragmented system of decision-making often makes the public participation ineffective, despite it is possible to participate from the early stages. The reason is, in short, that if the principal decision (mostly the land use permit) is conrarty to law, and it is not canceled before the subsequent decision (most typically buildingpermit) is issued, than later annulment of the principal decision, according to the jurisprudence, does not mean that the subsequent decision would be annulled too. |
| 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.” | 0 = Has not been enacted at all |
| 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.” | 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.  Art. 16 Act No. 100/2001 Coll., on EIA:  Zveřejnění informací o dokumentech pořízených v průběhu posuzování a o veřejných projednáních  (1) Příslušný úřad zajistí zveřejnění informace o  a) oznámení a o tom, kdy a kde je možno do něj nahlížet,  b) místě a času konání veřejného projednání podle tohoto zákona,  c) vrácení dokumentace k přepracování nebo doplnění,  d) dokumentaci a o tom, kdy a kde je možno do ní nahlížet,  e) posudku a o tom, kdy a kde je možno do něj nahlížet,  f) oznámení koncepce a o tom, kdy a kde je možno do něj nahlížet,  g) návrhu koncepce a o tom, kdy a kde je možno do něj nahlížet,  h) konzultaci při mezistátním posuzování.  (2) Příslušný úřad dále zajistí zveřejnění závěru zjišťovacího řízení, stanoviska a stanoviska ke koncepci.  Art. 16 Act No. 100/2001 Coll., on EIA:  Publication of information about the documents taken during the assessment and public hearings  (1) The competent authority shall ensure that information on  a) a notice about when and where it may be seen,  b) the venue and time of the public hearing under this Act;  c) returning documentation for reworking or supplementing,  d) the documentation and on when and where it is possible to see it  e) report and about when and where it may be seen (Specific information requested by Art 6/6 are as part of the documentation. Obligatory content of the documentation is defined it Annex 4 of the act 100/2011 Coll.),  …  h) consultation in transboundary assessment.  (2) The competent authority shall also ensure publication of the conclusions of the inquiry proceedings, the views and opinions on the project.  Art. 9b Act No. 100/2001 Coll., on EIA:  § 9b  (1) Správní orgán příslušný k vedení navazujícího řízení zveřejňuje postupem podle § 25 správního řádu spolu s oznámením o zahájení řízení  a) žádost spolu s upozorněním, že se jedná o záměr posouzený podle tohoto zákona, případně záměr podléhající posuzování vlivů na životní prostředí přesahujících hranice České republiky, spolu s informací, kde lze nahlédnout do příslušné dokumentace pro navazující řízení,  b) informace o předmětu a povaze rozhodnutí, které má být v navazujícím řízení vydáno,  c) informace o tom, kde se lze seznámit s dokumenty pořízenými v průběhu posuzování, které byly zveřejněny podle § 16,  d) informace o podmínkách zapojení veřejnosti do řízení podle § 9c odst. 1 a podle zvláštních právních předpisů, kterými se rozumí především informace o místě a čase konání případného veřejného ústního jednání, o lhůtě pro uplatnění připomínek veřejnosti k záměru a o případných důsledcích zmeškání takové lhůty, informace o tom, zda a případně v jaké lhůtě může veřejnost nahlížet do podkladů rozhodnutí, o dotčených orgánech a informace o možnostech dotčené veřejnosti účastnit se navazujícího řízení podle § 9c odst. 3 a 4.  Informace se považuje za zveřejněnou vyvěšením na úřední desce správního orgánu, který navazující řízení vede. Informace musí být vyvěšena po dobu 30 dnů.”  Art. 9b Act No. 100/2001 Coll., on EIA:  § 9b  (1) The administrative authority competent to conduct follow-up procedure published by the procedure under § 25 of the Administrative Code, together with the notice of initiation  a) the application along with the information that it is the project assessed under this Act or project that is subject to the assessment of environmental impacts beyond the borders of the Czech Republic, along with information on where you can consult the relevant documentation for related procedures,  b) information about the purpose and nature of the decision to be issued in subsequent proceedings,  c) information about where you can get acquainted with the documents acquired during assessments, which were published in accordance with § 16,  d) information about the conditions of public participation in proceedings under § 9c paragraph. 1 and under special laws, which mostly refers to information about the time and place of any public hearing, the time limit for applying public comments on the project and the possible consequences of missed a deadline, information about whether and to what period the public may see documents, decisions of the institutions concerned and information about how the public concerned to participate in the follow-up procedure according to § 9c paragraph. 3 and 4.  Information is deemed to be published by posting on the official board of regional public authority, which leads related procedures. Information must be posted at least for 30 days. |
| 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.” | 3 = Enactment is fully in accord  Public can submit any comments, information, analyses or opinions that it considers relevant to the proposed activity in different stages of multi-layer decision making process:  - application for EIA (Art. 6 sec. 7 Act on EIA)  - documentation EIA (Art. 8 sec. 3 Act on EIA)  - assessment of documentation EIA(Art. 9 sec. 8 Act on EIA)  - follow-up procedures (Art. 9c Act on EIA)  - a public hearing(s) usually take place in the scope of the EIA procedure and also in some subsequent decision making procesures, namely land-use procedure |
| 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.” | 2 = Minor errors  Any comments, information, analyses or opinions of public mentioned below should be taken into account and their assessment should be part of reasoning of decision.  - application for EIA (Art. 6 sec. 7 Act on EIA)  - documentation EIA (Art. 8 sec. 3 Act on EIA)  - assessment of documentation EIA(Art. 9 sec. 8 Act on EIA)  - follow-up procedures (Art. 9c Act on EIA)  - art. 9c par. 2 of the EIA Act: “The authority shall, in the justification of its decision, also deal with the comemnts of the public”.  The NGOs and owners can appeal against the screening decision and follow-up permits (e.g. land use and building permits). |
| 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.” | 3 = Enactment is fully in accord  Art. 16 Act No. 100/2001 Coll., on EIA:  Zveřejnění informací o dokumentech pořízených v průběhu posuzování a o veřejných projednáních  (2) Příslušný úřad dále zajistí zveřejnění závěru zjišťovacího řízení, stanoviska a stanoviska ke koncepci.  Art. 16 Act No. 100/2001 Coll., on EIA:  Publication of information about the documents taken during the assessment and public heari ngs  (2) The competent authority shall also ensure publication of the conclusions of the inquiry proceedings, the views and opinions on the project.  The decisions in EIA follow-up procedures are made publicly available based on the Building Act and Administrative Procedure Code. |
| 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.” | 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.”  Art 4 Act No. 100/2001 Coll., on EIA:  Předmět posuzování vlivů záměru na životní prostředí  (1) Předmětem posuzování podle tohoto zákona jsou  a) záměry uvedené v příloze č. 1 k tomuto zákonu kategorii I a změny těchto záměrů, pokud změna záměru vlastní kapacitou nebo rozsahem dosáhne příslušné limitní hodnoty, je-li uvedena; tyto záměry a změny záměrů podléhají posuzování vždy,  b) změny záměru uvedeného v příloze č. 1 k tomuto zákonu kategorii I, které by mohly mít významný negativní vliv na životní prostředí, zejména pokud má být významně zvýšena jeho kapacita a rozsah nebo pokud se významně mění jeho technologie, řízení provozu nebo způsob užívání a nejedná-li se o změny podle písmene a); tyto změny záměrů podléhají posuzování, pokud se tak stanoví ve zjišťovacím řízení,  c) záměry uvedené v příloze č. 1 k tomuto zákonu kategorii II a změny těchto záměrů, pokud změna záměru vlastní kapacitou nebo rozsahem dosáhne příslušné limitní hodnoty, je-li uvedena, nebo které by mohly mít významný negativní vliv na životní prostředí, zejména pokud má být významně zvýšena jeho kapacita a rozsah nebo pokud se významně mění jeho technologie, řízení provozu nebo způsob užívání; tyto záměry a změny záměrů podléhají posuzování, pokud se tak stanoví ve zjišťovacím řízení,  …  f) změny záměru, které by podle závazného stanoviska příslušného úřadu vydaného podle § 9a odst. 4 mohly mít významný negativní vliv na životní prostředí; tyto změny záměrů podléhají posuzování, pokud se tak stanoví ve zjišťovacím řízení.  Art 4 Act No. 100/2001 Coll., on EIA:  Subject of Environmental Impact Assessment  (1) The subject of assessment pursuant to this Act are  a) projects listed in Annex no. 1 category I and modifications to such projects if the own capacity or scope of the project change has reached the limit value, if given; these projects and intentions are subject to assessment of change at all times  b) changes in project listed in Annex no. 1 category I, which could have a significant negative impact on the environment, particularly if it has to be significantly increased its capacity and range, or if a significant change in the technology, operations management or method of use and unless the changes referred to in point a); These projects are subject to change assessment, if so provided in the screening procedure,  c) the projects listed in Annex no. 1 category II and modifications to such projects if the own capacity or scope of the change has reached the limit value, if specified, or if it could have a significant negative impact on the environment, particularly if It should be significantly increased its capacity and range, or if a significant change in the technology, operations management or method of use; these plans and intentions are subject to change assessment, if so provided in the screening procedure,  ...  f) changes in the projects (after EIA before the final development consent), which could have a significant negative impact on the environment pursuant to binding opinion issued by the competent authority, § 9a para. 4; These projects are subject to change assessment, if so provided in the screening procedure.  According to the quoted provisions, reconsiderations or updates of operating conditions for activities referred to in paragraph 1, if the update itself reaches the limit value, are always subject to EIA and therefore also to a public participation procedure meeting **all** the requirements of paragraphs 2 to 9.  Other updates are subject to a screening procedure, which allows for public participation, but not meeting all the requirements of paragraphs. But, if the outcome of the screening is, that the update has significant environmental implacts, and therefore full EIA procedure will take place – in other words, “where appropriate” - public participation procedure meeting **all** the requirements of paragraphs 2 to 9 takes place. |
| 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.” | 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.”  The Act No. 78/2004 Coll. on Dealing with Genetically Modified Organisms and Genetic Products, enables the public to take part in decision-making about permits concerning GMO discharge into the environment.  Art. 5 Act on GMO:  **(4)** Splňuje-li žádost všechny náležitosti stanovené podle tohoto zákona, ministerstvo do 5 pracovních dnů ode dne uplynutí lhůty k posouzení její úplnosti, případně ode dne obdržení doplněné žádosti podle odstavce 3 zašle vždy po jednom vyhotovení žádosti v listinné podobě a též elektronicky Ministerstvu zemědělství a Ministerstvu zdravotnictví (dále jen "dotčená ministerstva") a současně způsobem podle § 10 písm. b) zveřejní shrnutí obsahu žádosti a informaci o zahájení řízení, informaci o zahájení řízení zveřejní také způsobem podle § 10 písm. a) a c). Náležitosti shrnutí obsahu žádosti stanoví prováděcí právní předpis.  (6) Každý může zaslat své písemné vyjádření ministerstvu do 30 dnů ode dne zveřejnění shrnutí obsahu žádosti. K vyjádřením zaslaným po lhůtě ministerstvo není povinno přihlédnout.  (9) Při svém rozhodování ministerstvo vychází též z vyjádření dotčených ministerstev a veřejnosti. Součástí rozhodnutí o podané žádosti je vždy souhrnné vypořádání vyjádření podaných podle odstavců 5 a 6 a v případě veřejného projednání podle odstavce 7 též závěry z tohoto projednání.  **(11)** Rozhodnutí podle odstavce 8 ministerstvo zašle též dotčeným ministerstvům a zveřejní způsobem podle § 10.  Art. 5 Act on GMOs:  (4) If the request meets all the requirements prescribed in this Act, the Ministry within 5 working days assess its completeness … and at the same manner in accordance with § 10 point. b) publish a summary of the application and information about the initiation of the procedure, information about the initiation of proceedings also publish in the manner in accordance with § 10 point. a) and c) …  (6) Any person may submit their written comments to the Ministry within 30 days of publication of the summary of the application. The statement sent after the deadline the Ministry is not obliged to take into account.   (9) The ministry bases its decision on the expression of relevant ministries and the public. The decision on the request submitted is always a comprehensive settlement of statement filed pursuant to paragraphs 5 and 6 and in the case of a public hearing pursuant to paragraph 7 also conclusions from this discussion.  (11) The Ministry will also transmit the decisions pursuant to paragraph 8 relevant ministries and published it in the manner pursuant to § 10 of Act.  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 – par 2 partilally, par 5, par 6 partially, par. 8 and par 9 not in full. |

