**The Aarhus Convention Index**

**INTRODUCTION AND INDICATORS FOR PILOT TESTING**

**September 2016**

**COUNTRY: Ukraine**

[METHODOLOGY AND SCORING SYSTEM 5](#_Toc462667864)

[Legal Indicator Scoring 5](#_Toc462667865)

[Practice Indicator Scoring 7](#_Toc462667866)

[Weighting of the Legal Indicators and Practice Indicators 7](#_Toc462667867)

[Research and Review 8](#_Toc462667868)

[2015 Expert Workshop and 2016 ACI Pilot Testing 9](#_Toc462667869)

[SUMMARY OF COVERAGE BY INDICATORS 10](#_Toc462667870)

[AARHUS CONVENTION INDICATORS 18](#_Toc462667871)

[Guidelines for assessing legal indicators 18](#_Toc462667872)

[Guidelines for assessing practice indicators 21](#_Toc462667873)

[I. General pillar (incl. definitions) 23](#_Toc462667874)

[(a) Definitions - Legal indicators 23](#_Toc462667875)

[Definitions – Practice indicators 27](#_Toc462667876)

[(b) General provisions – Legal indicators 33](#_Toc462667877)

[General provisions – Practice indicators 40](#_Toc462667878)

[II. Access to information pillar 50](#_Toc462667879)

[(a) Information on request – Legal indicators 50](#_Toc462667880)

[Information on request – Practice indicators 63](#_Toc462667881)

[(b) Collection and active dissemination of information – Legal indicators 76](#_Toc462667882)

[Collection and active dissemination of information – Practice indicators 87](#_Toc462667883)

[III. Public participation pillar 103](#_Toc462667884)

[(a) Public participation in decisions on specific activities – Legal indicators 103](#_Toc462667885)

[Public participation in decisions on specific activities – Practice indicators 113](#_Toc462667886)

[(b) Public participation concerning plans, programmes and policies relating to the environment – Legal indicators 131](#_Toc462667887)

[Public participation concerning plans, programmes and policies relating to the environment – Practice indicators 134](#_Toc462667888)

[(c) Public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments – Legal indicators 140](#_Toc462667889)

[Public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments – Practice indicators 142](#_Toc462667890)

[IV. Access to justice pillar 146](#_Toc462667891)

[Access to justice – Legal indicators 146](#_Toc462667892)

[Access to justice – Practice indicators 155](#_Toc462667893)

[I. General pillar (including definitions)(cont.) 176](#_Toc462667894)

[National reporting and overall framework 176](#_Toc462667895)

**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?**

I think it is enough to allocate the highest score in respect of each relevant indicator where this is the situation. It is great when countries do more, but in order so see a relevant correlation of the countries performance of the minimal conventional guaranties it is important to measure to them, and not include additional points for overperformance.

## Practice Indicator Scoring

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

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

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

## Weighting of the Legal Indicators and Practice Indicators

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

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

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

## Research and Review

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

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

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

I agree with the method, don’t see a need to consider the alternatives.

##

## 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?**

To me the guidelines on legal indicators are clear and the terminology is defined well.

##

## 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?

Clear enough.

## I. General pillar (incl. definitions)

### (a) Definitions - Legal indicators

| **Aarhus provision** | **Legal indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 2(2) | 1. How well has the definition of “Public authority” been enacted?

Art. 2(2) provides:““Public authority” means:(a) Government at national, regional and other level;(b) Natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment;(c) Any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a body or person falling within subparagraphs (a) or (b) above;(d) The institutions of any regional economic integration organization referred to in article 17 which is a Party to this Convention.This definition does not include bodies or institutions acting in a judicial or legislative capacity;” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Enactment which goes further than requiredthe Law on Access to Public Information (№ 2939-VI, 2011) <http://zakon4.rada.gov.ua/laws/show/2939-17>According to Article 13.1 the Law on Access to Public Information applies to:1) Public authorities – bodies of state power, other state bodies, bodies of local self-government, bodies of the Autonomous Republic of Crimea, other subjects that perform public management functions inaccordance with legislation and whose decisions are mandatory – regarding all information in their possession;2) Legal entities that are funded by the state and local budgets, budget of the Autonomous Republic of Crimea – regarding information about the use of budget funds;3) Persons, if they perform delegated responsibilities of the public authorities in accordance with the law or agreement, including delivery of education, health, social, or any other state services – on information regarding their responsibilities;4) Subjects of economic activity that dominate on the market or have special or exclusive rights, or natural monopolies – regarding information about terms of supply of goods, services, and their prices.5) Subjects of economic activity that possess environmental information or any other information of the public interest.Thus, any private or public entities possessing environmental information are covered by the Law on Access to Public Information and obliged to provide information upon a request. |
| 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, environmentalagreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;(c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above;” | Scoring Guide:3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at allPlease refer to the [“Guidelines for assessing legal indicators” above](#_Guidelines_for_assessing)Incomplete enactment There are two definitions of environmental information included in two laws1) the Law on Information (№2657-XII, 1992)<http://zakon4.rada.gov.ua/laws/show/2657-12>2) in the Law of Ukraine on the Protection of the Environment (N 1264-XII, 1991)<http://zakon2.rada.gov.ua/laws/show/1264-12>1. **Стаття 13.** Інформація про стан довкілля (екологічна інформація)

      1. Інформація про стан довкілля (екологічна інформація) - відомості та/або дані про:      стан складових довкілля та його компоненти, включаючи генетично модифіковані організми, та взаємодію між цими складовими;      фактори, що впливають або можуть впливати на складові довкілля (речовини, енергія, шум і випромінювання, а також діяльність або заходи, включаючи адміністративні, угоди в галузі навколишнього природного середовища, політику, законодавство, плани і програми);      стан здоров'я та безпеки людей, умови життя людей, стан об'єктів культури і споруд тією мірою, якою на них впливає або може вплинути стан складових довкілля;      інші відомості та/або дані.1. **Стаття 25.** Інформація про стан навколишнього природного середовища (екологічна інформація)

Інформація про стан навколишнього природного середовища (екологічна інформація) - це будь-яка інформація в письмовій, аудіовізуальній, електронній чи іншій матеріальній формі про:стан навколишнього природного середовища чи його об'єктів - землі, вод, надр, атмосферного повітря, рослинного і тваринного світу та рівні їх забруднення;біологічне різноманіття і його компоненти, включаючи генетично видозмінені організми та їх взаємодію із об'єктами навколишнього природного середовища;джерела, фактори, матеріали, речовини, продукцію, енергію, фізичні фактори (шум, вібрацію, електромагнітне випромінювання, радіацію), які впливають або можуть вплинути на стан навколишнього природного середовища та здоров'я людей;загрозу виникнення і причини надзвичайних екологічних ситуацій, результати ліквідації цих явищ, рекомендації щодо заходів, спрямованих на зменшення їх негативного впливу на природні об'єкти та здоров'я людей;екологічні прогнози, плани і програми, заходи, в тому числі адміністративні, державну екологічну політику, законодавство про охорону навколишнього природного середовища;витрати, пов'язані із здійсненням природоохоронних заходів за рахунок фондів охорони навколишнього природного середовища, інших джерел фінансування, економічний аналіз, проведений у процесі прийняття рішень з питань, що стосуються довкілля.Neither of the definitions includes 1) cost-benefit and other economic analyses and assumptions used in environmental decision-making; 2) 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 factors, activities or measures referred to in subparagraph (b) Art. 2(3) of the Convention. |
| Art. 2(4) | 1. How well has the definition of “The public” been enacted?

Art. 2(4) provides:“”The public” means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups;” | Scoring Guide:3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at allPlease be aware, for example, that some countries refer to “citizen” instead of member of the public, while others do not give rights to unregistered groups or associations.Please refer to the [“Guidelines for assessing legal indicators” above](#_Guidelines_for_assessing)Incomplete enactment The Law on Access to Public Information <http://zakon5.rada.gov.ua/laws/show/2939-17>does not define “public”, but it vests access to information rights to all natural and legal persons and informal groups (Article 12).the Law of Ukraine on the Protection of the Environment (N 1264-XII, 1991)<http://zakon2.rada.gov.ua/laws/show/1264-12>the Law of Ukraine on Ecological Expertiza (N 45/95-ВР, 1995)http://zakon5.rada.gov.ua/laws/show/45/95-вр/print1467458930471345The Law of Ukraine on Urban Development (N 3038-VI, 2011)<http://zakon4.rada.gov.ua/laws/show/3038-17>the laws setting up legal framework for public participation in environmental decision-making, although use the term, do not define “public”.The definition of “public” is also not given in the Cabinet of Ministers adopted the Procedure for public involvement in discussion on making decisions which can affect the state of the environment (from 29 June 2011, 771). [http://zakon2.rada.gov.ua/laws/show/771-2011-п](http://zakon2.rada.gov.ua/laws/show/771-2011-%D0%BF)It is though contained in the Decree of MinEcology from 18.12.2003 N 168 On public participation in environmental decision-making<http://zakon5.rada.gov.ua/laws/show/z0155-04>. The definition of “public” reads – одна або більше фізичних чи юридичних осіб, їх об'єднання, організації або групи, які діють згідно з чинним законодавством України або практикою.one or more natural or legal persons, their associations, organizations or groups which act in accordance with national legislation or practice. |
| Art. 2(5)Indicator 1 | 1. Does the definition of “The public concerned” include the public affected or likely to be affected by the environmental decision-making?

Art. 2(5) provides:““The public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)the Law of Ukraine on the Protection of the Environment (N 1264-XII, 1991)<http://zakon2.rada.gov.ua/laws/show/1264-12>the Law of Ukraine on Ecological Expertiza (N 45/95-ВР, 1995)http://zakon5.rada.gov.ua/laws/show/45/95-вр/print1467458930471345The Law of Ukraine on Urban Development (N 3038-VI, 2011)<http://zakon4.rada.gov.ua/laws/show/3038-17>the laws setting up legal framework for public participation in environmental decision-making, do not define “the public concerned”.The definition of “the public concerned” is also not given in the Cabinet of Ministers adopted the Procedure for public involvement in discussion on making decisions which can affect the state of the environment (from 29 June 2011, 771). [http://zakon2.rada.gov.ua/laws/show/771-2011-п](http://zakon2.rada.gov.ua/laws/show/771-2011-%D0%BF)It is though contained in the Decree of MinEcology from 18.12.2003 N 168 On public participation in environmental decision-making<http://zakon5.rada.gov.ua/laws/show/z0155-04>. The definition of “the public concerned” reads – це громадськість, на яку впливає реалізація рішень з питань, що справляють чи можуть справити негативний вплив на стан довкілля.the public affected by decision-making that adversely impact or likely to impact the state of the environment. This definition, however, cannot be regarded as a proper enactment of Art. 2(4) provisions of the Aarhus Convention because the act was adopted by the Ministry of Ecology and thus is very limited in its scope of applications. The Decree of MinEcology N 168 On public participation in environmental decision-making does not apply to public participation in environmental matters on specific activities (GMO release – the only exception). It is only applicable to normative acts and planning documents prepared by the MinEcology as well as to the permits on GMO release.  |
| Art. 2(5)Indicator 2 | 1. Does the definition of “The public concerned” include the public having an interest in the environmental decision-making?

Art. 2(5) provides:““The public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.” | **Scoring Guide:**3 = Literal enactment and/or enactment specifies that any natural or legal person who asks to take part has an interest (i.e. a factual interest)2 = Minor errors or enactment specifies that only persons with a legal interest (even if not a direct financial interest) have an interest in the environmental decision-making1 = Errors that are more than minor (e.g. enactment specifies that only those with a direct financial interest in the decision-making have an interest in the environmental decision-making0 = Definition of “public concerned” does not include those with an interest in the environmental decision-making.**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Not enacted at allThe definition of “the public concerned” reads – це громадськість, на яку впливає реалізація рішень з питань, що справляють чи можуть справити негативний вплив на стан довкілля.the public affected by decision-making that adversely impact or likely to impact the state of the environment. the Decree of MinEcology from 18.12.2003 N 168 On public participation in environmental decision-making<http://zakon5.rada.gov.ua/laws/show/z0155-04> |
| Art. 2(5)Indicator 3 | Does the definition of “The public concerned” include NGOs promoting environmental protection and if so, are there any additional requirements under national law in order for an NGO to be deemed to have an interest?Art. 2(5) provides:““The public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.” | **Scoring Guide:**3 = NGOs are included (or deemed included) and there are no additional requirements2 = NGOs are included (or deemed included) and there are minimal and easily fulfilled requirements1 = NGOs are included (or deemed included) but there are demanding requirements, e.g. minimum 2000 members0 = Environmental NGOs are not included or deemed to have an interest**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Not enacted at allThe definition of “the public concerned” reads – це громадськість, на яку впливає реалізація рішень з питань, що справляють чи можуть справити негативний вплив на стан довкілля.the public affected by decision-making that adversely impact or likely to impact the state of the environment. the Decree of MinEcology from 18.12.2003 N 168 On public participation in environmental decision-making<http://zakon5.rada.gov.ua/laws/show/z0155-04> |

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

Reviewer: the defintions are used for different purposes in the Convention . E.g, “public” is used for the purpose of all three pillars. It is unclear how to weight them if any disparencies appear.

On the public concerned issue, it is unclear how to score in situations where such definition is not used at all but a wider term is used (“public”).