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

Not at all.

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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;” | 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.  The definition of permitting is quite broad.  The hybrid bills (legislative decisions in respect of individual issues) are not used.  The article 6 is not identified only with public participation in environmental impact assessment procedures  There are more often attempts to finish EIA at the screening procedure than exempt the project from EIA at all.  Part of decision-making with regard to nuclear investments, operations and any modifications of facilities etc. was for long time closed for public participation. The case law has changed cca 2 years ago.  The decision-making in connection with waters (water management authorities) and forests (belonging to the agricultural administration) with a likely significant environmental impact are open to public participation.  With regard to some activities form Annex I, it is not fully clear that they would be in every case subject to full EIA, or just screening (as EIA directive annex II projects). All annex I projects are subject to public participation. |
| 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. | 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)  The research reveals no examples of Article 6 being applied to proposed activities serving national defence purposes. |
| 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.” | 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,  The form of notification does not take into consideration the nature and size of the project. The variety of methods of notification, both general forms (media, websites) and specific ones (targeted letters) are not used often. The the means of notification do not fit the needs of the public concerned.  The adequate, timely and effective notification includs all matters listed in Art. 6(2) (a-e) and all accompanying information.  The 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.  There are no cases where the developer is solely responsible for notification. |
| 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.” | 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.  The time limits are same for all types of projects, as a result time given to participants in order to prepare and participate effectively is insufficient (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.]. The consultation period runs quite often over public holidays/celebration days, etc.).  There are almost no cases where the construction (or similar steps towards realising the project or activity) have already happened by the time the parties receive their notifications.  There are no general arrangements for regular/frequent participants (such as mailing lists).  The participants are able and willing to meet the deadlines set. |
| 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.” | 2 = Yes, in a majority of cases  All options are open vs. some parameters could still be changed, in order to enhance public acceptance of the project.  “Providing for participation” is always not a genuine attempt to trigger, enhance and support public participation.  There is no participation in the drafting stage of basic documents in the decision-making procedure.  There are open options in a tiered decision-making procedure, ensuring “early public participation” from the beginning of each new tier (with small exeptions).  The public participation is required in practice at the scoping and/or screening phases in EIA procedures.  In reality, the fragmented system of decision-making often makes the public participation ineffective, despite it is possible to participate from the early stages. The reason is, in short, that if the principal decision (mostly the land use permit) is conrarty to law, and it is not canceled before the subsequent decision (most typically building permit) is issued, than later annulment of the principal decision, according to the jurisprudence, does not mean that the subsequent decision would be annulled too. |
| 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.” | 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. The information is sometimes not so well balanced or proposed different aspects of activity (in this cases it would be point of court review). |
| 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.” | 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.  In EIA cases, there is case law forbidding to limit the scope of possible opinions to *strictu sensu* environmental issues or even less.  It is possible to submit opinions at a public hearing verbaly. There should be the possibility for direct exchange with the representatives of the developer and the authorities.  The hybrid hybrid decision-making procedures are not used.  There are almost no substantive or formal requirements regarding the opinions which may be submitted (with exeption to name the person submitting comments and in some cases the short reasons for submitting the comemnts).  There is no potential for the developer or the developer’s experts to filter or rephrase public opinion for the authorities. |
| 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.” | 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 (with small exemption for really complicated and politically sensitive decisions, when the reason do not have to always be touching the real point of question). |
| 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.” | 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.  The information about the decision is publicly available on-line and at the public authority.  The explanations, reasoning are broken down to the level of indicating responses to individual comments provided by the public.  The time periods for informing the public take account of relevant time frames for initiating review procedures. |
| 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.” | 1 = In practice, reconsiderations and updates of operating conditions are subject to public participation procedures only sometimes. In these cases the procedure meets the requirements of paragraphs 2 to 9.  Time lags in themselves might amount to significant modification even without any modification in the technical plan. In these case the new EIA is neccasary with full public participation.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. |
| 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.” | 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  The all decisions on permitting the deliberate release of GMOs into the environment are publicly accessible here: <http://www.mzp.cz/__C1256E7F0041C8C2.nsf/gmo-pub-env?OpenView> . There are no participants from public concerned mentioned in the decision. |

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)?

Not at all.

### (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.” | 2- Minor errors  Art. § 10a Act. No 100/2001 Coll., on EIA  Předmět posuzování vlivů koncepce na životní prostředí  (1) Předmětem posuzování vlivů koncepce na životní prostředí (dále jen "posuzování koncepce") podle tohoto zákona jsou  a) koncepce, které stanoví rámec pro budoucí povolení záměrů uvedených v příloze č. 1, zpracovávané v oblasti zemědělství, lesního hospodářství, myslivosti, rybářství, nakládání s povrchovými nebo podzemními vodami, energetiky, průmyslu, dopravy, odpadového hospodářství, telekomunikací, cestovního ruchu, územního plánování, regionálního rozvoje a životního prostředí včetně ochrany přírody, koncepce, u nichž nutnost jejich posouzení, s ohledem na možný vliv na životní prostředí, vyplývá ze zvláštního právního předpisu, a dále koncepce spolufinancované z prostředků fondů Evropských společenství; tyto koncepce podléhají posuzování vždy, pokud je dotčené území tvořeno územním obvodem více než jedné obce,  b) koncepce podle písmene a), u nichž je dotčené území tvořeno územním obvodem pouze jedné obce, pokud se tak stanoví ve zjišťovacím řízení podle § 10d,  c) změny koncepcí podle písmen a) a b), pokud se tak stanoví ve zjišťovacím řízení podle § 10d.  (2) Předmětem posuzování podle tohoto zákona nejsou  a) koncepce zpracovávané pouze pro účely obrany státu,  b) koncepce zpracovávané pro případ mimořádných událostí, při kterých dochází k závažnému a bezprostřednímu ohrožení životního prostředí, zdraví, bezpečnosti nebo majetku osob,4a)  c) finanční a rozpočtové koncepce.  Art. § 3 Act. No 100/2001 Coll., on EIA  Pro účely tohoto zákona se rozumí  b) koncepcí strategie, politiky, plány nebo programy zpracované nebo zadané orgánem veřejné správy a následně orgánem veřejné správy schvalované nebo ke schválení předkládané,  Art. § 10a Act. No 100/2001 Coll., on EIA  Subject of Strategic Environmental Assessment  (1) Subject of Strategic Environmental Assessment, pursuant to this Act  a) concept, which set the framework for future development consent of projects listed in Annex no. 1, prepared in area of agriculture, forestry, hunting, fishing, use of surface water or groundwater, energy, industry, transport, waste management, telecommunications, tourism , urban planning, regional development and the environment, including nature conservation, a concept in which the necessity of their assessment with regard to the possible impact on the environment arises from the special legislation, and concepts co-financed from the funds of the European Communities; These concepts are subject to assessment at all times, if the area in question consists of a territory of more than one municipality,  b) concept under a) where the area in question consists of a territory of only one municipality, if so provided in screening procedure pursuant to § 10d,  c) changes in concepts under a) and b) if so provided in screening procedure pursuant to § 10d.  (2) The assessment under this Act are not  a) Concept prepared for the purpose of national defense,  b) Concept prepared for emergency situations, where there is a serious and immediate threat to the environment, health, safety or property of persons,  c) financial and budgetary concepts.  Art. § 3 Act. No 100/2001 Coll., on EIA  Definitions  For the purposes of this Act:  b) concepts are policies, plans or programs developed or entered by public authority and followinglly by a public authority approved or submitted for approval,  Art. 7 is transposed solely via the SEA procedure. Not all plans and programmes relating to the environment are subject to SEA. First, land use plans and other plans where the area in question consists of a territory of only one municipality, are only subject to SEA if it is decided so in screening procedure. Second, CC case C/70, concerning the CZ National Investment Plan for the EU Emission Trading System, shows that there are plans and programs related to environment, whioch are fully outside of the scope of the SEA regulation. |
| 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.**” | 2- Minor errors  Art. 16 Act No. 100/2001 Coll., on EIA:  Zveřejnění informací o dokumentech pořízených v průběhu posuzování a o veřejných projednáních  (1) Příslušný úřad zajistí zveřejnění informace o  f) oznámení koncepce a o tom, kdy a kde je možno do něj nahlížet,  g) návrhu koncepce a o tom, kdy a kde je možno do něj nahlížet,  (2) Příslušný úřad dále zajistí zveřejnění závěru zjišťovacího řízení, stanoviska a stanoviska ke koncepci.    Art. 16 Act No. 100/2001 Coll., on EIA:  Publication of information about the documents taken during the assessment and public hearings   1. The competent authority shall ensure that information on   f) Announcement concept and about when and where it is possible to see it,  g) draft concepts and about when and where it is possible to see it,  h) consultation in transboundary assessment.  (2) The competent authority shall also ensure publication of the conclusions of the screening proceedure, the statement of concept.” |
| 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.” | 2- Minor errors  Art. 10c Act No. 100/2001 Coll., on EIA:  Oznámení koncepce  (3) Každý může zaslat své písemné vyjádření k oznámení koncepce příslušnému úřadu ve lhůtě do 20 dnů ode dne jeho zveřejnění. K vyjádřením zaslaným po lhůtě příslušný úřad nepřihlíží.  Art. 10f Act No. 100/2001 Coll., on EIA:  Návrh koncepce  (3) Předkladatel je povinen zveřejnit informaci o místě a času konání veřejného projednání návrhu koncepce na své úřední desce, na internetu a nejméně ještě jedním v dotčeném území obvyklým způsobem (například v tisku apod.), a to nejméně 10 dnů před jeho konáním. Současně je povinen o místě a času konání tohoto veřejného projednání informovat příslušný úřad.  (4) Veřejné projednání návrhu koncepce nemůže být konáno dříve než po uplynutí 30 dnů ode dne předložení návrhu koncepce příslušnému úřadu. Předkladatel je povinen nejpozději do 5 dnů ode dne konání veřejného projednání návrhu koncepce zaslat zápis z tohoto veřejného projednání příslušnému úřadu a současně jej zveřejnit na internetu.  (5) Každý může zaslat své písemné vyjádření k návrhu koncepce příslušnému úřadu nejpozději do 5 dnů ode dne konání veřejného projednání návrhu koncepce. V téže lhůtě může zaslat předkladatel příslušnému úřadu své písemné vyjádření k vyhodnocení. K vyjádřením zaslaným po lhůtě příslušný úřad nepřihlíží.  Art. 10g Act No. 100/2001 Coll., on EIA:  Stanovisko k návrhu koncepce  (1) Příslušný úřad vydá na základě návrhu koncepce, vyjádření k němu podaných a veřejného projednání stanovisko k posouzení vlivů provádění koncepce na životní prostředí a veřejné zdraví (dále jen "stanovisko ke koncepci") ve lhůtě do 30 dnů ode dne obdržení zápisu z veřejného projednání návrhu koncepce.  Art. 10c Act No. 100/2001 Coll., on EIA:  Announcement of the concept  (3) Any person may submit written observations on the concept to the competent authority within 20 days of its publication. The competent authority can disregarded the statement sent after the deadline.  Art. 10f Act No. 100/2001 Coll., on EIA:  Draft concept  (3) The submitter of concept is obliged to publish information on the venue and time of the public hearing of draft concept on its official notice board, on the Internet and in at least one more the usual way at the affected territory in (for example, print, etc.), at least 10 days before the meeting. At the same time submitter of concept is required to inform the competent authority about the venue and time of the public hearing.  (4) The public hearing of the concept can not be organized earlier than 30 days after the date of submission of the draft concept tothe competent authority. Submitter is required to send the minutes of the public hearing to the competent authority and also publish it on the Internet within 5 days from the date of the public hearing of draft conception.  (5) Any person may submit their written comments on the concept to the competent authority within 5 days from the date of the public hearing of draft concept. Within the same period anyone may send to the competent authority its written comments on the assessment. The competent authority can disregarded the comments sent after the deadline.  Art. 10f Act No. 100/2001 Coll., on EIA:  Opinion on the draft concept  (1) The competent authority shall make the statement on the basis of the draft concept, public hearing and expressed comments within 30 days after receiving the minutes of the public hearing of the draft concept. |
| 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.” | 0 - Has not been enacted at all  Art. 10c Act No. 100/2001 Coll., on EIA:  Oznámení koncepce  (3) Každý může zaslat své písemné vyjádření k oznámení koncepce příslušnému úřadu ve lhůtě do 20 dnů ode dne jeho zveřejnění. K vyjádřením zaslaným po lhůtě příslušný úřad nepřihlíží.  Art. 10f Act No. 100/2001 Coll., on EIA:  Návrh koncepce  (3) Předkladatel je povinen zveřejnit informaci o místě a času konání veřejného projednání návrhu koncepce na své úřední desce, na internetu a nejméně ještě jedním v dotčeném území obvyklým způsobem (například v tisku apod.), a to nejméně 10 dnů před jeho konáním. Současně je povinen o místě a času konání tohoto veřejného projednání informovat příslušný úřad.  (4) Veřejné projednání návrhu koncepce nemůže být konáno dříve než po uplynutí 30 dnů ode dne předložení návrhu koncepce příslušnému úřadu. Předkladatel je povinen nejpozději do 5 dnů ode dne konání veřejného projednání návrhu koncepce zaslat zápis z tohoto veřejného projednání příslušnému úřadu a současně jej zveřejnit na internetu.  (5) Každý může zaslat své písemné vyjádření k návrhu koncepce příslušnému úřadu nejpozději do 5 dnů ode dne konání veřejného projednání návrhu koncepce. V téže lhůtě může zaslat předkladatel příslušnému úřadu své písemné vyjádření k vyhodnocení. K vyjádřením zaslaným po lhůtě příslušný úřad nepřihlíží.  Art. 10c Act No. 100/2001 Coll., on EIA:  Announcement of the concept  (3) Any person may submit written observations on the concept to the competent authority within 20 days of its publication. The competent authority can disregarded the statement sent after the deadline.  Art. 10f Act No. 100/2001 Coll., on EIA:  Draft concept  (3) The submitter of concept is obliged to publish information on the venue and time of the public hearing of draft concept on its official notice board, on the Internet and in at least one more the usual way at the affected territory in (for example, print, etc.), at least 10 days before the meeting. At the same time submitter of concept is required to inform the competent authority about the venue and time of the public hearing.  (4) The public hearing of the concept can not be organized earlier than 30 days after the date of submission of the draft concept tothe competent authority. Submitter is required to send the minutes of the public hearing to the competent authority and also publish it on the Internet within 5 days from the date of the public hearing of draft conception.  (5) Any person may submit their written comments on the concept to the competent authority within 5 days from the date of the public hearing of draft concept. Within the same period anyone may send to the competent authority its written comments on the assessment. The competent authority can disregarded the comments sent after the deadline. |
| 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.” | 2 – Minor errors  Art. § 3 Act. No 100/2001 Coll., on EIA  Pro účely tohoto zákona se rozumí  b) koncepcí strategie, politiky, plány nebo programy zpracované nebo zadané orgánem veřejné správy a následně orgánem veřejné správy schvalované nebo ke schválení předkládané,  Art. § 3 Act. No 100/2001 Coll., on EIA  Definitions  For the purposes of this Act:  b) concepts are policies, plans or programs developed or entered by public authority and followinglly by a public authority approved or submitted for approval,  The minor errors have the same reason as for the first sentence – not all environmental policies are subject to SEA.. |

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”)?

The wording within a transparent and fair framework is so vague, that I do find as sufficient to cover this under the art. 3(1).