###

### Definitions – Practice indicators

| **Aarhus provision** | **Practice indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 2(2) | 1. Breadth of interpretation of the definition of “public authority”:[[13]](#footnote-14)

Art. 2(2) provides:““Public authority” means:(a) Government at national, regional and other level;(b) Natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment;(c) Any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a body or person falling within subparagraphs (a) or (b) above;(d) The institutions of any regional economic integration organization referred to in article 17 which is a Party to this Convention.This definition does not include bodies or institutions acting in a judicial or legislative capacity;” | **Scoring Guide:**3 = Broad 2 = Medium1 = Narrow 0 = Very narrowBreadth of interpretation may be considered to be relatively broader when the following institutions are considered “public authority” in practice in the majority of cases: public utility companies; administrative bodies when preparing or issuing normative acts (see ref. 2 below); legislative bodies when deciding on individual cases (see ref 4 below). Where one or more of these examples is not relevant in the Party, please justify your score in full by reference to the factors you have considered. The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* any cases where public utility companies perform quasi administrative functions (e.g. collecting data for public decision-making) (ref.1)
* breadth of interpretation of the term “bodies acting in a legislative capacity” in cases where administrative bodies issue or adopt normative acts (ref.2)
* the CJEU’s judgment in Case C-279/12 *Fish Legal* on the interpretation of the phrase “public administrative functions under national law” for the purposes of the definition of “public authority” (ref.3)
* occurrence and frequency of cases where legislative bodies decide on individual cases in “hybrid bill procedures” in order to approve major developments and exclude public participation (ref.4)
* bodies acting in a “judicial/legislative capacity”: e.g. can the public in your jurisdiction obtain access to parties’ written pleadings, submissions, responses, etc, or does your jurisdiction seek to argue that such documents are held by the courts, which hold such documents in a “judicial capacity", even where the proceedings in question have ended; cf. the CJEU’s judgment in Case C-204/09 for the parallel case of “acting in a legislative capacity” where the legislative process in question has ended (ref.5)

Please justify your score and explain the factors you considered, including any not listed above. Although the Law on Access to Public Information in terms of “public authorities” being under an obligation to provide environmental information upon a request, includes a provision which goes further than required, in practice breadth of interpretation of the definition of “public authority” is very narrow.According to the Law all economic entities (public or private) possessing environmental information are obliged to prove it upon request.Yet, only bodies of state and local government consider themselves under the obligation to provide information and act accordingly.Other providers of environmental information (referred to in Article 2b and 2c of the Aarhus Convention as well as in Article 13 of the Law on Access to Public Information) in the majority of cases do not consider themselves to be covered by either the Convention or the Law, thus they provide letters of refusals or do not answer at all.In a few occasions environmental NGOs have successfully challenged these refusals to courts. Please see the decision of the High Economic Court of Ukraine <http://www.reyestr.court.gov.ua/Review/23967697>Nevertheless, it is becoming increasingly difficult and expensive to go to court in any kind of cases, including in cases of challenging access to environmental information refusals. Also there is no effective expeditious and cheap administrative review of refusals in access to information. Furthermore, no decision even of a High Economic Court or any other high court for that matter on a specific case changes behaviour (legal practice) of administrative bodies, not to say private parties. Even courts are not bound by the decision of other courts (even high or the Supreme Court) in similar cases. On the other hand, legislative process in Ukraine is relatively open. On the official web-page of the Parliament all official information on draft laws is posted and updated regularly (including the initial draft laws itself, opinions of various commissions and advisory bodies, draft laws with amendments, if that was the case, all intermediate decisions of the Parliament as to the draft laws, results of voting etc.)Courts are also considered to be providers of information within the meaning of the Law on Access to Public Information. Yet they disseminate and provide upon requests so to say “administrative” information on the activities of the courts and not the information on cases that are being (or have been) considered by the courts. Persons that have not been parties to the case can only request access to final decisions. Furthermore, such requests shall be justified. Nevertheless, the State Register of Court Decisions, include all court decisions (issued during last 5 years, and some issued earlier). The register is accessible 24/7 online, free of charge. Personal data (names, addresses, bank account and other sensible information is excluded from the texts of the decisions included in the Register). |
| 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, environmentalagreements, 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 inenvironmental decision-making;(c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above;” | **Scoring Guide:**3 = Broad 2 = Medium1 = Narrow 0 = Very narrowThe interpretation of “environmental information” may be considered relatively broader when both rough data and processed data in any stage of their development are considered environmental information. A key issue is when non-environmental (e.g. water management, forestry, mining, road construction etc.) authorities handle data which is relevant from the viewpoint of any environmental elements and/or factors as mentioned in Art 2(3) of the Convention. Financial decisions that have consequences for the environment (such as supporting projects with strong environmental effects) shall be also evaluated here.Where decisions on the interpretation of “environmental information” have been appealed, reviewed, litigated, etc., please consider only the outcome of the highest decision-maker in scoring this indicator (which may be the CJEU in respect of EU Member States).The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)The level of development of information, between rough data and elaborated content frequently causes interpretation problems. Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* breadth of interpretation of the term environmental information in the case of feasibility studies and other background materials (ref.1)
* information produced or processed by non-environmental bodies, but having environmental relevance (ref.2)
* decisions, agreements etc. concerning the financing of environmentally relevant projects (ref.3)
* possible differentiation of raw and processed data (ref.4)

Please justify your score and explain the factors you considered, including any not listed aboveFirst of all, it should be highlighted that majority of environmental information is being requested by the public from governmental bodies via access to public information procedure. Thus, usually it is enough for the information to qualify as public in order to be provided. The Law on Access to Public information provides for fast cheap and easy way to receive information upon a request.It is rare, therefore, that information is being requested on the basis of it being environmental (and not public). So there is essentially not enough data to answer this question.In Ukrainian system of access to information the issue of information being environmental becomes important when one submits a request to a private party (according to the Law on Access to Public Information all private entities possessing environmental information shall provide it upon request according to the procedure set by this law). Nevertheless, it rarely comes to interpretation of information being or not being environmental, for private entities simply do not seem themselves bound by the Law on Access to Public Information. Thus they provide letters of refusals or do not answer at all.On the other hand, High Economic Court of Ukraine in a few occasions interpreted EIA report, permit on release of pollutants into the ambient air and other documents required by law for a polluting company to operate – to be environmental information (in full) and thus obliged the company to provide this information to an NGO, who submitted the case to the court. Please see the decision of the High Economic Court of Ukraine <http://www.reyestr.court.gov.ua/Review/23967697>Nevertheless, it is becoming increasingly difficult and expensive to go to court in any kind of cases, including in cases of challenging access to environmental information refusals. Also, there is effective administrative review of refusals in access to information. Furthermore, no decision even of a High Economic Court or any other high court for that matter on a specific case changes behaviour (legal practice) of administrative bodies, not to say private parties. Even courts are not bound by the decision of other courts (even high of the Supreme Court) in similar cases. The interpretation of the term “environmental information” has also arisen with regard to two Product Sharing Agreements (with Shell and Chevron on shale gas) which were signed by the government of Ukraine and the respective companies in 2013 and included confidentiality clauses that covered documents in full.Both the Government and the companies refused all access to information requests which were based on the grounds of information being public and environmental. There have been at least ten court cases, NGOs lost almost all of them. The only winning ones concerned permits for exploration and exploitation of minerals (which were negotiated within the negotiation process for the PSAs as such and thus deemed to be confidential as well). The courts said that the permits are public information and thus obliged the State Service for Geology and Minerals to provide them to the NGO.The PSAs until today remain classified. The communication on this matter was submitted to the ACCC by an NGO in November 2014, the case was admitted and is pending. |
| Art. 2(4) | 1. Breadth of interpretation of the definition of “The public”

Art. 2(4) provides:“”The public” means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups;” | **Scoring Guide:**3 = Broad 2 = Medium1 = Narrow 0 = Very narrowPlease be aware, for example, that some countries in practice narrow the definition of the public to “citizens”, while others do not give rights to unregistered groups or associations. In terms of access to information it is very clear that every one including the foreigners and informal groups are vested with the access to information and access to justice rights. I am not aware of cases of narrow interpretation of “the public” in this regard.As to public participation in environmental decision-making, the Law of Ukraine on the Protection of the Environment (N 1264-XII, 1991) <http://zakon2.rada.gov.ua/laws/show/1264-12> lists citizens’ rights in the field of environmental protection. However, I am also not aware of the cases of narrowing down the public to merely citizens.Informal (unregistered) groups are not generally recognized in Ukraine. Thus, those are usually dealt with as with individuals, but not as with the group.  |
| Art. 2(5) | 1. Breadth of interpretation of the definition of “The public concerned”

Art. 2(5) provides:““The public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.” | **Scoring Guide:**3 = Broad 2 = Medium1 = Narrow 0 = Very narrowAs a general guide for scoring, researchers should consider that, as a rule, the more additional qualifications attached to the “public concerned” in practice, the narrower the breadth of interpretation. For instance, whenever there is differential treatment between participants according to their physical proximity, the type of environmental case, the type of communities or organisations that wish to participate, etc., the lower the score should be.The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)Note that this indicator is closely related to other indicators, especially under Article 6. Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* interpretation of physical proximity, especially in the case of projects with a linear route (ref.1, ref.4)
* the breadth of the circle of people or communities who can be affected or their interests are at stake (ref.2)
* broad enough consideration of rights such as *in rem rights*, social rights or other rights (ref.5)
* how far the nature and size of the activity is taken into consideration when establishing the circle of affected persons? (ref.5)
* the practice concerning foreigners (ref.3)
* the practice concerning non-governmental organisations (ref.2)
* introducing new, obscure categories, subdivisions of definitions etc. with nebulous meaning might qualify as a restriction in defining the public concerned (ref.6)

Please justify your score and explain the factors you considered, including any not listed above The only existing in the domestic legal framework definition of “the public concerned” reads – the public affected by decision-making that adversely impact or likely to impact the state of the environment. the Decree of MinEcology from 18.12.2003 N 168 On public participation in environmental decision-making<http://zakon5.rada.gov.ua/laws/show/z0155-04>The definition does not include those having an interest in the environmental decision-making or non-governmental organizations promoting environmental protection.In practice, however, properly registered environmental NGO’s are usually deemed to have participatory rights. However, unregistered groups or not environmental NGOs (human rights, consumer organisations etc) are known to be excluded.the Law of Ukraine on the Protection of the Environment (N 1264-XII, 1991)<http://zakon2.rada.gov.ua/laws/show/1264-12>in Article 16 reads that NGOs can participate in environmental protection only if their properly registered by-laws list this activity.Cases of various scenarios of narrowing down “the public concerned” occurred often in the past years, due to 1) lack of proper legal framework for public participation; 2) lack of proper definition of “the public concerned”; 3) old Law on civil associations (revised in 2012) divided NGOs into local, national and international. There have been many cases when a proponent brought his employees for the public hearings and due to the lack of space the people from the communities likely to be affected by the planned activity were not allowed to participate in the hearings. There are no standards as to whom to consider to be affected by the planned activity, and thus proponents use whatever fit them. The courts have not yet developed any standards in this regard either.Although the old law did not prohibit NGOs to work outside of their regional scope, this division was often used to ban NGOs from public participation based on their place of registration.Although the most recent law on NGOs does not divide NGOs into local, national and international, as the previous law did, the practice remain in some cases.Courts still sometimes argue that an NGO in the West of Ukraine would not have standing in a case that concerns activity in the East. |

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?

I think it is better to have a practice indicator for each respective legal indicator.

###

### (b) General provisions – Legal indicators

| **Aarhus provision** | **Legal indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 3(2)[[15]](#footnote-16) | 1. To what extent does the law oblige officials and authorities to assist and provide guidance to the public in seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters?

Art. 3(2) provides:“Each Party shall endeavour to ensure that officials and authorities assist and provide guidance to the public in seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters.” | **Scoring Guide:**3 = The law obliges officials and authorities to assist and provide guidance to the public in ALL of the following areas: seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters2 = 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 matters1 = The law obliges officials and authorities to assist and provide guidance to the public in only ONE of the following areas: (a) seeking access to information, (b) in facilitating participation in decision-making, (c) in seeking access to justice in environmental matters0 = The law does not oblige officials and authorities to assist and provide guidance to the public in ANY of the following areas: seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incomplete enactment There is no explicit wording in the law as to assistance and guidance in any of the conventional pillars. Maybe only in access to justice, but not to the full extent. Only the Code of Administrative Judiciary of Ukraine (№ 2747-IV, 2005)<http://zakon4.rada.gov.ua/laws/show/2747-15>provides for assistance in preparing an administrative law suit upon request. However, this assistance would only cover the procedural aspects.Стаття 105. Форма і зміст адміністративного позовуНа прохання позивача службовцем апарату адміністративного суду може бути надана допомога в оформленні позовної заяви.None of the other procedural codes (Civil Procedural, Economic Procedural) provide for that.The Law on Access to Public Information <http://zakon3.rada.gov.ua/laws/show/2939-17>provides that assistance can be provided to disabled persons.Article 19У разі якщо з поважних причин (інвалідність, обмежені фізичні можливості тощо) особа не може подати письмовий запит, його має оформити відповідальна особа з питань доступу до публічної інформації, обов'язково зазначивши в запиті своє ім'я, контактний телефон, та надати копію запиту особі, яка його подала.The framework law on the Protection of the Environment and other laws regulating PP in environmental decision-making do not provide for any of that. |
| 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 inenvironmental matters.” | **Scoring Guide:**3 = The law obliges the government to promote environmental education and environmental awareness generally among the public as well as on specifically how to obtain all three of the following: (a) access to information, (b) to participate in decision-making and (c) to obtain access to justice in environmental matters.2 = The law obliges the government to promote environmental education and environmental awareness generally among the public as well as on one or two of the following: how to (a) obtain access to information, (b) participate in decision-making and (c) obtain access to justice in environmental matters.1 = The law obliges the government to promote environmental education and environmental awareness generally among the public, but not specifically in any of the following areas: (a) how to obtain access to information, (b) to participate in decision-making and (c) to obtain access to justice in environmental matters.1 = The law obliges the government to promote education and awareness among the public on all three of the following: how to (a) obtain access to information, (b) participate in decision-making and (c) obtain access to justice in environmental matters, but does not oblige the government to promote environmental education and environmental awareness generally among the public.0 = The law does not oblige the government to promote environmental education and environmental awareness among the public.Incomplete enactment the Law of Ukraine on the Protection of the Environment (N 1264-XII, 1991)<http://zakon2.rada.gov.ua/laws/show/1264-12>**Стаття 7.** Освіта і виховання в галузі охорони навколишнього природного середовищаПідвищення екологічної культури суспільства і професійна підготовка спеціалістів забезпечуються загальною обов'язковою комплексною освітою та вихованням в галузі охорони навколишнього природного середовища, в тому числі в дошкільних дитячих закладах, в системі загальної середньої, професійної та вищої освіти, підвищення кваліфікації та перепідготовки кадрів.Environmental awareness raising and professional trainings are provided through pre-school institutions, general secondary, professional and higher education, training and retraining of professionals.The Law of Ukraine on Education (№ 1060-XII, 1991)<http://zakon4.rada.gov.ua/laws/show/1060-12/print1475399074586991>**Стаття 35.** Загальна середня освітаЗагальна середня освіта забезпечує всебічний розвиток дитини як особистості, її нахилів, здібностей, талантів, трудову підготовку, професійне самовизначення, формування загальнолюдської моралі, засвоєння визначеного суспільними, мовними, національно-культурними потребами обсягу знань про природу, людину, суспільство і виробництво, екологічне виховання, фізичне вдосконалення.Environmental education is provided in schools. The Law of Ukraine on the protection of animals from cruelty (№ 3447-IV, 2006)<http://zakon5.rada.gov.ua/laws/show/3447-15>**Стаття 6.** Виховання гуманного ставлення до тварин Виховання гуманного ставлення до тварин є важливою складовою етичного, культурного та екологічного виховання громадян. Виховання гуманного ставлення до тварин передбачає формування високого рівня еколого-етичної свідомості та культури громадян. Виховання гуманного ставлення до тварин забезпечується шляхом викладання курсів з екологічної етики та гуманного ставлення до тварин у дошкільних навчальних закладах, у системі загальної середньої, професійно-технічної і вищої освіти. Humane treatment of animals is an important part of ethical, cultural and environmental education of citizens. It is being taught in pre-school institutions, general secondary, professional and higher education institutions. **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing) |
| Art. 3(4) | 1. To what extent does the law provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection, and is the national legal system consistent with this obligation?