### 

### 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.” | 2 - Yes, in most cases  Despite the case - ACCC/C/2012/70 – when national investment plan for emission trading scheme was not assessed, most of the plans and programmes are assessed pursuant to SEA a therefore the public can fully participate. However, not all plans and programmes relating to the environment are opened for the public participation, because there are not subject to SEA (e.g. plans in water management or forestry).  The spatial plans do have a specific regulation. The specific regulation allows public to fully participate.  The author of the concept shall be rather the administrative body (the wording of act is not clear about legislative bodies, there is no case law).  The financial and investment plans are excluded from SEA. However, the national investment plan for emission trading scheme could not be excluded as a financial plan after the ACCC finding.  The “ouster clauses” (legislative arrangements that exclude or limit court review of certain cases) to avoid public participation obligations are not used.  A lot of major plans (especially spatial plans) are in fact the subject of substantial public discussion. |
| 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.” | 2 = Yes, in most cases  There are some plans made subject to referendum.  In many cases, concerning both the land use and other kinds of plans, namely the general ones, prepared for large areas or for the whole country, the information about the possible impacts of the plans, provided to the public, is rather general and often not taking into account namely the cumulative effects of different plans and projects they include (for this reason, the coutts have canceled a number of the land use plans).  The access to numerical data concerning public participation in strategic decision-making depends on the competent public authority. The number of comments are clearly visible from the SEA statement (part of the statement is also mentioning of public comments).  The participation possibilities is possible for anyone, there is not handpicking of participants.  In some cases it is possible also to participate in the preliminary (idea gathering, brainstorming etc.) phases of the general decision-making procedures.  The draft plans are available on the Internet as a rule.  The concept is made publicly available from the first phase. There is no problem with early participation.  The time given to the public to form its opinion can be definitely longer. A most of public hearing is during during the day at working days (not at the evening, etc.). A period for public comments is quite often before or during Christmas, holidays, etc.  The public is not able to influence the content of plans especially in case of major infrastructure projects, energetic sector, etc.  There is no public participation in the monitoring of the implementation of plans (such as progress reports) regulated in the Act, the public participation in the monitoring can be part of SEA statement conditions.  The public consultations are in form of public hearings and submitting the written comments (usually in both forms – electronic or printed).  The public comments has to be part of SEA statement with at least short reasoning, how the comments were taken into account. |
| 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.” | 2 - Yes, in most cases  There are same rules for the plans and policies. The public participation during preparation of policies is at the same standard as public participation at plans and programmes (anyone can participate, early participation, sufficient time frames, etc.), but not in all cases. |
| 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)? | 2 = Yes, in most cases  There are same rules for the plans and policies. The public participation during preparation of policies is at the same standard as public participation at plans and programmes. The biggest problem is almost no possibility of public to really influence the content of the policy (especially policies concerning the major infrastructures projects or energetic sector). |

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

Not at all.

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### (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.” | 0 - Has not been enacted at all  There is no legally binding regulation of public participation with respect to preparation by public authorities of executive regulation and other generally applicable legally binding rules. Neither the internal government norms, including the rules on RIA, do not provide for a general regulation and consistent system of such participation.  The public has several opportunities to comment on draft regulations.   1. Regulatory Impact Assessment – RIA   To ensure the proper functioning and  creating procedural rules for the regulatory impact assessment was adopted several  document:  - General principles for regulatory impact assessment  - Amendments to the Government Legislative Rules  - Application of the general principles of the Regulatory Impact Assessment (RIA) and establishment of the Panel for Regulatory Reform and Effective Public Administration  - Methodology for the calculation of the planned costs of the performance of the state administration  - Methodology for public participation in the preparation of government documents  - Draft procedure implementing a methodology for public participation in the preparation of government  document  All central administrative bodies in the Czech Republic must assess mandatory the impact of all types of regulation, ie. instruments through which the executive implements requirements on individuals and groups (typically laws, government regulations, decrees, etc.). Only exception is a state budget crisis and a state of legislative emergency. Exceptions to the assessment process must always be justified. RIA includes a set of analytical methods for the systematic evaluation of negative and positive impacts of proposed or existing legislation in the field of economic, social and environmental.   1. Commenting on laws, regulations and decrees regulates Legislative Rules of the Government.   These rules determines "mandatory commenting places" (central state administration bodies and other institutions, no environmental NGO), and other commenting bodies (public) and deadlines for processing the comments and determine basic rules for dealing with comments. The draft legislation is published on public administration portal, which is publicly available. All commenting bodies have essential deadline for comments - 15 working days. The author of drafted regulation may extend the deadline. The way of settlement of public comments – comments of mandatory commenting places of substantial nature, which were not upheld, must be stated in the explanatory report on a legislative proposal with reasons why they were not accepted. Discussing the comments of the public are not mandatory but may be held voluntarily.   1. Ministry of Environment has its own internal directive (No. 3/2001). It puts all the draft legislation to the websites including the accompanying documents. The public has right to make a comments to these drafts. |
| 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;” | 0 - Has not been enacted at all  All commenting bodies have essential deadline for comments - 15 working days. The author of drafted regulation may extend the deadline.  No legally binding instrument on that issue. The internal rules only apply to a limited number of subjects. Possibility of broader public comments fully depends on the discretion of the ministry preparing the draft of the act. |
| 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;” | 0 - Has not been enacted at all  There are no legally binding instruments on that issue.  The draft regulation is made publicly available via internet based on the internal regulation of Ministry of Environment and Legislative Rules of the Government. |
| 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.” | 0 - Has not been enacted at all  There are no legally binding instruments on that issue.  Anyone has right to make comments based on the internal regulation of Ministry of Environment and Legislative Rules of the Government. However, the comments of environmental NGOs or concerned public are not “substantial”, so they do not have to be a part of explanatory report on a draft regulation or they are not discussed by the author of draft regulation at hearings with other mandatory commenting bodies (usually other administrative bodies, also unions, or Academy of Science, etc.). |
| 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.” | 0 - Has not been enacted at all  There are no legally binding instruments on that issue.  Anyone has right to make comments based on the internal regulation of Ministry of Environment and Legislative Rules of the Government. However, the comments of environmental NGOs or concerned public are not “substantial”, so they do not have to be a part of explanatory report on a draft regulation or they are not discussed by the author of draft regulation at hearings with other mandatory commenting bodies (usually other administrative bodies, also unions, or Academy of Science, etc.). |

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

Not at all.

### 

### 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. | 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”  The fact that most of the drafts are publicly accessible and anyone can send comments (with no right for even being taken into account) does not represent public participation. Except in rare individual cases, when public (or some members of the public) are actively invited to comment on the drafts of the prepared act, the authorities do not actively promote public participation with respect to draft executive regulations and other generally legally binding rules that may have a significant effect on the environment.  The public can participate also in drafting secondary legislation (such as decrees of the Government or ministers, statutory instruments, etc.).  The major changes to legislation are made during the legislative procedure in the Parliament. These changes are publicly available and public can make comments via members of parliament/administrative bodies.  The regulatory impact assessment exists also with the methodology on public participation.  There are no local ordinances with the impact on environment. |
| 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. | 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”  In most cases, there is no specific announcemet for the general public about possibility to participate, with informationabout timeframes and without any duty to take the comments into account.  The legislative drafts are accessible via internet.  NGOs’ or expert organisations’ role are sometimes parts of different working/commenting groups on draft regulation. They usually have to actively ask in advance to be part of these groups. These practice is more common at the Ministry of Environment (and much less common when other ministries prepare the regulation with the impact on environment).  The regulatory impact assessment exists.  There are “e-democracy” interactive participation modes on the Internet (usually not very sophisticated).  There are no or almost no significant modification of drafts after public participation (public has still weaker voice than industry or ministries). |

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

Not at all.

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## IV. Access to justice pillar

### Access to justice – Legal indicators

| **Aarhus provision** | **Legal indicators** | **Guidance note** |
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| 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.” | 3 = Enactment is fully in accord  Art. 65 of the Act No 150/2002 Coll., Code of Administrative Justice Žalobní legitimace  (1) Kdo tvrdí, že byl na svých právech zkrácen přímo nebo v důsledku porušení svých práv v předcházejícím řízení úkonem správního orgánu, jímž se zakládají, mění, ruší nebo závazně určují jeho práva nebo povinnosti, (dále jen "rozhodnutí"), může se žalobou domáhat zrušení takového rozhodnutí, popřípadě vyslovení jeho nicotnosti, nestanoví-li tento nebo zvláštní zákon jinak.  The standing rights are generally regulated by art. 65 of the Act No 150/2002 Coll., Code of Administrative Justice. This provision grants standing to start a court review procedure of acts of administrative authorities to   1. persons whose rights or obligations were “created, changed, nullified or bindingly determined by the act”, 2. or b) other parties to administrative proceedings who assert that their rights have been infringed in these proceedings (and this could cause illegality of the final act).   The wording of this “general standing provision” of administrative justice, as well as it’s common interpretation by the Czech courts, leads to the conclusion that access to review procedures of administrative acts at court is (also in environmental cases) granted only to persons “maintaining impairment of a right.”. This is not problem at all in case of request of information. The situations when the request for information is ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article lead to the decision/act, which can always be reviewed before the court. |
| 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.” | 3 = Enactment is fully in accord  Art. § 14 Act No. 123/1998 Coll., on Right on Environmental Information  Použití předpisů o správním řízení a soudní ochrana  (1) Předpisy o správním řízení se použijí při řízení podle § 9 odst. 1, 3 a 4 tohoto zákona a k počítání lhůt.  (2) Rozhodnutí o odepření zpřístupnění informace je po vyčerpání řádných opravných prostředků přezkoumatelné podle zvláštního právního předpisu.  Art. § 81 Act No. 500/2004 Coll., Administrative Procedure Code  (1) Účastník může proti rozhodnutí podat odvolání, pokud zákon nestanoví jinak.  Art. § 14 Act No. 123/1998 Coll., on Right on Environmental Information  The use of the administrative procedure and judicial protection  (1) The rules on administrative procedure shall apply to the proceedings under § 9. 1, 3 and 4 of this Act and the deadlines.  (2) The decision on the refusal to disclose information after exhaustion of regular remedies is reviewable under special act.  Art. § 81 Act No. 500/2004 Coll., Administrative Procedure Code  (1) A party may appeal the decision, unless the law provides otherwise.  The appeal is not subject to any obligatory fees.  The competent authority shall decide about appeal in max. 90 days (60 day as a rule – see § 71, 88 and 90 Administrative Procedure Code).  The ombudsman can deal with complains concerning wrong dealing with the requests for the information by public authorities. |
| 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.” | 3 = Enactment is fully in accord  Art. § 54 Act. 150/2002 Coll., Code of Administrative Justice  Rozsudek  (6) Výrok pravomocného rozsudku je závazný pro účastníky, osoby na řízení zúčastněné a pro orgány veřejné moci.  Art. § 54 Act. 150/2002 Coll., Code of Administrative Justice  Judgment  (6) The case statement of the judgment is final and binding for the parties, persons involved in the management and public authorities. |
| 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)].” | 3 = Enactment is fully in accord  Art. § 54 Act. 150/2002 Coll., Code of Administrative Justice  Rozsudek  (2) Rozsudek musí být písemně vyhotoven, musí obsahovat označení soudu, jména všech soudců, kteří ve věci rozhodli, označení účastníků, jejich zástupců, projednávané věci, výrok, odůvodnění, poučení o opravném prostředku a den a místo vyhlášení.  Art. § 54 Act. 150/2002 Coll., Code of Administrative Justice  Judgment  (2) The judgment must be drawn up in writing, must contain the identification of the court, the names of the judges who ruled on the case, identity of the parties, their representatives, present case statement, justification, instruction on appeal and the date and place of publication. |
| 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.” | 1 = Errors that are more than minor  As far as we considered the group of activites under the appendix 1 Aarhus Convention equal or smaller than the group of activities assessed in EIA. (It would probably be true for most of them, some of them are hard to judge, because they use different limits).  Art. § 9d Act. 100/2001 Coll, on EIA  (1) Dotčená veřejnost uvedená v § 3 písm. i) bodě 2 se může žalobou domáhat zrušení rozhodnutí vydaného v navazujícím řízení a napadat hmotnou nebo procesní zákonnost tohoto rozhodnutí. Pro účely postupu dle věty první se má za to, že dotčená veřejnost uvedená v § 3 písm. i) bodě 2 má práva, na kterých může být rozhodnutím vydaným v navazujícím řízení zkrácena.  Art. § 9d Act. 100/2001 Coll, on EIA  (1) The public concerned referred to in § 3. i) point 2 may seek annulment of a decision in subsequent proceedings and challenge the substantive or procedural legality of that decision. For the purposes of the procedure under the first sentence, it is considered that the relevant public referred to in § 3. i) point 2 has rights which can be impaired by decision.  Art. 9 par 2 of the Aarhus Convention explicitly stipulates that members of the public concerned shall have access to the review procedures at court not only with regard to acts and decisions, but also omissions of the administrative authorities. The Czech legislation includes the possibility of judicial protection in administrative omissions in Art .79 of the CAJ, which states that a person who has ineffectively exhausted the administrative measures for the protection against the inaction of an administrative authority “may request that the court obliges the administrative authority to issue a decision on the merits of the matter”.  There is, however, a significant “gap” in this regulation (as interpreted by the Czech administrative courts), which leads to the conclusion that no person can initiate a review procedure at in situations when the authority fails to start the procedure *ex officio*, under occasions when a law asks it to do so (for example, if an investor builds a structure or starts an operation without the necessary permit).  In such event, the affected person can ask the superior administrative authority to take a remedy. However, if also the superior authority fails to do so, the courts cannot order the passive authority to act (start the procedure). The SAC confirmed this interpretation in a number of its decisions.  The SAC case law does not take into account, that lack of effective remedies against omissions of administrative authorities in this kind of cases can lead to serious infringements of rights of the affected persons and that it is not in compliance with the requirements of Art. 9 of the Aarhus Convention (both par 2 and 3, as the case law fully applies also on the activities listed in Annex I of the Convention and therefore subject to its Art. 6 and 9 par 2).  The standing rights are generally regulated by art. 65 of the Act No 150/2002 Coll., Code of Administrative Justice. This provision grants standing to start a court review procedure of acts of administrative authorities to   1. persons whose rights or obligations were “created, changed, nullified or bindingly determined by the act”, 2. or b) other parties to administrative proceedings who assert that their rights have been infringed in these proceedings (and this could cause illegality of the final act).   Members of the public concerned, other than NGOs, have standing to challenge the acts under art. 6 of the Convention on the basis of art. 65 of CAJ, which means that they have to claim infringement of their rights  - as explained in respect to art. 2/5, some members of the public concerned do not have status of parties of the administrative procedures under art. 6, which makes their access to court review more difficult, despite not impossible. |
| 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)].” | 1 = Errors that are more than minor  The regulation is enough broad for NGOs. However based on the case law, the individuals can have impaired only property rights (e.g. tenats or ooperative owners cannot be public concerned).  Art. § 9d Act. 100/2001 Coll, on EIA  (1) Dotčená veřejnost uvedená v § 3 písm. i) bodě 2 se může žalobou domáhat zrušení rozhodnutí vydaného v navazujícím řízení a napadat hmotnou nebo procesní zákonnost tohoto rozhodnutí. Pro účely postupu dle věty první se má za to, že dotčená veřejnost uvedená v § 3 písm. i) bodě 2 má práva, na kterých může být rozhodnutím vydaným v navazujícím řízení zkrácena.  Art. § 3 Act. 100/2001 Coll, on EIA  i) dotčenou veřejností  1. osoba, která může být rozhodnutím vydaným v navazujícím řízení dotčena ve svých právech nebo povinnostech,  2. právnická osoba soukromého práva, jejímž předmětem činnosti je podle zakladatelského právního jednání ochrana životního prostředí nebo veřejného zdraví, a jejíž hlavní činností není podnikání nebo jiná výdělečná činnost, která vznikla alespoň 3 roky před dnem zveřejnění informací o navazujícím řízení podle § 9b odst. 1, případně před dnem vydání rozhodnutí podle § 7 odst. 6, nebo kterou podporuje svými podpisy nejméně 200 osob,  Art. § 9d Act. 100/2001 Coll, on EIA  (1) The public concerned referred to in § 3. i) point 2 may seek annulment of a decision in subsequent proceedings and challenge the substantive or procedural legality of that decision. For the purposes of the procedure under the first sentence, it is considered that the relevant public referred to in § 3. i) point 2 has rights which can be impaired by decision.  Art. § 3 Act. 100/2001 Coll, on EIA  i) the public concerned  1. any person who may be impaired of their rights and obligations by a decision given in subsequent proceedings,  2. legal person of private law, whose goal is by founding status to protect the environment or public health, and whose main activity is not a business or other gainful activity,  which existes at least three years before the publication of information about subsequent procedure according to § 9b paragraph. 1, or before the date of the decision under § 7 para. 6  or which is supported by the signatures of at least 200 people,  The standing rights are generally regulated by art. 65 of the Act No 150/2002 Coll., Code of Administrative Justice. This provision grants standing to start a court review procedure of acts of administrative authorities to   1. persons whose rights or obligations were “created, changed, nullified or bindingly determined by the act”, 2. or b) other parties to administrative proceedings who assert that their rights have been infringed in these proceedings (and this could cause illegality of the final act).   Important is also art. 65 of the Code of Administrative Justice (CAJ - quoted above in relation to art. 9/1 of the Convention)  Members of the public concerned, other than NGOs, have standing to challenge the acts under art. 6 of the Convention on the basis of art. 65 of CAJ, which means that they have to claim infringement of their rights  - as explained in respect to art. 2/5, some members of the public concerned do not have status of parties of the administrative procedures under art. 6, which makes their access to court review more difficult, despite not impossible. |