Art. 3(4) provides:“Each Party shall provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection and ensure that its national legal system is consistent with this obligation.” | **Scoring Guide:**3 = The law provides for appropriate recognition and support, and the national legal system is consistent with this obligation.2 = The law provides for appropriate recognition or support (not both).1 = The law provides for appropriate recognition or support (not both), but the national legal system is inconsistent with this obligation.0 = The law does not provide for appropriate recognition or support**In assessing “appropriate” recognition and support, please refer (amongst other things) to pp.66-67 of the** [**Aarhus Implementation Guide (2014)**](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf). Please consider especially the following parameters in the legal framework: simple/onerous registration requirements, tax advantages, fee waiver provisions, court cost exemptions, access to legal aid. A further important aspect that should be evaluated here is whether the above types of recognition/support are given to all associations, organizations and groups promoting environmental protection, or only registered ones?**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incomplete enactment the Law of Ukraine on the Protection of the Environment (N 1264-XII, 1991)<http://zakon2.rada.gov.ua/laws/show/1264-12>The Law on On Civil Associations (№ 4572-VI, 2012)<http://zakon4.rada.gov.ua/laws/show/4572-17>provides for an easy and free of charge procedure for registration of civil associations (NGOs). Under this law the Assosiations are pretty much free to work anywhere and on whatever objectives they want. The Law of Ukraine on the Protection of the Environment (N 1264-XII, 1991)<http://zakon2.rada.gov.ua/laws/show/1264-12>in Article 16 allows NGOs, having environmental protection listed in their respacted and properly registered by-laws (statutes), to participate in this activity.The law also includes a list of specific rights attributed to environmental NGOs. **Стаття 21.** Повноваження громадських організацій у галузі охорони навколишнього природного середовищаГромадські природоохоронні організації мають право:а) брати участь у розробці планів, програм, пов'язаних з охороною навколишнього природного середовища, розробляти і пропагувати свої екологічні програми;б) утворювати громадські фонди охорони природи; за погодженням з місцевими радами за рахунок власних коштів і добровільної трудової участі членів громадських організацій виконувати роботи по охороні та відтворенню природних ресурсів, збереженню та поліпшенню стану навколишнього природного середовища;в) брати участь у проведенні центральним органом виконавчої влади, що реалізує державну політику із здійснення державного нагляду (контролю) у сфері охорони навколишнього природного середовища, раціонального використання, відтворення і охорони природних ресурсів, перевірок виконання підприємствами, установами та організаціями природоохоронних планів і заходів;г) проводити громадську екологічну експертизу, обнародувати її результати і передавати їх органам, уповноваженим приймати рішення;д) вільного доступу до екологічної інформації;е) виступати з ініціативою проведення всеукраїнського і місцевих референдумів з питань, пов'язаних з охороною навколишнього природного середовища, використанням природних ресурсів та забезпеченням екологічної безпеки;є) вносити до відповідних органів пропозиції про організацію територій та об'єктів природно-заповідного фонду;ж) подавати до суду позови про відшкодування шкоди, заподіяної внаслідок порушення законодавства про охорону навколишнього природного середовища, в тому числі здоров'ю громадян і майну громадських організацій;з) брати участь у заходах міжнародних неурядових організацій з питань охорони навколишнього природного середовища;и) брати участь у підготовці проектів нормативно-правових актів з екологічних питань;і) оскаржувати в установленому законом порядку рішення про відмову чи несвоєчасне надання за запитом екологічної інформації або неправомірне відхилення запиту та його неповне задоволення.The Law on Access to Public Information (№ 2939-VI, 2011) <http://zakon4.rada.gov.ua/laws/show/2939-17>gives access rights to all (including registered NGOs and informal groups).The laws on PP in environmental decision-making do not specifically vest NGOs with the participatory rights. The procedural codes (Civil, Administrative, Economic) provide standing to either physical or judicial persons (meaning only to registered NGOs). General rules of standing require to maintain an impairment of one’s rights or interests.The Law on the Protection of the Environment <http://zakon2.rada.gov.ua/laws/show/1264-12>provides for standing of ENGO, but only in two types of cases (access to EI cases, and for collection of damages caused to the environment).The Law on court fees (№ 3674-VI, 2011)<http://zakon2.rada.gov.ua/laws/show/3674-17>does not exclude environmental NGOs from any court fees. Procedural codes also do not favour NGOs in terms of the rules of waiving of court expenses or any other procedural rules for that matter. Loser pays principle applies, no exceptions for NGOs.There is no free legal aid available to NGOs or any other mechanism to help NGOs deal with the financial barriers what so ever. |
| Art. 3(5) | 1. Has the Party maintained or introduced measures providing for broader access to information, more extensive public participation in decision-making and wider access to justice in environmental matters than required by the Convention?

Article 3(5) provides:“5. The provisions of this Convention shall not affect the right of a Party to maintain or introduce measures providing for broader access to information, more extensive public participation in decision-making and wider access to justice in environmental matters than required by this Convention.” | **Scoring Guide:**3 = Three or more such measures have been maintained or introduced2 = Two such measures have been maintained or introduced1 = One such measure has been maintained or introduced0 = No such measures have been maintained or introduced**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)the Law on Access to Public Information (№ 2939-VI, 2011) <http://zakon4.rada.gov.ua/laws/show/2939-17> Articles 7, 13, 20and the Law on Information (№2657-XII, 1992)<http://zakon4.rada.gov.ua/laws/show/2657-12>Article 13* Establishe that not only public authorities, but also all private entities holding environmental information are required to provide it upon a request.
* Timetable for response is 5 working days
* Environmental information cannot be limited in access except for the location of military facilities.
* First 10 pages (or copies) are always free of charge.
 |
| Art. 3(7) | 1. To what extent does the law oblige the government to promote the application of the principles of the Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment?

Art. 3(7) provides:“Each Party shall promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at allNote that there are two key aspects to be considered here: the first aspect is whether the Party is legally required itself to promote the Convention in international forums relating to the environment. The second aspect is whether the law requires the Party to involve its own public in the preparation of its input prior to meetings of the international forum; to include members of the public (e.g. relevant NGOs) in its delegation at the international forum; to report back to its public during and after the event; and to involve the public in the implementation of the outcomes of the international forum.Both aspects will need to have been enacted in order for a score of 3 to be awarded. If one of the aspects has not been enacted, the maximum possible score is 1.**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing). Niether the Law of Ukraine on the Protection of the Environment (N 1264-XII, 1991)<http://zakon2.rada.gov.ua/laws/show/1264-12>, nor any other law known to me, provide for that. |
| 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 judicialproceedings.” | **Scoring Guide:**3 = The law contains provisions aimed at ensuring that persons exercising their rights in conformity with the provisions of the Convention are not penalized, persecuted or harassed in any way for their involvement and those provisions would likely provide effective protection to persons exercising any right set out in the Convention, those rights being interpreted broadly. 2 = The law contains provisions aimed at ensuring that persons exercising their rights in conformity with the provisions of the Convention are not penalized, persecuted or harassed in any way for their involvement and those provisions would likely provide effective protection to persons exercising the specific rights set out in article 4, 6, 7, 8 and 9 of the Convention1 = 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 Convention0 = The law does not contain any provision(s) which could operate to ensure that persons exercising their rights in conformity with the provisions of the Convention are not penalized, persecuted or harassed for their involvement**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing). Incomplete enactmentthe Law on Citizens Appeals (№ 393/96-ВР, 1996)[http://zakon3.rada.gov.ua/laws/show/393/96-вр](http://zakon3.rada.gov.ua/laws/show/393/96-%D0%B2%D1%80)Стаття 9. Заборона переслідування громадян за подання звернення і неприпустимість примушування їх до його поданняЗабороняється переслідування громадян і членів їх сімей за подання звернення до органів державної влади, місцевого самоврядування, підприємств, установ, організацій незалежно від форм власності, об'єднань громадян, посадових осіб за критику у зверненні їх діяльності та рішень.The law prohibits to persecute citizens and members of their families for submitting applications to public authorities, enterprises, institution and organisations and for criticism of their activities included in such applications.  |
| 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 participatein decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.” | **Scoring Guide:**3= The law prohibits discrimination as to citizenship, nationality and domicile and, for a legal person, registered seat or effective centre of its activities with respect to each of (a) access to information, (b) public participation and (c) access to justice2= The law prohibits discrimination as to citizenship, nationality and domicile and, for a legal person, registered seat or effective centre of its activities with respect to two of (a) access to information, (b) public participation and (c) access to justice1= The law prohibits discrimination as to citizenship, nationality and domicile and, for a legal person, registered seat or effective centre of its activities with respect to one of (a) access to information, (b) public participation and (c) access to justice0= The law does not prohibit discrimination as to citizenship, nationality and domicile and, for a legal person, registered seat or effective centre of its activities with respect to access to information, public participation or access to justice**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Effective enactmentConstitution of Ukraine (№ 254к/96-ВР, 1996)<http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>provides for general prohibition of discrimination of citizens. **Стаття 24.** Громадяни мають рівні конституційні права і свободи та є рівними перед законом.Не може бути привілеїв чи обмежень за ознаками раси, кольору шкіри, політичних, релігійних та інших переконань, статі, етнічного та соціального походження, майнового стану, місця проживання, за мовними або іншими ознаками.Both the Law on Access to Public Information, as well as all procedural codes (in terms of access to justice) provide respective rights to all physical persons (including non-citizens).the Law of Ukraine on the Protection of the Environment (N 1264-XII, 1991)<http://zakon2.rada.gov.ua/laws/show/1264-12>provides PP rights only to citizens.The Law on Access to Public Information explicitly states as one of its prinsiples - equality, regardless of race, political, religious and other beliefs, sex, ethnic or social origin, property, residence, language or other characteristics.**Стаття 4. Принципи забезпечення доступу до публічної інформації**1. Доступ до публічної інформації відповідно до цього Закону здійснюється на принципах:3) рівноправності, незалежно від ознак раси, політичних, релігійних та інших переконань, статі, етнічного та соціального походження, майнового стану, місця проживання, мовних або інших ознак.The Law on Civil Assosiations (№ 4572-VI, 2012) <http://zakon3.rada.gov.ua/laws/show/4572-17/page2>provides for the right of NGOs to freely choose the territory of its activity.Стаття 3. Принципи утворення і діяльності громадських об'єднань1. Громадські об'єднання утворюються і діють на принципах:3) вільного вибору території діяльності;4. Вільний вибір території діяльності передбачає право громадських об'єднань самостійно визначати територію своєї діяльності, крім випадків, визначених законом. |

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)?

I actually did not know how to properly score that indicator, for there are probably even more then 3 measures that go beyond the requirements of the Convention, but they all concern access to information. Furthermore, they are not all of the same significance, including in a way that some are implemented in practice while the other are not.

### 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 inenvironmental matters.” | **Scoring Guide:**3 = Excellent2 = Good1 = Fair0 = Poor or non-existentThe references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)Please note that capacity building[[17]](#footnote-18) (CB) is a key indicator. Without communities and individuals who are able and willing to use them, the three pillars of environmental democracy will not work. When deciding the score for this indicator please consider especially the CB quality of selected relevant homepages, leaflets/flyers and other materials aimed at supporting Aarhus Convention rights. Also the existence and effectiveness of officials dealing partly or wholly with CB should be evaluated here. Take into consideration *inter alia*:* as a minimum requirement the homepage of the environmental authorities should be of an acceptable quality (well structured, regularly updated etc.)(ref.1, ref.2)
* information officers available (an equally good solution could be proper information training for, and availability of, ‘regular’ environmental officials) (ref.1, ref.5, ref.6, ref.9)
* proper training, guidance documents, circulars etc. for officials about public participation (ref.3, ref.4)
* general use of electronic mailing, phone, Facebook etc. by environmental authorities for enhancing public participation (ref.6, ref.8, ref.11)
* guides, manuals, easy to understand descriptions of public participation available to members and organisations of the public
* all kinds of assistance and information within the circle of capacity building are for free (ref.12)

Please justify your score and explain the factors you considered Homepages of the environmental authorities may be structured, yet not regularly updated.As to access to information – authorities provide only what is required by law – information in the procedure of access to information (hours of work, address, phone, email, form of an information request) and the procedure to challenge a refusal. However, the law is silent on the issue of the extant of the details, so the Ministry of Ecology only mentions on its official web-page that refusals can be challenged to superiors or to an administrative court. No further detail is provided.There is no information on the governmental web-pages as to the possibilities of the public to participate in decision-making on specific activities among other things due to the fact that it is not a MinEcology, but Ministry of Regional Development and Construction who is responsible for that.Most public authorities do, however, post on their web-pages invitations to comment on drafts of executive legislation (those that regulate economic activities).Courts post general information on access to justice on their web-pages, but this information is complicated, not user friendly and useful essentially only to lawyers.I am not aware of any publications (leaflets, manuals etc.) on these matters ever published by public authorities.No CB activities were ever organized for the general public and NGOs by the public authorities as to access to information, public participation or access to justice.Such publications are produces and CB activities organised by NGOs, international and charitable organisations on their own initiative and expense (sometimes in cooperation with public authorities, but their input is merely nominal). |
| Art. 3(3), first clause | 1. Governmental efforts concerning, as a general matter, promoting environmental education and awareness raising among the public[[18]](#footnote-19)