| 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.” | 1 = Errors that are more than minor  The standing rights are generally regulated by art. 65 of the Act No 150/2002 Coll., Code of Administrative Justice. This provision grants standing to start a court review procedure of acts of administrative authorities to   1. persons whose rights or obligations were “created, changed, nullified or bindingly determined by the act”, 2. or b) other parties to administrative proceedings who assert that their rights have been infringed in these proceedings (and this could cause illegality of the final act).   There is no direct transposition of Art. 9 par. 3 of the Convention. The legislation makes it impossible for the members of the public to participate in some of the environmental procedures, and therefore also to ask for the court review of the related decisions. However, this relation is not so direct and clear in some cases. It is possible to sue a decision for a person who was not a party to the administrative procedure, which was confirmed by judgement of the SAC concerning a permit for NPP Temelin.  The Czech system of environmental  decision-making is fragmented. There are therefore usually more permits needed for a  project to be realized. In theory, all such decisions (permits) which shall be considered as  establishing right of the investor and at the same time influencing rights and legal interests  of other affected persons. As such, they shall be subject to the judicial review. In practice, however, the scope “really reviewable” acts is influenced by the diverse regulation of the parties of the respective decision-making procedures, which predetermines the scope of potential plaintiffs. With regard to some of the procedures, the laws explicitly state that only the applicant (i.e. the investor) has the position of a party. Consequently, only the applicant has standing to sue the decision. If the applicant is  satisfied with it, there is no other subject who could ask the court to review the legality of  the decision.  This situation exists for example with regard to the “noise exceptions” – decisions which  authorize an operator of a source of noise which is exceeding the maximum limits to  continue with the operations for a limited period of time (however, with possibility of  repeated prolongation). According to Art. 94 par 2 of the Public Health Protection Act  (258/2000 Coll.), only an applicant is a party of an administrative procedure on the  request for the exception. As a result, the persons whose rights are affected (sometimes  very strongly infringed) by the noise exceeding the limits have no possibility to influence  if the exception will be issued or not, eventually under which conditions. In practice, in most cases they  also do not have access to judicial procedure to challenge the decision about the  exception.  Another example of legally identical situation is a procedure and subsequent decision  on delimitation of so called “protected area of natural resources” according to art. 17 of  the Mining Act (44/1998 Coll.). Also according to this provision (par 3), only the applicant has status of party of such procedure.  The legislation of the Czech Republic is not  in full compliance with Art. 9 par 3 of the Convention, as it effectively prevents any  person (member of the public) from access to review procedures of some important  administrative acts and omissions related to the environment. |
| 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.” | 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)  In some cases there are impossible to participate and access to justice in for the whole public concerned (e.g. noise exemptions).  In some cases there is possible to participate only for owners of land or houses and NGOs (not for the tenants). |
| 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.” | 2 - Minor errors  This provision only applies with regard to art 9 para. 2 court procedings:  Art. § 9d Act. 100/2001 Coll, on EIA  (2) O žalobách proti rozhodnutím vydaným v navazujících řízeních rozhodne soud do 90 dnů poté, kdy žaloba došla soudu. Soud i bez návrhu rozhodne o přiznání odkladného účinku žalobě nebo o předběžném opatření podle soudního řádu správního. Soud přizná žalobě odkladný účinek nebo nařídí předběžné opatření, hrozí-li nebezpečí, že realizací záměru může dojít k závažným škodám na životním prostředí.  Art. § 9d Act. 100/2001 Coll, on EIA  (2) The court decides about the actions against decisions issued in subsequent proceedings within 90 days after the action was sent to a court. The court decides to grant suspensive effect or to apply interim measures also without be asking to do so. The court grantes the action suspensive effect or interim measures, when there is a risk that the implementation of project can result in serious damage to the environment.  In cases concerning activities other than subject to EIA, i.e. other than art. 9/2 cases, the conditions for injunctive relief, as formulated in the law, are not fully enacting the requirements of the Convention, as they do not sufficiently reflect the need to protect not only the subjective rights of the plaintiff, but also the general interests, including the environment (contrary to art 9d of the EIA Act).  Art. § 38 Act No 150/2002 Coll., Code of Administrative Justice  Předběžné opatření  (1) Byl-li podán návrh na zahájení řízení a je potřeba zatímně upravit poměry účastníků pro hrozící vážnou újmu, může usnesením soud na návrh předběžným opatřením účastníkům uložit něco vykonat, něčeho se zdržet nebo něco snášet. Ze stejných důvodů může soud uložit takovou povinnost i třetí osobě, lze-li to po ní spravedlivě žádat.  (2) K návrhu na předběžné opatření si soud podle potřeby vyžádá vyjádření ostatních účastníků.  (3) O návrhu na předběžné opatření rozhodne soud bez zbytečného odkladu; není-li tu nebezpečí z prodlení, rozhodne do 30 dnů od jeho podání. Usnesení o návrhu na předběžné opatření musí být vždy odůvodněno.  (4) Soud může rozhodnutí o předběžném opatření zrušit nebo změnit, změní-li se poměry, a to i bez návrhu. Předběžné opatření zaniká nejpozději dnem, kdy se rozhodnutí soudu, jímž se řízení končí, stalo vykonatelným.  Art. § 73 Act No 150/2002 Coll., Code of Administrative Justice.  Odkladný účinek žaloby  (1) Podání žaloby nemá odkladný účinek, pokud tento nebo zvláštní zákon nestanoví jinak.  (2) Soud na návrh žalobce po vyjádření žalovaného usnesením přizná žalobě odkladný účinek, jestliže by výkon nebo jiné právní následky rozhodnutí znamenaly pro žalobce nepoměrně větší újmu, než jaká přiznáním odkladného účinku může vzniknout jiným osobám, a jestliže to nebude v rozporu s důležitým veřejným zájmem.  (3) Přiznáním odkladného účinku se pozastavují do skončení řízení před soudem účinky napadeného rozhodnutí.  (4) O návrhu na přiznání odkladného účinku rozhodne soud bez zbytečného odkladu; není-li tu nebezpečí z prodlení, rozhodne do 30 dnů od jeho podání. Usnesení o návrhu na přiznání odkladného účinku musí být vždy odůvodněno.  (5) Usnesení o přiznání odkladného účinku může soud i bez návrhu usnesením zrušit, ukáže-li se v průběhu řízení, že pro přiznání odkladného účinku nebyly důvody, nebo že tyto důvody v mezidobí odpadly.  Art. § 38 Act No 150/2002 Coll., Code of Administrative Justice  interim measures  (1) If a motion to initiate proceedings and if there is the need to provisionally adjust the proportions of participants because of threat of serious harm, the court may impose by provisional measures to participants to do or not to do something or something to endure. For the same reasons, the court may impose such a requirement on a third party, if it is fair to ask her.  (2) To the application for interim measures, the court will call upon the statements of other participants.  (3) The application for interim measures is decided by the court without undue delay; unless there is danger in delay, a decision shall be made within 30 days of its submission. Resolution on the application for interim measures must always be justified.  (4) The court may cancel or change a decision on interim measures, in case of new conditions, even without a petition. Precautionary measure expires no later than the date when the final decision of the court proceedings became enforceable.  Art § 73 Act No 150/2002 Coll., Code of Administrative Justice  Suspensory effect of the action  (1) An action does not have suspensory effect, unless this or a special law provides otherwise.  (2) The court can confesses action the suspensory effect at the request of the applicant after the response of other party, if any performance or other legal consequences of decisions can make plaintiffs incomparably greater loss than the loss which may arise by granting of the suspensive effect to other persons, and if it does not conflict with important public interest.  (3) The award of suspensory effect shall suspend the effects of the contested decision until the end of the trial.  (4) The court will decide about a proposal to grant suspensive effect without undue delay; unless there is danger in delay, a decision shall be made within 30 days of its submission. Resolution on the proposal for granting suspensory effect must always be justified.  (5) The court can also on its own motion cancel the granted suspensive effect, if it becomes evident during the proceedings that there were no reasons for the suspensive effect or those reasons in the meantime fallen off. |
| 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.” | 3 = Enactment is fully in accord  Art. § 36 Act 150/2002 Coll., Code of Administrative Justice  Práva a povinnosti účastníků  (1) Účastníci mají v řízení rovné postavení. Soud je povinen poskytnout jim stejné možnosti k uplatnění jejich práv a poskytnout jim poučení o jejich procesních právech a povinnostech v rozsahu nezbytném pro to, aby v řízení neutrpěli újmu.  Art. § 64 Act 150/2002 Coll., Code of Administrative Justice  Použití občanského soudního řádu  Nestanoví-li tento zákon jinak, použijí se pro řízení ve správním soudnictví přiměřeně ustanovení prvé a třetí části občanského soudního řádu.  Art. § 1 Act No. 99/1963 Coll , Code of Civil Procedure  Občanský soudní řád upravuje postup soudu a účastníků v občanském soudním řízení tak, aby byla zajištěna spravedlivá ochrana soukromých práv a oprávněných zájmů účastníků, jakož i výchova k dodržování smluv a zákonů, k čestnému plnění povinností a k úctě k právům jiných osob.  Art. § 3 Act No. 99/1963 Coll , Code of Civil Procedure  Občanské soudní řízení je jednou ze záruk spravedlnosti a práva, slouží upevňování a rozvíjení zásad soukromého práva. Každý se může domáhat u soudu ochrany soukromého práva, které bylo ohroženo nebo porušeno.  Art. § 36 Act 150/2002 Coll., Code of Administrative Justice  The rights and obligations of the parties  (1) Participants in proceedings have equal status. The court is obliged to provide them with equal opportunities to exercise their rights and give them advice on their procedural rights and obligations to the extent necessary to ensure that the participant would not suffered any damage.  Art. § 64 Act 150/2002 Coll., Code of Administrative Justice  Use of Code of Civil Procedure  Unless specified otherwise in this Act, the first and third parts of Code of Civil Procedure shall apply to proceedings in administrative justice mutatis mutandis.  Art. § 1 Act No. 99/1963 Coll , Code of Civil Procedure  Code of Civil Procedure regulates the procedure of the court and the parties to civil proceedings in order to ensure fair protection of private rights and legitimate interests of the participants, … .  Art. § 3 Act No. 99/1963 Coll , Code of Civil Procedure  Civil proceedings is one of the guarantees of fairness and justice, serving to consolidate and develop the principles of private law. Anyone may request the court to protect the private right that has been threatened or infringed. |