Art. 3(3), first clause, provides (underlined):“Each Party shall promote environmental education and environmental awareness among the public, especially on how to obtain access to information, to participate in decision-making and to obtain access to justice inenvironmental matters.” | **Scoring guide**3 = Excellent2 = Good1 = Fair0 = Poor or non-existentThe references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)Please consider, where relevant, inter alia:* what kind of specialised environmental administrative organisations, departments etc. deal with the research, development, support, management etc. of environmental education and awareness raising? (ref.1, ref.2, ref.9, ref.11)
* how far environmental education is integrated into the regular curricula at several levels of the education system (ref.2, ref.5)
* are there green school projects (such as forest school, clean up campaigns, ‘open school’ curricula, etc.) with proper organisational, financial and methodological support? (ref.2, ref.13)
* is there proper cooperation between the relevant ministries and other governmental bodies in the field of environmental education and awareness raising (with the participation of departments responsible for education, culture, agriculture etc.)? (ref.2, ref.3)
* frequency and success (coverage in the media, number of visitors, positive professional feedback etc.) of environmental awareness raising projects (ref.4, ref.6, ref.7, ref.8, ref.13)
* how far civil society organisations are involved in environmental education and awareness raising? (ref.7, ref.10, ref.11)

Please justify your score and explain the factors you consideredNo specialized environmental administrative organizations or departments deals with the research, development, support, management etc. of environmental education and awareness raising. Some departments may have this written in their agendas, but close to nothing is done in reality.Some awareness raising activities are supposed to be carried out by the Aarhus centre – a department of the MinEcology. In practice, however, they only provide free venue for meetings of the Civil Society Council of MinEcology, various public hearings, trainings, conferences etc. Some educational and awareness raising activities are performed sporadically by administrations of the protected areas.So far, despite the law requires that, environmental education has not been integrated into the regular curricula at various levels of the education system. Some efforts are currently being done by the MinEcology, but the Ministry of Education recently rejected the proposal of introduction of a separate course on environment in the curricula of secondary education (schools). Effective cooperation between the MinEcology and Ministry of Education is lacking.There are municipally-owned extracurricular education institutions (дитячі центри охорони природи та подібні) in major cities, whose main objective is environmental education of children.Civil society organisations are very much involved in environmental education and awareness raising, but they do it on their own initiative and expense.  |
| Art. 3(4) | 1. Governmental efforts to provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection

Art. 3(4) provides:“Each Party shall provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection and ensure that its national legal system is consistent with this obligation.” | **Scoring guide**3 = Excellent2 = Good1 = Fair0 = Poor or non-existentConditions for achieving legal status in practice, bureaucratic or restrictive registration processes and other forms of state control over NGOs are important considerations for scoring here. A high level of state financing of NGOs is not always a sign of excellent performance, especially when the financing depends on political, economic or other extraneous interests, rather than the environmental performance of the NGOs. Any country whose legal practice contains occurrences of penalization, persecution or harassment of persons exercising their rights in conformity with the provisions of the Convention should score a 0 for this indicator. The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* the level of active and passive (upon their request only) involvement of NGOs in dialogue with governmental bodies and into relevant governmental programs, activities (ref.1, ref.5, ref.12, ref.14), including government delegations for international processes.
* the level of institutionalisation and financing of the involvement of NGOs (such as framework agreements, standing participation in relevant committees) (ref.2, ref.3, ref.4, ref.9, ref.15)
* direct financing of environmental NGOs through project based or operational support (ref.3, ref.4, ref.10, ref.13)
* differentiation of participating NGOs (is it objective or arbitrary, based on professional or rather political considerations, is transparency of financial support ensured? etc.) (ref.6)
* legal status of environmental NGOs in the practice of registration courts and other relevant bodies (freedom of forming, possible administrative burdens, complication of registration, possible re-registration campaigns, tax status, foreign relations etc.) (ref.7, ref.8, ref.11)

Please justify your score and explain the factors you consideredThere are three levels of NGO registration so to say* not registered – informal groups,
* registered as NGOs, but not as legal entities (cannot open a bank account, or go to a court),
* fully registered as NGOs and as legal entities.

all of them are vested with certain rights, with the most important rights vested on all categories (to operate, to access information, to participate in environmental decision-making).It is relatively easy and free of charge to register an NGO as a legal entity. Natural and legal persons are free to form civil association and essentially do whatever they want wherever they want. Limitations on creation and activity of civil associations are limited, they are prescribed by law and are justified.In terms of taxes there are no preferences.The level of state financing of NGOs is low. Independent NGOs prefer not to use this source of financing. I am not aware of occurrences of penalization, persecution or harassment of persons exercising their rights in conformity with the provisions of the Convention.Formally government both actively and passively involves NGOs in dialogue and into relevant governmental programs, activities (not in government delegations for international processes), when such involvement is prescribed by law. Effectiveness of the outcome of such involvement is doubtful, however this depends case by case.Most of the governmental authorities have established civil society councils. These are essentially fora for exchange of ideas as to the activity of a given authority. However, there are a few cases known, when MinEcology formed its civil society council only from lenient NGOs. |
| Art. 3(5) | 1. In practice, does the Party provide for broader access to information, more extensive public participation in decision-making or wider access to justice in environmental matters than is required by the Convention?

Article 3(5) provides:“5. The provisions of this Convention shall not affect the right of a Party to maintain or introduce measures providing for broader access to information, more extensive public participation in decision-making and wider access to justice in environmental matters than required by this Convention.” | **Scoring Guide:**3 = Always or almost always2 = Frequently1 = Rarely0 = NeverSome of the provisions of national legislation that can be regarded to go beyond what is required by the Convention, do not work on practice. However, information requests are almost always answered within 5 working days period. 10 pages or less are always provided free of charge.  |
| Art. 3(7) | 1. In practice, how is the government’s performance in terms of promoting the application of the principles of the Aarhus Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment?

Art. 3(7) provides:“Each Party shall promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment.” | **Scoring guide**3 = Excellent 2 = Good1 = Fair0 = Poor or non-existentWhile they by no means reflect the wide range of international processes and organizations within the scope of article 3(7), as a proxy to evaluate this indicator, please assess the extent to which the Party:1. Promoted the application of the principles of the Aarhus Convention in the UNFCCC process, including at both the national and international levels before, during and after UNFCCC meetings.
2. Promoted the application of the principles of the Aarhus Convention in UNEA, including UNEP’s recent consultation exercise regarding its new access to information policy and stakeholder engagement policy.

Please refer to the Almaty Guidelines for guidance on some ways that Parties may promote the principles of the Convention in international processes.Please justify your score and explain the factors you considered.The Party is not known to promote Aarhus principles in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment. |
| 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 judicialproceedings.” | **Scoring guide**3 = Excellent 2 = Good1 = Fair0 = Poor or non-existentThe references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)The score should, inter alia, reflect how effectively the state system prevents (or rather encourages) SLAPP cases or costly media campaigns against public participation in environmental matters. The efforts of such institutions as the ombudsman or public attorneys might play important roles in this protective work. In addition to these factors, all kinds of misuse of State powers (e.g. handpicked tax and revenue office investigations, arbitrary arrest, imposition of fines, incarceration and deportation of environmental activists etc.) belong within the scope of this indicator. Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* the occurrence of strategic lawsuits against public participation (SLAPP cases) or other similar legal manoeuvres initiated against NGOS, local communities or individuals, where legal tools are misused/abused in order to retaliate in respect of public participation, or intimidate the public from participating (ref.1, ref.5)
* the practice of the ombudsman or other similar bodies (prosecutors, auditing offices etc.), if any, in such cases (ref.2)
* the typical reaction of the government to civil disobedience actions? (ref.3)
* are any whistleblower protection rules applied effectively? are there in practice instances of conflicts of interest when environmental complaints are handled? (ref.4, ref.6)
* is the pursuit of legal costs applied in such a way as to penalise or harass those who used their participation rights? (ref.7)
* use of the media to harass or insult those who exercise their participation rights (ref.8)

Please justify your score and explain the factors you considered.The cases of misuse of State powers (e.g. handpicked tax and revenue office investigations, arbitrary arrest, imposition of fines, incarceration and deportation of environmental activists etc.) are very rare.However, the state system does a very small effort in prevention of misuse/abuse of defamation cases. Those have been known to be used against NGOs, local communities or individuals in order to intimidate the public from participating. The state system does not recognize and therefore prevent SLAPP cases or costly media campaigns against public participation in environmental matters. There is no Anti-SLAPP legislation. The legislation includes whistleblower protection rules, and those are known to be used in practice.Legal costs are known to be applied in such a way as to penalise or harass those who used their participation rights. Private parties when sued by NGOs in case of winning often claim legal costs inter alia in order to discourage any future legal action against them by this or any other NGO. Courts apply general rules on legal costs in these cases, for legislation does not provide for any exceptions for NGOs or plaintiffs in public interest cases etc. |
| 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 participatein decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.” | **Scoring guide**3 = Never (insofar as aware) 2 = Very rarely (no more than 1 example in past 5 years)1 = Sometimes (between 2 and 4 examples in past 5 years)0 = Often (5 or more examples in past 5 years)We suppose that the scandalous events of discrimination leave their traces in the media, community media and the collective memory of the green NGO community. However, discrimination can be more nuanced than this. It may not be intentional and may not be always reported in the media. For example, authorities may refuse to respond to a request for access to information sent from overseas by a foreign citizen, because they are not aware that art 3(9) means that this rights must be provided to everyone, no matter where in the world they are.As an example of discrimination in public participation, persons across borders may not be notified of a project that may have transboundary impacts, and thus may miss out on their chance to participate in the decision-making, or the main documents may not be translated into their language, so they cannot effectively participate. Furthermore, the hearing in respect of such a project may be held in the main capital, such that persons across the border have difficulty travelling there.These may not be “deliberate” discrimination occurrences, but they still effectively prevent those members of the public concerned from participating.The reference cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)Take into consideration, for example:* occurrences of discrimination based on nationality, language etc. (ref.1)

Please justify your score and explain the factors you considered.In terms of access to information - the law clearly says “any natural or legal person including… “. In the overwhelming majority of cases all requests (including from foreigners within or outside Ukraine and minors) are answered. This is also achieved by the existence of exhaustive list of only 4 legal ground for refusal, none of which would allow discrimination.In terms of public participation - cases of various discrimination scenarios occurred often in the past years, due to 1) lack of proper legal framework for public participation; 2) lack of proper definition of “the public concerned”; 3) old Law on civil associations (revised in 2012) divided NGOs into local, national and international. Although the law did not prohibit NGOs to work outside of their regional scope, this division was often used to ban NGOs from public participation based on their place of registration. The practice remains (specially on the lower level) even though the law was changed. |

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?

I think it is fine.

##

## II. Access to information pillar

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

| **Aarhus provision** | **Legal indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 4(1)(a) | 1. How well has Art. 4(1)(a) been enacted?

Art. 4(1)(a) provides:“1. Each Party shall ensure that, subject to the following paragraphs of this article, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information: **(a) Without an interest having to be stated;**(b) In the form requested unless: (i) It is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form; or (ii) The information is already publicly available in another form.”  | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Literal enactment the Law on Access to Public Information (№ 2939-VI, 2011) <http://zakon4.rada.gov.ua/laws/show/2939-17>**Стаття 19. Оформлення запитів на інформацію**2. Запитувач має право звернутися до розпорядника інформації із запитом на інформацію незалежно від того, стосується ця інформація його особисто чи ні, без пояснення причини подання запиту. |
| 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 whiach case reasons shall be given for making it available in that form; or** **(ii) The information is already publicly available in another form.”** | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Enactment which goes further than requiredthe Law on Access to Public Information (№ 2939-VI, 2011) <http://zakon4.rada.gov.ua/laws/show/2939-17>the information shall be provided in the form requested. No exceptions are envisaged. It is even explicitly prohibited to deny provision of a document, on the grounds of its availability on-line, or in any other generally accessible way.**Стаття 22. Відмова та відстрочка в задоволенні запиту на інформацію**1. Розпорядник інформації має право відмовити в задоволенні запиту в таких випадках:1) розпорядник інформації не володіє і не зобов'язаний відповідно до його компетенції, передбаченої законодавством, володіти інформацією, щодо якої зроблено запит;2) інформація, що запитується, належить до категорії інформації з обмеженим доступом відповідно до частини другої статті 6 цього Закону;3) особа, яка подала запит на інформацію, не оплатила передбачені статтею 21 цього Закону фактичні витрати, пов'язані з копіюванням або друком;4) не дотримано вимог до запиту на інформацію, передбачених частиною п'ятою статті 19 цього Закону.2. Відповідь розпорядника інформації про те, що інформація може бути одержана запитувачем із загальнодоступних джерел, або відповідь не по суті запиту вважається неправомірною відмовою в наданні інформації. |
| Art. 4(2) | 1. How well has Art. 4(2) been enacted?

 “The environmental information referred to in paragraph 1 above [i.e. Art. 4(1)] shall be made available as soon as possible and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request. The applicant shall be informed of any extension and of the reasons justifying it.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Enactment which goes further than requiredthe Law on Access to Public Information (№ 2939-VI, 2011) <http://zakon4.rada.gov.ua/laws/show/2939-17>5 working days – general rule48 hours - in urgent cases20 working ways – if volume or the complexity of the information justify an extension of 5 days periodСтаття 20. Строк розгляду запитів на інформацію1. Розпорядник інформації має надати відповідь на запит на інформацію не пізніше п'яти робочих днів з дня отримання запиту.2. У разі якщо запит на інформацію стосується інформації, необхідної для захисту життя чи свободи особи, щодо стану довкілля, якості харчових продуктів і предметів побуту, аварій, катастроф, небезпечних природних явищ та інших надзвичайних подій, що сталися або можуть статись і загрожують безпеці громадян, відповідь має бути надана не пізніше 48 годин з дня отримання запиту.3. Клопотання про термінове опрацювання запиту має бути обґрунтованим.4. У разі якщо запит стосується надання великого обсягу інформації або потребує пошуку інформації серед значної кількості даних, розпорядник інформації може продовжити строк розгляду запиту до 20 робочих днів з обґрунтуванням такого продовження. Про продовження строку розпорядник інформації повідомляє запитувача в письмовій формі не пізніше п'яти робочих днів з дня отримання запиту. |
| 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 theapplicant of the public authority to which it believes it is possible to apply for the information requested or transfer the request to that authority and inform the applicant accordingly.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at allThese two provisions are assessed together here given their interrelationship.**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Literal enactment the Law on Access to Public Information (№ 2939-VI, 2011) <http://zakon4.rada.gov.ua/laws/show/2939-17>**Стаття 22. Відмова та відстрочка в задоволенні запиту на інформацію**1. Розпорядник інформації має право відмовити в задоволенні запиту в таких випадках:1) розпорядник інформації не володіє і не зобов'язаний відповідно до його компетенції, передбаченої законодавством, володіти інформацією, щодо якої зроблено запит;3. Розпорядник інформації, який не володіє запитуваною інформацією, але якому за статусом або характером діяльності відомо або має бути відомо, хто нею володіє, зобов'язаний направити цей запит належному розпоряднику з одночасним повідомленням про це запитувача. У такому разі відлік строку розгляду запиту на інформацію починається з дня отримання запиту належним розпорядником. |
| Art. 4(3)(b) | 1. How well has Art. 4(3)(b) been enacted?

Art. 4(3)(b) provides:“A request for environmental information may be refused if:(b) The request is manifestly unreasonable or formulated in too general a manner;” | **Scoring Guide:**3 = Enactment provides a narrower exception than the Convention provision2 = Enactment is fully in accord 1= Minor errors0 = Errors that are more than minor For present purposes, and in light of the text associated with a score of 3, enacting a provision that is narrower than the exception contained in the Convention should not be regarded as an error.**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Enactment which goes further than requiredthe Law on Access to Public Information (№ 2939-VI, 2011) <http://zakon4.rada.gov.ua/laws/show/2939-17>**Стаття 22. Відмова та відстрочка в задоволенні запиту на інформацію**1. Розпорядник інформації має право відмовити в задоволенні запиту в таких випадках:1) розпорядник інформації не володіє і не зобов'язаний відповідно до його компетенції, передбаченої законодавством, володіти інформацією, щодо якої зроблено запит;2) інформація, що запитується, належить до категорії інформації з обмеженим доступом відповідно до частини другої статті 6 цього Закону;3) особа, яка подала запит на інформацію, не оплатила передбачені статтею 21 цього Закону фактичні витрати, пов'язані з копіюванням або друком;4) не дотримано вимог до запиту на інформацію, передбачених частиною п'ятою статті 19 цього Закону.**Стаття 19. Оформлення запитів на інформацію**5. Запит на інформацію має містити:1) ім'я (найменування) запитувача, поштову адресу або адресу електронної пошти, а також номер засобу зв'язку, якщо такий є;2) загальний опис інформації або вид, назву, реквізити чи зміст документа, щодо якого зроблено запит, якщо запитувачу це відомо;3) підпис і дату за умови подання запиту в письмовій формі.The law allows to deny a request only in case it lacks any description of the information required. |
| 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 exemptionis provided for in national law or customary practice, taking into account the public interest served by disclosure.” | **Scoring Guide:**3 = Enactment provides a narrower exception than the Convention provision2 = Enactment is fully in accord 1= Minor errors0 = Errors that are more than minor For present purposes, and in light of the text associated with a score of 3, enacting a provision that is narrower than the exception contained in the Convention should not be regarded as an error.**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Literal enactment the Law on Access to Public Information (№ 2939-VI, 2011) <http://zakon4.rada.gov.ua/laws/show/2939-17>**Стаття 9. Службова інформація**1. Відповідно до вимог частини другої статті 6 цього Закону до службової може належати така інформація:1) що міститься в документах суб'єктів владних повноважень, які становлять внутрівідомчу службову кореспонденцію, доповідні записки, рекомендації, якщо вони пов'язані з розробкою напряму діяльності установи або здійсненням контрольних, наглядових функцій органами державної влади, процесом прийняття рішень і передують публічному обговоренню та/або прийняттю рішень;**Стаття 6. Публічна інформація з обмеженим доступом**2. Обмеження доступу до інформації здійснюється відповідно до закону при дотриманні сукупності таких вимог:1) виключно в інтересах національної безпеки, територіальної цілісності або громадського порядку з метою запобігання заворушенням чи злочинам, для охорони здоров'я населення, для захисту репутації або прав інших людей, для запобігання розголошенню інформації, одержаної конфіденційно, або для підтримання авторитету і неупередженості правосуддя;2) розголошення інформації може завдати істотної шкоди цим інтересам;3) шкода від оприлюднення такої інформації переважає суспільний інтерес в її отриманні. |
| 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 takinginto account whether the information requested relates to emissions into the environment.” | **Scoring Guide:**3 = Enactment provides a narrower exception than the Convention provision2 = Enactment is fully in accord 1= Minor errors0 = Errors that are more than minorFor present purposes, and in light of the text associated with a score of 3, enacting a provision that is narrower than the exception contained in the Convention should not be regarded as an error. Please note that if the national legal framework does not require the grounds for refusal to be “interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment,” this will be a “more than minor” error.**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Enactment which goes further than requiredThe national law does not provide for confidentiality of the proceedings of public authorities. |
| 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 takinginto account whether the information requested relates to emissions into the environment.” | **Scoring Guide:**3 = Enactment provides a narrower exception than the Convention provision2 = Enactment is fully in accord 1= Minor errors0 = Errors that are more than minor For present purposes, and in light of the text associated with a score of 3, enacting a provision that is narrower than the exception contained in the Convention should not be regarded as an error.Please note that if the national legal framework does not require the grounds for refusal to be “interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment,” this will be a “more than minor” error.**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incomplete and inconsistent enactmentthe Law on Access to Public Information (№ 2939-VI, 2011) <http://zakon4.rada.gov.ua/laws/show/2939-17>the Law of Ukraine on the Protection of the Environment (N 1264-XII, 1991)<http://zakon2.rada.gov.ua/laws/show/1264-12>When applying limitation in access to information the national legal framework requires to take into account the public interest served by disclosure (the third pillar of the three-pillar test of Article 6.2 of the Law on Access to Public Information).National legal framework, however, **does not require** grounds for refusal be interpreted in a restrictive way, taking into account whether the information requested relates to emissions into the environment.On the other hand, the Law on Information (Article 13), <http://zakon2.rada.gov.ua/laws/show/2657-12>clearly states that the environmental information can not be limited in access exept for the data on location of military facilities (Article 13). Інформація про стан довкілля, крім інформації про місце розташування військових об'єктів, не може бути віднесена до інформації з обмеженим доступом.This provision, hovever, has not been interpreted by either a regulator or by the courts and essentially is not applied. It is also inconsistent with the Law on Access to Public Information which clearly prohibits to apply confidentiality (one type of linformation of limited access) to the environmental information, but not all three of them.This creates unclarity and inconsistency in the legal framework. |
| 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 takinginto account whether the information requested relates to emissions into the environment.” | **Scoring Guide:**3 = Enactment provides a narrower exception than the Convention provision2 = Enactment is fully in accord 1= Minor errors0 = Errors that are more than minorFor present purposes, and in light of the text associated with a score of 3, enacting a provision that is narrower than the exception contained in the Convention should not be regarded as an error.Please note that if the national legal framework does not require the grounds for refusal to be “interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment,” this will be a “more than minor” error.**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incomplete and inconsistent enactmentthe Law on Access to Public Information (№ 2939-VI, 2011) <http://zakon4.rada.gov.ua/laws/show/2939-17>the Law of Ukraine on the Protection of the Environment (N 1264-XII, 1991)<http://zakon2.rada.gov.ua/laws/show/1264-12>When applying limitation in access to information the national legal framework requires to take into account the public interest served by disclosure (the third pillar of the three-pillar test of Article 6.2 of the Law on Access to Public Information).National legal framework, however, **does not require** grounds for refusal be interpreted in a restrictive way, taking into account whether the information requested relates to emissions into the environment.On the other hand, the Law on Information (Article 13), <http://zakon2.rada.gov.ua/laws/show/2657-12>clearly states the environmental information can not be limited in access exept for the data on location of military facilities (Article 13). Інформація про стан довкілля, крім інформації про місце розташування військових об'єктів, не може бути віднесена до інформації з обмеженим доступом.This provision, hovever, has not been interpreted by either a regulator or by the courts and essentially is not applied. It is also inconsistent with the Law on Access to Public Information which clearly prohibits to apply confidentiality (one type of linformation of limited access) to the environmental information, but not all three of them.This creates unclarity and inconsistency in the legal framework. |
| 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 takinginto account whether the information requested relates to emissions into the environment.” | **Scoring Guide:**3 = Enactment provides a narrower exception than the Convention provision2 = Enactment is fully in accord 1= Minor errors0 = Errors that are more than minorFor present purposes, and in light of the text associated with a score of 3, enacting a provision that is narrower than the exception contained in the Convention should not be regarded as an error.Please note that if the national legal framework does not require the grounds for refusal to be “interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment,” this will be a “more than minor” error.**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Enactment which goes further than requiredthe Law on Access to Public Information (№ 2939-VI, 2011) <http://zakon4.rada.gov.ua/laws/show/2939-17>When applying limitation in access to information the national legal framework requires to take into account the public interest served by disclosure (the third pillar of the three-pillar test of Article 6.2 of the Law on Access to Public Information).National legal framework, however, **does not require** grounds for refusal be interpreted in a restrictive way, taking into account whether the information requested relates to emissions into the environment.The law explicitly prohibits to apply confidentiality to environmental information, thus there is no need in the public interest or emissions tests.Стаття 7. Конфіденційна інформаціяКонфіденційна інформація - інформація, доступ до якої обмежено фізичною або юридичною особою, крім суб'єктів владних повноважень, та яка може поширюватися у визначеному ними порядку за їхнім бажанням відповідно до передбачених ними умов. Не може бути віднесена до конфіденційної інформація, зазначена в частині першій і другій статті 13 цього Закону.Стаття 13. Розпорядники інформації2. До розпорядників інформації, зобов'язаних оприлюднювати та надавати за запитами інформацію, визначену в цій статті, у порядку, передбаченому цим Законом, прирівнюються суб'єкти господарювання, які володіють:1) інформацією про стан довкілля;The confidentiality of commercial and industrial information is protected by law. However, the Law on Access to Public Information says that access to environmental information cannot be limited on this ground. The Law also requires private parties possessing environmental information to provide it upon a request.  |
| 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 takinginto account whether the information requested relates to emissions into the environment.” | **Scoring Guide:**3 = Enactment provides a narrower exception than the Convention provision2 = Enactment is fully in accord 1= Minor errors0 = Errors that are more than minorFor present purposes, and in light of the text associated with a score of 3, enacting a provision that is narrower than the exception contained in the Convention should not be regarded as an error.Please note that if the national legal framework does not require the grounds for refusal to be “interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment,” this will be a “more than minor” error.**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Enactment which goes further than requiredthe Law on Access to Public Information (№ 2939-VI, 2011) <http://zakon4.rada.gov.ua/laws/show/2939-17>When applying limitation in access to information the national legal framework requires to take into account the public interest served by disclosure (the third pillar of the three-pillar test of Article 6.2 of the Law on Access to Public Information).National legal framework, however, **does not require** grounds for refusal be interpreted in a restrictive way, taking into account whether the information requested relates to emissions into the environment.The law explicitly prohibits to apply intellectual property rights argument to environmental information, thus there is no need in the public interest or emissions tests.Стаття 7. Конфіденційна інформаціяКонфіденційна інформація - інформація, доступ до якої обмежено фізичною або юридичною особою, крім суб'єктів владних повноважень, та яка може поширюватися у визначеному ними порядку за їхнім бажанням відповідно до передбачених ними умов. Не може бути віднесена до конфіденційної інформація, зазначена в частині першій і другій статті 13 цього Закону.Стаття 13. Розпорядники інформації2. До розпорядників інформації, зобов'язаних оприлюднювати та надавати за запитами інформацію, визначену в цій статті, у порядку, передбаченому цим Законом, прирівнюються суб'єкти господарювання, які володіють:1) інформацією про стан довкілля;Intellectual property rights are protected by law. However, the Law on Access to Public Information says that access to environmental information cannot be limited on this ground. The Law also requires private parties possessing environmental information to provide it upon a request.  |
| 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 takinginto account whether the information requested relates to emissions into the environment.” | **Scoring Guide:**3 = Enactment provides a narrower exception than the Convention provision2 = Enactment is fully in accord 1= Minor errors0 = Errors that are more than minorFor present purposes, and in light of the text associated with a score of 3, enacting a provision that is narrower than the exception contained in the Convention should not be regarded as an error.Please note that if the national legal framework does not require the grounds for refusal to be “interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment,” this will be a “more than minor” error.**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Enactment which goes further than requiredthe Law on Access to Public Information (№ 2939-VI, 2011) <http://zakon4.rada.gov.ua/laws/show/2939-17>the Law of Ukraine on the Protection of the Environment (N 1264-XII, 1991)<http://zakon2.rada.gov.ua/laws/show/1264-12>When applying limitation in access to information the national legal framework requires to take into account the public interest served by disclosure (the third pillar of the three-pillar test of Article 6.2 of the Law on Access to Public Information).National legal framework, however, **does not require** grounds for refusal be interpreted in a restrictive way, taking into account whether the information requested relates to emissions into the environment.The law explicitly prohibits to apply confidentiality of personal data argument to environmental information, thus there is no need in the public interest or emissions tests.Стаття 7. Конфіденційна інформаціяКонфіденційна інформація - інформація, доступ до якої обмежено фізичною або юридичною особою, крім суб'єктів владних повноважень, та яка може поширюватися у визначеному ними порядку за їхнім бажанням відповідно до передбачених ними умов. Не може бути віднесена до конфіденційної інформація, зазначена в частині першій і другій статті 13 цього Закону.Стаття 13. Розпорядники інформації2. До розпорядників інформації, зобов'язаних оприлюднювати та надавати за запитами інформацію, визначену в цій статті, у порядку, передбаченому цим Законом, прирівнюються суб'єкти господарювання, які володіють:1) інформацією про стан довкілля;Confidentiality of personal data is protected by law. However, the Law on Access to Public Information says that access to environmental information cannot be limited on this ground. The Law also requires private parties possessing environmental information to provide it upon a request. Law of Ukraine on Protection of Personal Data (01.06.2010, № 2297-VI), http://zakon2.rada.gov.ua/laws/show/2297-17Ч. 2 статті 16Поширення персональних даних без згоди суб'єкта персональних даних або уповноваженої ним особи дозволяється у випадках, визначених законом, і лише (якщо це необхідно) в інтересах національної безпеки, економічного добробуту та прав людини.Disclosure of personal data without a consent of the person is allowed in cases prescribed by law and only in the interest of national security, economic prosperity and human rights. |
| 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 legalobligation 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 takinginto account whether the information requested relates to emissions into the environment.” | **Scoring Guide:**3 = Enactment provides a narrower exception than the Convention provision2 = Enactment is fully in accord 1= Minor errors0 = Errors that are more than minor For present purposes, and in light of the text associated with a score of 3, enacting a provision that is narrower than the exception contained in the Convention should not be regarded as an error.Please note that if the national legal framework does not require the grounds for refusal to be “interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment,” this will be a “more than minor” error.**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Enactment which goes further than requiredthe Law on Access to Public Information (№ 2939-VI, 2011) <http://zakon4.rada.gov.ua/laws/show/2939-17>the Law of Ukraine on the Protection of the Environment (N 1264-XII, 1991)<http://zakon2.rada.gov.ua/laws/show/1264-12>When applying limitation in access to information the national legal framework requires to take into account the public interest served by disclosure (the third pillar of the three-pillar test of Article 6.2 of the Law on Access to Public Information).National legal framework, however, **does not require** grounds for refusal be interpreted in a restrictive way, taking into account whether the information requested relates to emissions into the environment.The law explicitly prohibits to apply confidentiality argument (of any kind) to environmental information, thus there is no need in the public interest or emissions tests.Стаття 7. Конфіденційна інформаціяКонфіденційна інформація - інформація, доступ до якої обмежено фізичною або юридичною особою, крім суб'єктів владних повноважень, та яка може поширюватися у визначеному ними порядку за їхнім бажанням відповідно до передбачених ними умов. Не може бути віднесена до конфіденційної інформація, зазначена в частині першій і другій статті 13 цього Закону.Стаття 13. Розпорядники інформації2. До розпорядників інформації, зобов'язаних оприлюднювати та надавати за запитами інформацію, визначену в цій статті, у порядку, передбаченому цим Законом, прирівнюються суб'єкти господарювання, які володіють:1) інформацією про стан довкілля;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 are protected by law in the context of confidential information. Hovever, with regard to environmental information all parties (both public and private) are under / capable of being put under a legal obligation to provide environmental information upon a request.Furthermore, the Law on Access to Public Information says that access to environmental information cannot be limited on this ground. The Law also requires private parties possessing environmental information to provide it upon a request.  |
| 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 takinginto account whether the information requested relates to emissions into the environment.” | **Scoring Guide:**3 = Enactment provides a narrower exception than the Convention provision2 = Enactment is fully in accord 1= Minor errors0 = Errors that are more than minor For present purposes, and in light of the text associated with a score of 3, enacting a provision that is narrower than the exception contained in the Convention should not be regarded as an error.Please note that if the national legal framework does not require the grounds for refusal to be “interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment,” this will be a “more than minor” error.**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incomplete and inconsistent enactmentThe Law on the Red Book of Ukraine (N 3055-III, 2002),<http://zakon0.rada.gov.ua/laws/show/3055-14>prohibit dissemination of data on the exact location as well as other date if that may adversely affect conditions of protection and reproduction of the species included in the Red Book.Стаття 12Не допускається оприлюднення відомостей про точне місце перебування (зростання) об'єктів Червоної книги України та інших відомостей про них, якщо це може призвести до погіршення умов охорони та відтворення цих об'єктів.However, the Law on Access to Public Information (№ 2939-VI, 2011) does not envisage this ground for the refusal.the Law on Access to Public Information (№ 2939-VI, 2011) <http://zakon4.rada.gov.ua/laws/show/2939-17>the Law of Ukraine on the Protection of the Environment (N 1264-XII, 1991)<http://zakon2.rada.gov.ua/laws/show/1264-12>When applying limitation in access to information the national legal framework requires to take into account the public interest served by disclosure (the third pillar of the three-pillar test of Article 6.2 of the Law on Access to Public Information).National legal framework, however, **does not require** grounds for refusal be interpreted in a restrictive way, taking into account whether the information requested relates to emissions into the environment.On the other hand, the Law on Information (Article 13), <http://zakon2.rada.gov.ua/laws/show/2657-12>clearly states the environmental information can not be limited in access exept for the data on location of military facilities. 3. Інформація про стан довкілля, крім інформації про місце розташування військових об'єктів, не може бути віднесена до інформації з обмеженим доступом.This creates unclarity and inconsistency in the legal framework. |
| N/A | 1. Does the law provide for any situations in which a request for environmental information may be refused which are not contemplated by Art. 4(3) or 4(4) of the Aarhus Convention?
 | **Scoring Guide:**3 = No0 = Yes**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)the Law on Access to Public Information (№ 2939-VI, 2011) <http://zakon4.rada.gov.ua/laws/show/2939-17>The law allows public authorities to refuse a request, if a person submitting a request did not pay the fee for provision of information, or if the request does not include name or address of the person submitting it or the request is not signed or dated.Стаття 22. Відмова та відстрочка в задоволенні запиту на інформаціюРозпорядник інформації має право відмовити в задоволенні запиту в таких випадках:3) особа, яка подала запит на інформацію, не оплатила передбачені статтею 21 цього Закону фактичні витрати, пов'язані з копіюванням або друком;4) не дотримано вимог до запиту на інформацію, передбачених частиною п'ятою статті 19 цього Закону. |
| Art. 4(6) | 1. How well has Art. 4(6) been enacted?