| 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.” | 3 = Enactment is fully in accord  Art. § 64 Act 150/2002 Coll., Code of Administrative Justice  Použití občanského soudního řádu  Nestanoví-li tento zákon jinak, použijí se pro řízení ve správním soudnictví přiměřeně ustanovení prvé a třetí části občanského soudního řádu.  Art. § 6 Act No. 99/1963 Coll , Code of Civil Procedure  V řízení postupuje soud předvídatelně a v součinnosti s účastníky řízení tak, aby ochrana práv byla rychlá a účinná … .  Art. § 164 Act No. 6/2002 Coll., on Courts and Judges  (1) Fyzické a právnické osoby (dále jen "stěžovatel") jsou oprávněny obracet se na orgány státní správy soudů se stížnostmi, jen jde-li o průtahy v řízení  Art. § 64 Act 150/2002 Coll., Code of Administrative Justice  Use of Code of Civil Procedure  Unless specified otherwise in this Act, the first and third parts of Code of Civil Procedure shall apply to proceedings in administrative justice mutatis mutandis.  Art. § 6 Act No. 99/1963 Coll , Code of Civil Procedure  In the proceedings, the court acts predictably and in cooperation with the parties so that the protection of rights was fast and effective … .  Art. § 164 Act No. 6/2002 Coll., on Courts and Judges  (1) Natural and legal persons (hereinafter referred to as "the complainant") are entitled to appeal to the bodies of state administration of courts with complaints, in case of delays in proceedings.  There are fixed time limits (90 days) in provisons regulating time limits for some kinds of proceedings (art 9d of EIA Act for art 9/2 proceedings, art. 101b of CAJ for land use plans and other kinds of measures of general nature). |
| 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**.” | 3 = Enactment is fully in accord  The court costs are court fee, costs of counterparty and own costs (e.g. for expertises, laweyrs, etc).  Art. § 36 Act 150/2002 Coll., Code of Administrative Justice  Práva a povinnosti účastníků  (3) Účastník, který doloží, že nemá dostatečné prostředky, může být na vlastní žádost usnesením předsedy senátu zčásti osvobozen od soudních poplatků. Přiznat účastníkovi osvobození od soudních poplatků zcela lze pouze výjimečně, jsou-li pro to zvlášť závažné důvody, a toto rozhodnutí musí být odůvodněno. Dospěje-li však soud k závěru, že návrh zjevně nemůže být úspěšný, takovou žádost zamítne. Přiznané osvobození kdykoliv za řízení odejme, popřípadě i se zpětnou účinností, jestliže se do pravomocného skončení řízení ukáže, že poměry účastníka přiznané osvobození neodůvodňují, popřípadě neodůvodňovaly. Přiznané osvobození se vztahuje i na řízení o kasační stížnosti.  Art. § 60 Act 150/2002 Coll., Code of Administrative Justice  Náhrada nákladů řízení  (1) Nestanoví-li tento zákon jinak, má účastník, který měl ve věci plný úspěch, právo na náhradu nákladů řízení před soudem, které důvodně vynaložil, proti účastníkovi, který ve věci úspěch neměl. Měl-li úspěch jen částečný, přizná mu soud právo na náhradu poměrné části nákladů.  (2) Ustanovení odstavce 1 neplatí, mělo-li by být právo přiznáno správnímu orgánu ve věcech důchodového pojištění, nemocenského pojištění, pomoci v hmotné nouzi a sociální péče.  (4) Stát má proti neúspěšnému účastníkovi právo na náhradu nákladů řízení, které platil, není-li tento účastník osvobozen od soudních poplatků.  Art. § 36 Act 150/2002 Coll., Code of Administrative Justice  The rights and obligations of the parties  (3) A party who shows that he or she is without adequate resources, may, at their request, by order of the presiding judge partially exempt from court fees. Exemption from court fees is exceptional, if for a particularly serious reasons, and this decision must be justified. If the court concludes that the proposal clearly can not be successful, such a request will be rejected. Granted exemption can be withdrawn at any time during the proceedings or even retroactively, if it is found out before closing of proceedings, that the situation did not justify an exemption. Granted exemption extends to the cassation complaint proceedings.  Art. § 60 Act 150/2002 Coll., Code of Administrative Justice  Costs  (1) Unless otherwise provided herein, the participant, who had the full success, has the right to be paid the costs of the proceedings before the court that reasonably incurred against the participant who had been unsuccessful. If he had only partial success, the court granted him the right to reimbursement of the proportional part of the costs.  (2) Paragraph 1 shall not apply if it would be granted the right to an administrative authority in matters of pension insurance, health insurance, poverty relief and social services. (In practice this is applied also in environmental cases).  (4) The state has a right against the unsuccessful party to pay the costs, which the state paid, unless that party is exempt from court fees. |
| 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.” | 3 = Enactment is fully in accord  Art. § 54 Act. 150/2002 Coll., Code of Administrative Justice  Rozsudek  (2) Rozsudek musí být písemně vyhotoven, musí obsahovat označení soudu, jména všech soudců, kteří ve věci rozhodli, označení účastníků, jejich zástupců, projednávané věci, výrok, odůvodnění, poučení o opravném prostředku a den a místo vyhlášení.  Art. § 54 Act. 150/2002 Coll., Code of Administrative Justice  Judgment  (2) The judgment must be drawn up in writing, must contain the identification of the court, the names of the judges who ruled on the case, identity of the parties, their representatives, present case statement, justification, instruction on appeal and the date and place of publication. |
| 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.” | 1 - Errors that are more than minor  Art. § 49 Act. 150/2002 Coll., Code of Administrative Justice  (9) Rozsudek musí být vyhlášen jménem republiky a veřejně. Jakmile soud vyhlásí rozsudek, je jím vázán.  Art. § 49 Act. 150/2002 Coll., Code of Administrative Justice  (9) Judgment shall be pronounced publicly on behalf of the Republic. Once the court declares the judgment is bound.  There is no real obligation that the decisions are, after pronounced, publicly accessible. |
| 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.” | 1 - Errors that are more than minor  Art. § 68 Act No. 500/2004 Coll., on Adminstrative Procedure  (5) V poučení se uvede, zda je možné proti rozhodnutí podat odvolání, v jaké lhůtě je možno tak učinit, od kterého dne se tato lhůta počítá, který správní orgán o odvolání rozhoduje a u kterého správního orgánu se odvolání podává.  Art. § 54 Act. 150/2002 Coll., Code of Administrative Justice  Rozsudek  (2) Rozsudek musí být písemně vyhotoven, musí obsahovat označení soudu, jména všech soudců, kteří ve věci rozhodli, označení účastníků, jejich zástupců, projednávané věci, výrok, odůvodnění, poučení o opravném prostředku a den a místo vyhlášení.  Art. § 68 Act No. 500/2004 Coll., on Adminstrative Procedure  (5) The instructions will indicate whether it is possible to appeal the decision, the period within which it is possible to do so, from which date to this period is calculated that the administrative body decides on the appeal and in which administrative body the appeal is lodged.  Art. § 54 Act. 150/2002 Coll., Code of Administrative Justice  Judgment  (2) The judgment must be drawn up in writing, must contain the identification of the court, the names of the judges who ruled on the case, identity of the parties, their representatives, present case statement, justification, instruction on appeal and the date and place of publication.  There is no real obligation that the decisions are, after pronounced, publicly accessible. |
| 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.”** | 2- Minor errors.  The court costs are court fee, costs of counterparty and own costs (e.g. for expertises, laweyrs, etc).  Art. § 36 Act 150/2002 Coll., Code of Administrative Justice  Práva a povinnosti účastníků  (3) Účastník, který doloží, že nemá dostatečné prostředky, může být na vlastní žádost usnesením předsedy senátu zčásti osvobozen od soudních poplatků. Přiznat účastníkovi osvobození od soudních poplatků zcela lze pouze výjimečně, jsou-li pro to zvlášť závažné důvody, a toto rozhodnutí musí být odůvodněno. Dospěje-li však soud k závěru, že návrh zjevně nemůže být úspěšný, takovou žádost zamítne. Přiznané osvobození kdykoliv za řízení odejme, popřípadě i se zpětnou účinností, jestliže se do pravomocného skončení řízení ukáže, že poměry účastníka přiznané osvobození neodůvodňují, popřípadě neodůvodňovaly. Přiznané osvobození se vztahuje i na řízení o kasační stížnosti.  Art. § 60 Act 150/2002 Coll., Code of Administrative Justice  Náhrada nákladů řízení  (1) Nestanoví-li tento zákon jinak, má účastník, který měl ve věci plný úspěch, právo na náhradu nákladů řízení před soudem, které důvodně vynaložil, proti účastníkovi, který ve věci úspěch neměl. Měl-li úspěch jen částečný, přizná mu soud právo na náhradu poměrné části nákladů.  (2) Ustanovení odstavce 1 neplatí, mělo-li by být právo přiznáno správnímu orgánu ve věcech důchodového pojištění, nemocenského pojištění, pomoci v hmotné nouzi a sociální péče.  (4) Stát má proti neúspěšnému účastníkovi právo na náhradu nákladů řízení, které platil, není-li tento účastník osvobozen od soudních poplatků.  Art. § 36 Act 150/2002 Coll., Code of Administrative Justice  The rights and obligations of the parties  (3) A party who shows that he or she is without adequate resources, may, at their request, by order of the presiding judge partially exempt from court fees. Exemption from court fees is exceptional, if for a particularly serious reasons, and this decision must be justified. If the court concludes that the proposal clearly can not be successful, such a request will be rejected. Granted exemption can be withdrawn at any time during the proceedings or even retroactively, if it is found out before closing of proceedings, that the situation did not justify an exemption. Granted exemption extends to the cassation complaint proceedings.  Art. § 60 Act 150/2002 Coll., Code of Administrative Justice  Costs  (1) Unless otherwise provided herein, the participant, who had the full success, has the right to be paid the costs of the proceedings before the court that reasonably incurred against the participant who had been unsuccessful. If he had only partial success, the court granted him the right to reimbursement of the proportional part of the costs.  (2) Paragraph 1 shall not apply if it would be granted the right to an administrative authority in matters of pension insurance, health insurance, poverty relief and social services. (In practice this is applied also in environmental cases).  (4) The state has a right against the unsuccessful party to pay the costs, which the state paid, unless that party is exempt from court fees.  Art. § 35 para. Act 150/2002 Coll., Code of Administrative Justice states that the participants with the right to not to pay court fee because of the insufficient financial funds have also right to legal assistance paid by state. The assistance mechanisms are not complete, namely for NGOs. |

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).

I find out the mentioned case as extraordinary exception of abusive interpretation of law by court. Therefore I do not think it is neccassary to tackle this questions in any detail.

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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.” | 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)  The standing rights are generally regulated by art. 65 of the Act No 150/2002 Coll., Code of Administrative Justice. This provision grants standing to start a court review procedure of acts of administrative authorities to   1. persons whose rights or obligations were “created, changed, nullified or bindingly determined by the act”, 2. or b) other parties to administrative proceedings who assert that their rights have been infringed in these proceedings (and this could cause illegality of the final act). |
| 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.” | 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. |
| 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.” | 2 = The procedure is in most cases expeditious. However, in cases of unwillingness to provide the information from both public authority and independent and impartial body, it can take months or even years (rarely less than 1 year before a court). |
| 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. | 1 - No, in a minority of cases.  There are restrictive conditions for public concerned - possession of neighbouring land (do not have to be directly neighbouring).  There are not many cases when the individual wants to protect the wildlife, however in one of these cases the court has found the rights nonimpaired.  As described with respect to art. 2/5 and with respect to legal indicators of art. 9/2, the interpretations of the terms “sufficient interest” and “impairment of a right” is rather restrictive, but for example with regard to the land owners, it was interpreted that they do not have to be “directly neighbouring” to be considered as being able to claim possible impairment of a right. |
| 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. | 2 = In most cases, and the requirements in article 2(5) are not restrictive  The NGO is subject to additional conditions, such as certain provisions in their bylaws (protection of environments) and existence more than 3 years or 200 supporters (not members).  There is no requirement for NGO to have participated in the entirety of previous processes (only to appeal against the decision).  In above mentioned case when the individual wants to protect the wildlife and court has found the rights of individual nonimpaired, the court has found the rights of NGO impaired.  There is access to justice also for NGOs not directly dealing with environmental protection (public health etc.)  The new legislaton in EIA act and case law which are, concerning the NGOs, in compliance with art. 2.5, 6 and 9/2 of the Convention are still new and not fully established.  In some cases, it is not clear if the decision making procedure is considered as “subsequent” to EIA proceednigs; if not, the “old”, more restrictive interpretation of the NGOs standing rights would apply. |
| 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. | 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.  Art. 9 par 2 of the Aarhus Convention explicitly stipulates that members of the public concerned shall have access to the review procedures at court not only with regard to acts and decisions, but also omissions of the administrative authorities. The Czech legislation includes the possibility of judicial protection in administrative omissions in Art .79 of the CAJ, which states that a person who has ineffectively exhausted the administrative measures for the protection against the inaction of an administrative authority “may request that the court obliges the administrative authority to issue a decision on the merits of the matter”.  There is, however, a significant “gap” in this regulation (as interpreted by the Czech administrative courts), which leads to the conclusion that no person can initiate a review procedure at in situations when the authority fails to start the procedure *ex officio*, under occasions when a law asks it to do so (for example, if an investor builds a structure or starts an operation without the necessary permit).  In such event, the affected person can ask the superior administrative authority to take a remedy. However, if also the superior authority fails to do so, the courts cannot order the passive authority to act (start the procedure). The SAC confirmed this interpretation in a number of its decisions.  The SAC case law does not take into account, that lack of effective remedies against omissions of administrative authorities in this kind of cases can lead to serious infringements of rights of the affected persons and that it is not in compliance with the requirements of Art. 9 of the Aarhus Convention (both par 2 and 3, as the case law fully applies also on the activities listed in Annex I of the Convention and therefore subject to its Art. 6 and 9 par 2).  There is no 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.).  In long, tiered decision-making procedures, the biggiest problem is the suspensatory effect which is not always granted.  There is no decision of the European Court of Justice concerning directly the Czech Republic. The decisions of ECJ are sometimes used to broaden the interpretation of access to courts, sometimes there are not admitted to broaden the interpretation.  The data on the numbers and outcomes of legal remedies in environmental matters are not available.  The new legislaton in EIA act and case law which are, concerning the NGOs, in compliance with art. 2.5, 6 and 9/2 of the Convention are still new and not fully established.  In some cases, it is not clear if the decision making procedure is considered as “subsequent” to EIA proceednigs; if not, the “old”, more restrictive interpretation of the NGOs standing rights would apply. |
| 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.” | 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.  The NGO participation in challenging administrative cases is significant for the environment.  There are general requirements for selecting those NGOs that might have standing before courts in environmental cases, such content of bylaws – the protection of environment.  There is also access to justice for foreign NGOs.  There is no intention to interpret 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.  There are different conditions for public participation and access to justice in case of EIA. However, there is possible to participate and access to court also in environmental cases others than EIA.  The access to justice in the case of planning documents, especially spatial planning is possible for neighbouring owners, NGOs and municipalities.  There is no right for NGO to participate in environmental criminal cases or even administrative offences cases.  The ombudspersons has right to make *actio popularis* (also in case of environmental protection).  The courts deal with all parts of complaints.  It is still quite complicated to defend against “omissions”.  There is no intention to interpret 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). The courts repeatedly stated than the Aarhus Convention is not directly binding and that the courts are not obliged to interpret the national law consistently with Art. 9(3).  There is no intention to interpret the phrase “acts and omissions” (Art. 9(3)) to exclude “decisions” (contrast with the “any decision, act or omission” language of Art. 9(2)).  There is no availability of data on the numbers and outcomes of legal remedies in environmental matters.  There is not 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.). |
| 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. | 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  The injunctive relief is more common only in EIA and cases (art. 9(2), not in cases art. 9(1)(3). The factors for non-EIA cases are much stricter than in cases of EIA. The factors for non-EIA cases are almost impossible to fulfil in environmental cases.  There are no bonds or any other financial burdens on those persons seeking injunctive relief. |
| 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.” | 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  There is due notification of all parties and sending the findings to all of them.  There are no judges specialised in respect of environmental cases. However most of them have same training also environmental law and there are some specialists especially in Supreme Administrative Court.  The investigation of facts is fully left to the parties.  There is available a specialised legal aid (environmental NGOs, environmental lawyers).  The experts are not so often used in the procedure, but they can be used. There are ways to ensure their unbiased, professional contribution.  The interpretation of the “fairness” as between the claimant and respondent or appreciation that complainants concern points of public interest depends mostly on the personality of judge.  There are both types of opinions, beliefs and misbeliefs of legal/professional circles concerning access to justice for NGOs, such as that this is time consuming, expensive for investors, abused, or on the positive side, problem sensitivity, specific factual and professional viewpoints channelled into the procedures etc. |
| 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.” | 1 = Only a minority of procedures and/or cases within the scope of article 9, paragraphs 1, 2 and 3 are timely.  The average duration of court procedures is about 7 months for each of two instances. It is likely that this number, for the first stage, is influenced by proceedings for which there is a definite time limit of 3 months (EIA and land ue planning cases). In any other cases, in my experience, the first instance proceeding do not last less than 1 year.  There are no judges specialised in respect of environmental cases. However most of them have same training also environmental law and there are some specialists especially in Supreme Administrative Court.  The investigation of facts is fully left to the parties.  There are both types of opinions, beliefs and misbeliefs of legal/professional circles concerning access to justice for NGOs, such as that this is time consuming, expensive for investors, abused, or on the positive side, problem sensitivity, specific factual and professional viewpoints channelled into the procedures etc. |
| 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. “ | 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.  Some procedures are prohibitively expensie for individuals “not poor enough” for legal aid, but still with not sufficient resources, and for small NGOs.  There is description of level of costs in section of legal indicators. The costs are usually quite low and majority of NGOs or public concerned can afford them. The problem can be with the experts fee (they are not often used). The prices of environmental laweyers are usually lower than is avarege price at the general market. The civil cases related to environment can be much more expensive than administrative. |
| 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.” | 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.  All of Supreme Administrative Court decisions are publicly available at the internet. There are also majority of decisions of regional courts (usually the most important of them). |
| 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.” | 2 = Good  The user-friendliness of information prepared by the statefrom the public’s perspective is not especially high. However a lot of information is prepared by the NGOs, this type of information si really user-friendly.  There are available information about lawyers, their expertise and experience.  There are no significant the effects of restrictions on advertising by lawyers and law firms.  There are available public interest environmental lawyers, and law clinics at universities.  There are no judges specialised in respect of environmental cases. However most of them have same training also environmental law and there are some specialists especially in Supreme Administrative Court.  There are no case studies available for the public on relevant issues prepared by the state. There are these studies prepared by the NGOs. |
| 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.” | 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. |

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)).

I do not find the further subdivision usefull.

## 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?[[19]](#footnote-20)   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 […]” | 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 |
| 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.” | 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).  The access to information is the least problematic pillar. The only complication is based on the fact, that there are two different acts regulating access to information (environmental and general). The acts have slightly different procedures and as a result in some specific cases it can be unclear which steps to take. |
| 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.” | 1= in practice, the framework for implementing the public participation pillar is not very clear, transparent and not necessarily consistent.  The public participation is really complicated and not clear at all. The really deep understanding of this framework has only a few specialized environmental lawyers (e.g. not the general laweyrs at all). The rules for public participation are different in EIA/non-EIA cases, for different subjects (NGOs/individuals) and at different separate procedures.  The institutions in place usually do not foster the culture of participation.  There is no big attention to local level public participation institutions, including interdepartmental working groups etc. established for research and development of public participation.  There are not a lot institutional, organisational measures within the judiciary in order to support more effective public participation.  There are some developments of public participation infrastructure more generally than environmental matters (e.g. participatory municipality budgets).  There are not problems with the correct translation of the Convention into the relevant national language.  There are certain branches of government that are responsible in relation to public participation to be understood clearly enough. |
| 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.” | 1= in practice, the framework for implementing the access to justice pillar is not very clear, transparent and not necessarily consistent.  The access to justice is really complicated and not clear at all. The really deep understanding of this framework has only a few specialized environmental lawyers (e.g. not the general laweyrs at all). A lot of rules are based solely on case law. |

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

Not at all.

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. 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-18)
18. 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-19)
19. 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-20)