Art. 4(6) provides:“Each Party shall ensure that, if information exempted from disclosure under paragraphs 3 (c) and 4 above [i.e. Art. 4(3)(c) and 4(4)] can be separated out without prejudice to the confidentiality of the information exempted, public authorities make available the remainder of the environmental information that has been requested.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Literal enactment the Law on Access to Public Information (№ 2939-VI, 2011) <http://zakon4.rada.gov.ua/laws/show/2939-17>Стаття 6. Публічна інформація з обмеженим доступом7. Обмеженню доступу підлягає інформація, а не документ. Якщо документ містить інформацію з обмеженим доступом, для ознайомлення надається інформація, доступ до якої необмежений. |
| Art. 4(7), first sentence | 1. How well has the first sentence of Art. 4(7) been enacted?

The first sentence of Art. 4(7) provides:“A refusal of a request shall be in writing if the request was in writing or the applicant so requests.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Literal enactment the Law on Access to Public Information (№ 2939-VI, 2011) <http://zakon4.rada.gov.ua/laws/show/2939-17>Стаття 22. Відмова та відстрочка в задоволенні запиту на інформацію5. Відмова в задоволенні запиту на інформацію надається в письмовій формі. |
| Art. 4(7), second sentence | 1. How well has the second sentence of Art. 4(7) been enacted?

The second sentence of Art. 4(7) provides:“A refusal shall state the reasons for the refusal and give information on access to the review procedure provided for in accordance with article 9.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Literal enactment the Law on Access to Public Information (№ 2939-VI, 2011) <http://zakon4.rada.gov.ua/laws/show/2939-17>Стаття 22. Відмова та відстрочка в задоволенні запиту на інформацію4. У відмові в задоволенні запиту на інформацію має бути зазначено:1) прізвище, ім'я, по батькові та посаду особи, відповідальної за розгляд запиту розпорядником інформації;2) дату відмови;3) мотивовану підставу відмови;4) порядок оскарження відмови;5) підпис. |
| Art. 4(7), third and fourth sentences | 1. How well have the third and fourth sentences of Art. 4(7) been enacted?

The third and fourth sentences of Art. 4(7) provide:“The refusal shall be made as soon as possible and at the latest within one month, unless the complexity of the information justifies an extension of this period up to two months after the request. The applicant shall be informed of any extension and of the reasons justifying it. | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Enactment which goes further than requiredthe Law on Access to Public Information (№ 2939-VI, 2011) <http://zakon4.rada.gov.ua/laws/show/2939-17>5 working days – general rule (either for provision of the information or for a written refusal)20 working ways – if volume and the complexity of the information justify an extension of a 5 days periodСтаття 20. Строк розгляду запитів на інформацію1. Розпорядник інформації має надати відповідь на запит на інформацію не пізніше п'яти робочих днів з дня отримання запиту.4. У разі якщо запит стосується надання великого обсягу інформації або потребує пошуку інформації серед значної кількості даних, розпорядник інформації може продовжити строк розгляду запиту до 20 робочих днів з обґрунтуванням такого продовження. Про продовження строку розпорядник інформації повідомляє запитувача в письмовій формі не пізніше п'яти робочих днів з дня отримання запиту.Стаття 22. Відмова та відстрочка в задоволенні запиту на інформацію4. У відмові в задоволенні запиту на інформацію має бути зазначено:1) прізвище, ім'я, по батькові та посаду особи, відповідальної за розгляд запиту розпорядником інформації;2) дату відмови;3) мотивовану підставу відмови;4) порядок оскарження відмови;5) підпис. |
| Art. 4(8) | 1. How well has Art. 4(8) been enacted?

Art. 4(8) provides:“Each Party may allow its public authorities to make a charge for supplying information, but such charge shall not exceed a reasonable amount.Public authorities intending to make such a charge for supplying information shall make available to applicants a schedule of charges which may be levied, indicating the circumstances in which they may be levied or waived and when the supply of information is conditional on the advance payment of such a charge.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)the Law on Access to Public Information (№ 2939-VI, 2011) <http://zakon4.rada.gov.ua/laws/show/2939-17>Стаття 21. Плата за надання інформації1. Інформація на запит надається безкоштовно.2. У разі якщо задоволення запиту на інформацію передбачає виготовлення копій документів обсягом більш як 10 сторінок, запитувач зобов'язаний відшкодувати фактичні витрати на копіювання та друк.3. Розмір фактичних витрат визначається відповідним розпорядником на копіювання та друк в межах [граничних норм](http://zakon4.rada.gov.ua/laws/show/740-2011-%D0%BF), встановлених Кабінетом Міністрів України. У разі якщо розпорядник інформації не встановив розміру плати за копіювання або друк, інформація надається безкоштовно.4. При наданні особі інформації про себе та інформації, що становить суспільний інтерес, плата за копіювання та друк не стягується.According to Article 21.1 of the Law on Access to Public Information1. Information in response to requests is provided free of charge.2. If the response requires photocopies of more than 10 pages, the requester must compensate the actual costs of copying and printing.3. The amount of actual costs is determined by authorities within the limits established by the Cabinet of Ministers of Ukraine. In case a public authority has not established the price for printing and copying, the information is provided free of charge.According to the Decree of Cabinet of Ministers of Ukraine on the Limits of reimbursement of actual costs of coping and printing provided on the requests (№ 740, 2011), <http://zakon2.rada.gov.ua/laws/show/740-2011-%D0%BF>the reimbursement cannot exceed 0,001 % of the minimal monthly wage for one A4 page. In our opinion it is a reasonable fee.The law does not require public authorities to 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. |

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

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

###

### Information on request – Practice indicators

| **Aarhus provision** | **Practice indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 4(1) | 1. As a general matter, how good has the Party’s performance been in practice in terms of ensuring access to environmental information in accordance with Art. 4(1)?

Art. 4(1) provides:“1. Each Party shall ensure that, subject to the following paragraphs of this article, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information: (a) Without an interest having to be stated; (b) In the form requested unless: (i) It is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form; or (ii) The information is already publicly available in another form.” | **Scoring guide**3 = Excellent 2 = Good1 = Fair0 = Poor or non-existentThe references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)Take into account here in general the level of institutionalisation of passive (upon request) information servicing; the level of use of electronic communication; whether the country has institutionalized a records and monitoring system for compiling information request statistics and also the available statistics relating to information requests and related decisions (outcome, timeliness, format etc.) Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* availability of statistics on information requests and servicing, including research and analyses and measures taken based on them (ref.1, ref.2, ref.11, ref.12, ref.15, ref.16, ref.17, ref.18)
* richness of data sources used for information servicing (ref.4, ref.19)
* the role of any statistical organisations and aggregate data in information servicing (ref.8)
* transforming data to provide an easier to handle information (knowledge, wisdom) (ref.10)
* modalities of receiving and servicing information requests (ref.1, ref.8, ref.20, ref.21)
* use of information help desks and other similar units to service environmental information requests (ref.4, ref.16)
* is there an information commissioner or similar body which receives reports (e.g. annual statistics) from public authorities on information processing and servicing, perhaps also dealing with complaints from citizens (or complaints and information requests are managed by the desk officers) (ref.5, ref.13, ref.14)
* establishing central body to guide the administrative organisations and officials dealing with information requests (ref.7)
* protection of data owners without infringing the rights of requesters (ref.6, ref.9)
* cases in which public authorities seek to insist on an interest being stated
* cases in which public authorities provide information in a format that is impossible to process (e.g. PDF) in circumstances where the original is easily processable (e.g. Excel sheet), despite being asked to provide the processable version

Please justify your score and explain the factors you considered.As a general matter, the Party’s performance in practice in terms of ensuring access to environmental information is good. Cases in which public authorities seek to insist on an interest being stated are very rare.No central body, however, was established to guide the administrative organisations and officials dealing with information requests.Statistics on information requests and servicing is normally available. It is published on the web-pages of the public authorities.Since the central bodies would normally score on this indicator 3, the local authorities would often only 1, so the general score I am assigning is 2 (good). |
| Art. 4(2)First sentence | 1. In practice, how good is the Party’s performance in terms of complying with the first sentence of Art. 4(2)

 “**The environmental information referred to in paragraph 1 above [i.e. Art. 4(1)] shall be made available as soon as possible and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request.** The applicant shall be informed of any extension and of the reasons justifying it.” | **Scoring guide**3 = Excellent (provision of information either immediately or in considerably less than one month is typical)2 = Good (majority of requests are serviced within the prescribed deadlines)1 = Fair (minority of requests are serviced within the prescribed deadlines)0 = Poor or non-existent (almost no or no requests are serviced within the prescribed deadlines); or no coherent dataset available to score this indicator\*\*If there is no coherent dataset available to allow you to assess this indicator, please consider your own experience in practice as well as the experiences of any colleagues or interviewees. Whilst Art. 4(2) does not explicitly require the collation of such data, because it might be too burdensome on the Parties, some Parties monitor at least parts of compliance with this provision. In scoring this indicator, authorities keeping to deadlines is not the only important factor; other important considerations would include typical or repeated traits/behaviours of the authorities e.g. at first they only respond to the request (e.g. notifying the requester that the request is accepted) and they delay the actual servicing of the requested information. The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)Insofar as possible, please take into consideration *inter alia*:* how many information requests are responded to immediately? (ref.1)
* to what extent are the prescribed deadlines met? (ref.2, ref.4, ref.5)
* keeping to the rules regarding the extension of deadlines (ref.3)
* any time gaps between responding to the request and actual provision of the information itself (ref.5)
* use of the “heavy workload” argument (ref.6)
* frequency of occurrence of no answer at all to requests (ref.6)

Please justify your score and explain the factors you considered.“Classic” public authorities (state bodies) in the overwhelming majority of cases do meet 5 working days deadline for consideration of requests (they provide either information requested or justified refusals). The cases of no answer at all are rare.In the majority of cases, if a request concerns a less than 10 pages long document, it is answered in 5 working days.If the information requested constitutes more than 10 pages, in 5 working days a requester would be notified of a necessity to pay the fee (the exact amount of the fee will be stated). When a public authority would receive a request again, now with the payment document included, it would in many cases (not all) use the extended 20 working days deadline to answer the request. Local authorities’ implementation of access to public information provisions lags behind.Other providers of environmental information (referred to in Article 2b and 2c of the Aarhus Convention as well as in Article 13 of the Law on Access to Public Information) in the majority of cases do not consider themselves to be covered by either the Convention or the Law, thus they provide letters of refusals (within or after the deadline).In a few occasions environmental NGOs have challenged these refusals to courts and won. Please see the decision of the High Economic Court of Ukraine <http://www.reyestr.court.gov.ua/Review/23967697>Nevertheless, it is becoming increasingly difficult and expensive to go to a court in any kind of cases, including in cases of challenging access to environmental information refusals. Also there is no expeditious and free/cheap administrative review of access to information refusals.  |
| Art. 4(2)Second sentence | 1. In practice, how good is the Party’s performance in terms of complying with the second sentence of Art. 4(2)

 “The environmental information referred to in paragraph 1 above [i.e. Art. 4(1)] shall be made available as soon as possible and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request. **The applicant shall be informed of any extension and of the reasons justifying it.”** | **Scoring guide**3 = Excellent (applicants always or almost always informed of the extension and reasons, and the reasons cited always or almost always fall within those permissible under Art. 4(2))2 = Good (applicants normally informed of the extension and reasons, and the reasons cited normally fall within those permissible under Art. 4(2))1 = Fair (applicants rarely informed of the extension and reasons; and where reasons are cited they rarely fall within those permissible under Art. 4(2))0 = Poor or non-existent (applicants are typically not informed of the extension and reasons; and where reasons are cited they only very rarely fall within those permissible under Art. 4(2)); or no coherent dataset available to score this indicator\*\*If there is no coherent dataset available to allow you to assess this indicator, please consider your own experience in practice as well as the experiences of any colleagues or interviewees. Please indicate in the comments how you came to your conclusion and the resources that were available. Whilst Art. 4(2) does not explicitly require the collation of such data, because it might be too burdensome on the Parties, some Parties monitor at least parts of compliance with this provision. As explained in the comment to the previous indicator governmental bodies and local authorities in the majority of cases do meet the deadlines and, if this is the case, in 5 working days inform requesters that 1) the information requested exceeds 10 pages and they have to pay or it, or that 2) in order to find the requested information it is necessary to work with a lot of sources.These two cases are legitimate grounds for a prolonged deadline – 20 working days.Other providers of environmental information (referred to in Article 2b and 2c of the Aarhus Convention as well as in Article 13 of the Law on Access to Public Information) in the majority of cases either do not reply or reply disrespecting the deadlines. |
| 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 theapplicant of the public authority to which it believes it is possible to apply for the information requested or transfer the request to that authority and inform the applicant accordingly.” | **Scoring Guide:**3 = Yes, always 2 = Yes, frequently 1 = No, rarely 0 = No, neverFor the purpose of this indicator, please regard “promptly” as being within one week of the public authority receiving the information requestThe reference cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)Please note *inter alia*:* conditions relating to the onward referral of information requests (ref.1)

Please justify your score and explain the factors you considered.The Law requires public authorities to refer information requests within 5 working days, and they in the majority of cases keep the deadline.Yet, the referrals themselves happen rarely. Only in cases when a central authority would refer a request to one of its local offices or vice-versa. Cases when public authorities refer requests to other bodies (like the Ministry of Ecology to the Ministry of Health) are very rare. Usually, they just say that they do not 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.” | **Scoring Guide:**3 = Article 4(3)(b) is interpreted restrictively AND with respect to article 4(3)(c), there are no exemptions in national law or practice for materials in the course of completion or for internal communications of public authorities.2 = Article 4(3)(b) is interpreted restrictively AND with respect to article 4(3)(c), there is no exemption in national law or practice for materials in the course of completion OR for internal communications of public authorities OR any such exemption is interpreted restrictively, taking into account the public interest served by disclosure1 = Article 4(3)(b) and (c) are not interpreted restrictively in practice but in the case of Art. 4(3)(c)) the public interest served by disclosure is typically taken into account. 0 = Article 4(3)(b) and (c) are not interpreted restrictively in practice, and in the case of Art. 4(3)(c), the public interest served by disclosure is frequently not taken into account. The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)Insofar as possible, please take into consideration *inter alia*:* the practice in cases where the requested information is said to be too voluminous (ref.1, ref.5)
* the practice in cases where the request is said to be formulated in too general a manner (ref.2)
* the use of exemptions in connection with advice and considerations in preparatory phases of administrative decisions (Especially in the light of the principle of ensuring even procedural positions for all parties and the right to legal remedies against the whole decision, including expert opinions and other supporting materials.) (ref.3, ref.4, ref.6, ref.7, ref.8)

Please justify your score and explain the factors you considered.Article 4(3)(b) is not interpreted restrictively in practice, because the law does not require this.However, in cases where the requested information is considered to be voluminous, public authorities would calculate the fee and if it is paid, the information would normally be provided. If the fee is not paid, the request will be denied based on the failure of the requester to pay a respective fee.The Law provide for such exemptions as 1) materials in the course of completion, 2) internal communications of public authorities, which are used often. When applying these exceptions the law requires public authorities to apply three-pillar test (limitation is legal if it serves one of the legitimate interests listed in the law, disclosure of information adversely effects such an interest, and the need to protect the information overrides the public interest in its disclosure) every time they consider denying a request based on limitation of access to a requested information. However, they never do this in practice. Public authorities would normally only cite the provision of the law listing an exemption and would not provide any further justification. |
| 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 legalobligation 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 takinginto account whether the information requested relates to emissions into the environment.” | **Scoring Guide:**3 = Very restrictively, giving strong weight to the public interest served by disclosure and whether the information requested relates to emissions into the environment2 = Restrictively, always or almost always taking into account the public interest served by disclosure and also whether the information requested relates to emissions into the environment.1 = EITHER not restrictively, OR the authorities do not always or almost always take into account the public interest served by disclosure OR if the information requested relates to emissions into the environment0 = Not restrictively and authorities do not always or almost always take into account the public interest served by disclosure or if the information requested relates to emissions into the environment.Please note that some of the exemptions might be in connection with short term economic interests (such as business secrets), while others might - in contrast - protect the environment itself (e.g. Para (h) of Art 4(4)). Naturally, restrictions in access to information falling within this second group of issues should not be considered as indicators of a poorer practice in ensuring environmental democracy. The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing).Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* ‘legitimate economic interests’ and confidentiality of business secrets (ref.4)
* balancing the right to access environmental information and intellectual property rights (e.g. in the case of GMOs) (ref.1)
* any cases where environmental impact assessment documentation, wholly or partly, is exempted from disclosure (ref.2)
* the handling of information of environmental, nature protection sensibility (ref.3)

Please justify your score and explain the factors you considered.When applying these exceptions the law requires public authorities to apply three-pillar test (limitation is legal if it serves one of the legitimate interests listed in the law, disclosure of information adversely effects such an interest, and the need to protect the information overrides the public interest in its disclosure) every time they consider denying a request based on limitation of access to a requested information. However, they never do this in practice. Public authorities would normally only cite the provision of the law listing an exemption and would not provide any further justification.The law does not require to take into account if the information requested relates to emissions into the environment, and it is not being done in practice. |
| N/A | 1. In practice, are requests for environmental information refused on grounds which are not contemplated by Art. 4(3) or 4(4) of the Aarhus Convention?
 | **Scoring Guide:**3 = No2 = Very rarely1= Yes, sometimes but not on a regular basis.0 = Yes, frequently, on a regular basis.From the times before the Law on Access to Public Information and even far back from the Soviet Union times the legislation contains the institute of “official use only information”. This is a less secret information then a state secret, but still limited in access. Some 8 years ago even conclusions of environmental expertizas (somewhat comparable to an EIA decision) was considered by the Ministry of Ecology of Ukraine to be ‘’for official use only’. Although the Law on Access to Public Information allows to apply this label only to a narrow range of information (material in the course of completion or information that concerns internal communications of public authorities), in practice public authorities apply it to a much wider range of information they used to keep limited in access before the new law came into force.Public interest test, although provided for in the law, is never applied by public authorities when deciding on whether to provide information. |
| Art. 4(6) | 1. In practice, do the relevant authorities separate out information exempted from disclosure from other information (known as partial disclosure or severance)?

Art. 4(6) provides:“Each Party shall ensure that, if information exempted from disclosure under paragraphs 3 (c) and 4 above [i.e. Art. 4(3)(c) and 4(4)] can be separated out without prejudice to the confidentiality of the information exempted, public authorities make available the remainder of the environmental information that has been requested.” | **Scoring Guide:**3 = Yes, always 2 = Yes, frequently 1 = No, rarely 0 = No, neverPlease note that separation can be interpreted broadly: the progressive, flexible practice for instance, where authorities black out names, other personal data and any other sensitive data, in order to ensure serviceable material. The reference cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)Take into consideration *inter alia*:* any examples of reluctance on the part of the relevant authorities to separate out environmental information that is not exempted from disclosure (ref.1)
* failure to implement Art. 4(6) in practice and no reference to this otherwise existing legal possibility in the publicly available information materials (ref.2)

Please justify your score and explain the factors you considered.Although the law explicitly proves for this, I am not aware of a single case when information exempted from disclosure was separated out and public authorities made available the remainder of the environmental information that has been requested.The usual practice is that the whole document is limited in access and not provided.  |
| Art. 4(7) | 1. Are instances of refusal provided (i) in writing (if request was in writing or applicant requests), (ii) within the prescribed time frames, (iii) with reference to the reasons for refusal and (iv) with information on access to the review procedure provided under article 9?

Art. 4(7) provides:“A refusal of a request shall be in writing if the request was in writing or the applicant so requests. A refusal shall state the reasons for the refusal and give information on access to the review procedure provided for in accordance with article 9. The refusal shall be made as soon as possible and at the latest within one month, unless the complexity of the information justifies an extension of this period up to two months after the request. The applicant shall be informed of any extension and of the reasons justifying it.” | **Scoring Guide:**3 = All four criteria are always or almost always met in practice2 = All four criteria are met in the majority of cases2 = Three of the four criteria are always or almost always met in practice.1 = Only one or two of the four criteria are always or almost always met in practice.1= Only in a minority of cases are all four criteria met in practice.0 = Never or almost never are all four criteria met in practice.Note that refusal is not a black and white issue: in practice authorities that do not wish to provide the requested information might give it only in part and ignore the other aspects of the request or after such a delay that obtaining the information is by then futile. The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing) Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* cases where the authority answers the information request only in part (ref.1)
* cases where the authority does not give any substantial explanation for refusing the request (ref.1)
* any references made by authorities to their “tacit agreement” or “positive silence” in seeking to defend their neglect of information requests (ref.2)
* any references by authorities to actively disseminated information when seeking to explain their neglect of information requests (ref.2)

Please justify your score and explain the factors you considered.In practice authorities that do not wish to provide the requested information often give it only in part and ignore the other aspects of the request.Public authorities almost always provide refusals in writing, within the prescribed time frames, with reference to one of four reasons for refusal listed in the Law on Access to Public Information. However, they almost never provide information on access to the review procedures.Furthermore, providers other than public authorities do not respond at all, or disregard the deadlines with their refusals. |
| Art. 4(8) | Are any charges that public authorities make for supplying information reasonable and is a schedule of any such charges made available to applicants in advance, indicating the circumstances in which they be levied or waived and when advance payment is required? Art. 4(8) provides:“Each Party may allow its public authorities to make a charge for supplying information, but such charge shall not exceed a reasonable amount.Public authorities intending to make such a charge for supplying information shall make available to applicants a schedule of charges which may be levied, indicating the circumstances in which they may be levied or waived and when the supply of information is conditional on the advance payment of such a charge.” | **Scoring Guide:**3 = Authorities always or almost always either do not charge for supplying information or charge no more than a reasonable amount and a schedule of any such charges is made available in advance. 2 = In the majority of cases, authorities either do not charge or charge no more than a reasonable amount and a schedule of any such charges is made available in advance.1 = Charges for supplying information are frequently higher than what would be reasonable OR a schedule of such charges is typically not made available in advance.0 = Charges for supplying information are frequently higher than what would be reasonable AND a schedule of such charges is typically not made available in advance.The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing) Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* cases where authorities charge only for certain types of information (ref.1)
* any differential treatment where different kinds of requesters (public bodies, corporate bodies, NGOs, private persons etc.) ask for information
* free information provision as a general rule (ref.2)
* relatively high price imposed even for simple copying of requested printed materials (ref.3)
* The Opinion of AG Sharpston and the subsequent judgment in [Case C-71/14](http://curia.europa.eu/juris/liste.jsf?pro=&nat=or&oqp=&dates=&lg=&language=en&jur=C%2CT%2CF&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&num=C-71%252F14&td=%3BALL&pcs=Oor&avg=&page=1&mat=or&jge=&for=&cid=203778)

Please justify your score and explain the factors you considered.There is no difference as to what kind of information is requested or who requests it.The general rule is that, if answer to a request is less than ten pages, it is provided free of charge. In accordance to the provisions of the Law on Access to Public Information almost all public authorities calculated and adopted their fees for photocopying or printing. The fees are charged then an answer to a request exceeds ten pages. The fees are reasonable. They are also usually available on the web-pages of public authorities.  |

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.

###

### (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;” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Neither framework Law on the Protection of the Environment, nor any other law explicitly obliges public authorities to possess and update environmental information which is relevant to their functions.the Law of Ukraine on the Protection of the Environment (N 1264-XII, 1991)<http://zakon2.rada.gov.ua/laws/show/1264-12>Yet, this is to some extent implied by the legal acts regulating the performance by public authorities of their functions. |
| 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 existingactivities which may significantly affect the environment;” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incomplete enactmentNeither framework Law on the Protection of the Environment, nor any other law explicitly prescribes for the existence of the mandatory systems of adequate flow of information to public authorities about proposed and existing activities which may significantly affect the environment.the Law of Ukraine on the Protection of the Environment (N 1264-XII, 1991)<http://zakon2.rada.gov.ua/laws/show/1264-12>The legislation, however, prescribes environmental (and other relevant) public authorities to collect and keep certain environmental information.* Planned activities

The existing legal framework for environmental assessment of project documentation does not establishes an adequate flow of information to relevant public authorities about proposed activities which may significantly affect the environment. A Report on environmental impact assessment (Report on OVNS) is prepared and kept by a proponent. Public authorities issuing permitting decisions based on Reports on OVNS are not obliged and do not keep copies of the Reports. The Law of Ukraine on Urban Development (N 3038-VI 2011)<http://zakon4.rada.gov.ua/laws/show/3038-17> and the implementing regulations.SEA is not currently being performed in Ukraine. * Existing activities

The Ministry of Ecology and relevant local departments (together with some ten other public authorities) conduct environmental monitoring for the purpose of collection of information on the state of the elements of the environment (but not on the impact of existing activities that affect the environment).Regulation on the State System of Environmental Monitoring approved by the Decree of the Cabinet of Ministers of Ukraine (30.03.1998 № 391) <http://zakon4.rada.gov.ua/laws/show/391-98-%D0%BF>The Ministry of Ecology and relevant local departments also issue environmental permits and limits on the use of natural resources and limits of discharges into the environment. They keep this information.the Law of Ukraine on the Protection of the Environment (N 1264-XII, 1991)<http://zakon2.rada.gov.ua/laws/show/1264-12>The State Environmental Inspection of Ukraine and its local offices (conducting control) possess information on the carried inspections of the existing activities that affect the environment. The Regulation on the State Environmental Inspection approved by the Decree of the President of Ukraine of 13.04.2011 N 454/2011<http://zakon4.rada.gov.ua/laws/show/454/2011>The State Statistic Service of Ukraine and its local offices collect statistic data on emissions and discharges of existing activities that affect the environment. |
| 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, allinformation which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority isdisseminated immediately and without delay to members of the public who may be affected.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)**Incomplete enactment**The Law on the Protection of the Environment (N 1264-XII, 1991)<http://zakon2.rada.gov.ua/laws/show/1264-12>In Article 25-1 requires public authorities to immediately inform the public in the case of environmental emergency situations. The Code of Civil Protection of Ukraine (№ 5403-VI, 2013) <http://zakon2.rada.gov.ua/laws/show/5403-17>in Article 30 and other obliges various public authorities to timely inform the public on emergency situations.The law does not explicitly oblige the public authorities to disseminate **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.Article 8 (8) requires public authorities to inform the public on the situation (as to emergency) and the measures taken by the authorities.Articles 19(6), 19(7) requires public authorities to inform the public on the threat of disasters and in case disasters happen.Article 31 additionally requires public authorities to inform the public on ways and methods of protection against desasters.The Decree of the Cabinet of Ministers from 15 February 1999, #192 on the organization of warning and communication in emergencies regulates in detail the issue of operation and maintenance of the warning and communication systems. |
| 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 environmentalinformation available to the public is transparent and that environmental information is effectively accessible, inter alia, by:(a) Providing sufficient information to the public about the type and scope of environmental information held by the relevant public authorities,the basic terms and conditions under which such information is made available and accessible, and the process by which it can be obtained;” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Effective enactmentthe Law on Access to Public Information (№ 2939-VI, 2011) <http://zakon4.rada.gov.ua/laws/show/2939-17>Article 15requires public authorities to publish inter alia * information on the procedures for preparation and submission of information requests;
* Information on the data register, information on the types of documents held by the authority.

**Стаття 15. Оприлюднення інформації розпорядниками**Розпорядники інформації зобов'язані оприлюднювати:4) порядок складання, подання запиту на інформацію, оскарження рішень розпорядників інформації, дій чи бездіяльності; 5) інформацію про систему обліку, види інформації, яку зберігає розпорядник;5**-1**) перелік наборів даних, що оприлюднюються у формі відкритих даних; |
| 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 environmentalinformation 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 ofcharge.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)**Incomplete enactment**the Law on Access to Public Information (№ 2939-VI, 2011) <http://zakon4.rada.gov.ua/laws/show/2939-17>Article 18The law requires public authorities to maintain a register of all data collected which includes the following information: title of the document; date of creation; date of collection; source; a reason, if limited in access; field; key words; type (document, video, audio, image) etc.Public is given free access to the Register preferably online, if not possible, in any other generally accessible way. The Register is accessible free of charge.**Стаття 18. Реєстрація документів розпорядника інформації**1. Для забезпечення збереження та доступу до публічної інформації документи, що знаходяться у суб'єктів владних повноважень, підлягають обов'язковій реєстрації в системі обліку, що має містити:1) назву документа;2) дату створення документа;3) дату надходження документа;4) джерело інформації (автор, відповідний підрозділ);5) передбачену законом підставу віднесення інформації до категорії з обмеженим доступом;6) строк обмеження доступу до інформації, у разі якщо вона віднесена до інформації з обмеженим доступом;7) галузь;8) ключові слова;9) тип, носій (текстовий документ, електронний документ, плівки, відеозаписи, аудіозаписи тощо);10) вид (нормативні акти, угоди, рішення, протоколи, звіти, прес-релізи);11) проекти рішень (доповідні записки, звернення, заяви, подання, пропозиції, листи тощо);12) форму та місце зберігання документа тощо.2. Доступ до системи обліку, що містить інформацію про документ, що знаходиться у суб'єкта владних повноважень, забезпечується шляхом:1) оприлюднення на офіційних веб-сайтах суб'єктів владних повноважень такої інформації, а в разі їх відсутності- в інший прийнятний спосіб;2) надання доступу до системи за запитами.3. Система обліку публічної інформації не може бути віднесена до категорії інформації з обмеженим доступом.There is no provision in the Law requiring officials to support the public in seeking access to information apart from assistance to disabled persons.The Law obliges public authorities * to have special departments or appoint responsible officials for the purpose of dissemination and provision on requests of public information;
* to designate special area for requesters to work with the documents.

**Стаття 14. Обов'язки розпорядників інформації**1. Розпорядники інформації зобов'язані:4) визначати спеціальні місця для роботи запитувачів з документами чи їх копіями, а також надавати право запитувачам робити виписки з них, фотографувати, копіювати, сканувати їх, записувати на будь-які носії інформації тощо;5) мати спеціальні структурні підрозділи або призначати відповідальних осіб для забезпечення доступу запитувачів до інформації та оприлюднення інформації; |
| Art. 5(3) | 1. How well has Art. 5(3) been enacted?

“3. Each Party shall ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks. Information accessible in this form should include:(a) Reports on the state of the environment, as referred to in paragraph 4 below;(b) Texts of legislation on or relating to the environment;(c) As appropriate, policies, plans and programmes on or relating to the environment, and environmental agreements;(d) Other information, to the extent that the availability of such information in this form would facilitate the application of national law implementing the Convention, provided that such information is already available in electronic form.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)**Incomplete enactment**Neither the Law on Access to Public Information (№ 2939-VI, 2011), <http://zakon4.rada.gov.ua/laws/show/2939-17>northe Law on the Protection of the Environment (N 1264-XII, 1991)<http://zakon2.rada.gov.ua/laws/show/1264-12>acknowledge the need and provides for a mechanism to insure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks.Yet, Article 25-1 of the Law on the Protection of the Environment requires that a National Report on the State of the Environment is published on the Internet. Furthermore, all legislation including on or relating to the environment is already available free of charge 24/7 online on the official web-portal of the parliament of Ukraine.The law does not requirepolicies, plans and programmes on or relating to the environment, and environmental agreements to be available in this form. However, these documents would be available on the abovementioned web-portal, if adopted by state bodies (parliament, government, ministries).  |
| 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 theenvironment, including information on the quality of the environment and information on pressures on the environment.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors, e.g. the report is to be provided at slightly greater intervals, say 5 years. 1 = Errors that are more than minor, e.g. the report is to be provided at greater intervals, say every 6 or more years and/or detailed information on the quality of or pressures on the environment is not required. 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Effective enactmentThe Law on the Protection of the Environment (N 1264-XII, 1991)<http://zakon2.rada.gov.ua/laws/show/1264-12>in Article 25-1 requires the appropriate Ministry to annually prepare and submit for approval to the Parliament of Ukraine a National Report on the State of the Environment, which afterword is published in print and on the Internet.  |
| 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, andprogress reports on their implementation, prepared at various levels of government;(b) International treaties, conventions and agreements on environmental issues; and(c) Other significant international documents on environmental issues, as appropriate.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)The Decree of the President of Ukraine (N 503/97, 1997) On the Procedure for official publication of legal acts and their becoming effective<http://zakon2.rada.gov.ua/laws/show/503/97>requires all acts of the Parliament, the President and the Cabinet of Ministers to be officially published within 15 days from their adoption and signature. These acts can become effective only after their official publication. In Ukraine, policy documents such as documents on strategies, policies, programmes and action plans relating to the environment usually would be adopted by an act of the Parliament or the Government, so they are covered by the abovementioned legal requirement.There is no legal provision requiring progress reports on implementation of legislation, strategies, policies, programmes and action plans relating to the environment, prepared at various levels of government to be published or otherwise disseminated.Also the Law on Access to Public Information require a public authority to publish all normative acts adopted by it.**Стаття 15. Оприлюднення інформації розпорядниками**1. Розпорядники інформації зобов'язані оприлюднювати:2) нормативно-правові акти, акти індивідуальної дії (крім внутрішньоорганізаційних), прийняті розпорядником, проекти рішень, що підлягають обговоренню, інформацію про нормативно-правові засади діяльності;According to the Law On International Agreements of Ukraine (№ 1906-IV, 2004)http://zakon3.rada.gov.ua/laws/show/1906-15All international treaties, conventions and agreements including on environmental issues to which Ukraine is a party are translated into Ukrainian by the Ministry of foreign affairs and officially published.**Стаття 21.** Оприлюднення міжнародних договорів України 1. Чинні міжнародні договори України публікуються українською мовою в "Зібранні діючих міжнародних договорів України" та інших офіційних друкованих виданнях України. 2. Офіційний переклад багатосторонніх міжнародних договорів України на українську мову здійснює Міністерство закордонних справ України в порядку ( [353-2006-п](http://zakon3.rada.gov.ua/laws/show/353-2006-%D0%BF) ), встановленому Кабінетом Міністрів України. |
| 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 theframework of voluntary eco-labelling or eco-auditing schemes or by other means.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Not enacted at allThe Law on the Protection of the Environment (N 1264-XII, 1991)<http://zakon2.rada.gov.ua/laws/show/1264-12> or any other law does not oblige or provide for economic or other incentives for the operators whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products.The Law of Ukraine [On Use of Nuclear Power and Radiation Safety](http://zakon5.rada.gov.ua/laws/anot/39/95-%D0%B2%D1%80) obliges (Article 10) nuclear facilities to periodically inform the public via media on the impacts of those facilities.[http://zakon5.rada.gov.ua/laws/show/39/95-вр](http://zakon5.rada.gov.ua/laws/show/39/95-%D0%B2%D1%80)But I am not aware of any economic or other incentives invisiged in the law for the operators in this regard. |
| Art. 5(7)(a) | 1. How well has Art. 5(7) been enacted?

Art. 5(7)(a) provides:“7. Each Party shall:(a) Publish the facts and analyses of facts which it considers relevant and important in framing major environmental policy proposals;” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Not enacted at allThe Law on the Protection of the Environment (N 1264-XII, 1991)<http://zakon2.rada.gov.ua/laws/show/1264-12>or any other law does not prescribe public authorities to publish the facts and analyses of facts which it considers relevant and important in framing major environmental policy proposals. |
| Art. 5(7)(b) | 1. How well has Art. 5(7)(b) been enacted?

Art. 5(7)(b) provides:“7. Each Party shall:(b) Publish, or otherwise make accessible, available explanatory material on its dealings with the public in matters falling within the scope of this Convention;” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Effective enactment The Decree of the President of Ukraine № 547/2011 on provision of access to public information by public authorities,<http://zakon2.rada.gov.ua/laws/show/547/2011> obliges all public authorities to keep record of all requests on access to information.Based on this provision almost all public authorities developed its internal regulations on periodical reporting on requests on access to information and dissemination of these reports via their websites. |
| 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 theenvironment by government at all levels.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incomplete enactmentThe Law on the Protection of the Environment (N 1264-XII, 1991)<http://zakon2.rada.gov.ua/laws/show/1264-12>does not prescribe public authorities to 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.The Law on Access to Public Information<http://zakon5.rada.gov.ua/laws/show/2939-17>requires all public authorities to publish information on the list and conditions of provision of the services provided by a given public authority, forms and rules of their filling, examples of the filled documents.Preparation and publication of reports on the performance of public functions and the provision of public services including relating to the environment by government at all levels is required by administrative legislation. Such reports are required and are made public. |
| Art. 5(8) | 1. How well has Art. 5(8) been enacted?

Art. 5(8) provides:“8. Each Party shall develop mechanisms with a view to ensuring that sufficient product information is made available to the public in a manner which enables consumers to make informed environmental choices.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Not enacted at allThe Law on the Protection of the Environment (N 1264-XII, 1991)<http://zakon2.rada.gov.ua/laws/show/1264-12>does not prescribe for 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.No mechanisms has been developed so far 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.The Ministry of Health has developed the Draft Law of Ukraine "On information for consumers on food products" <http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=58324>in accordance with the Association Agreement between Ukraine and EU. According to the Agreement Ukraine has to align its legislation on sanitary and phytosanitary measures to protect the life and health of people, animals and plants to the EU legislation, as defined in Annex V to the Agreement.The draft law was developed taking into account the provisions of * the Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers,
* Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods,
* Commission Implementing Regulation (EU) No. 1337/2013 laying down rules for the application of Regulation (EU) No. 1169/2011 of the European Parliament and of the Council as regards the indication of the country of origin or place of provenance for fresh, chilled and frozen meat of swine, sheep, goats and poultry.
* Commission Implementing Regulation (EU) No 828/2014 of 30 July 2014 on the requirements for the provision of information to consumers on the absence or reduced presence of gluten in food.

The draft law was submitted to the Parliament in March 2016, but has not been considered yet. |
| 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 andpublicly accessible database compiled through standardized reporting. Such a system may include inputs, releases and transfers of a specified range of substances and products, including water, energy and resource use, from a specified range of activities to environmental media and to on-site and off-site treatment and disposal sites.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please note the following passage from the** [**Aarhus Implementation Guide (2014)**](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf) **– at p.115: “For Parties that have ratified the Protocol on PRTRs, the implementation of their obligations under the Protocol should also meet their obligations under article 5, paragraph 9. For those Parties not party to the Protocol, the Protocol nevertheless serves as an important guide to the implementation of this paragraph.”****Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Not enacted at allUkraine ratified the Protocol on PRTRs on February 2015, yet this provision has not been enacted at all. The Law On basic principles (strategy) of the State Environmental Policy of Ukraine till 2020 (№ 2818-VI, 2010)http://zakon3.rada.gov.ua/laws/show/2818-17/print1475399074322641lists creation by 2015 of a nationwide automated information system for ensuring access to environmental information which includes, in particular, registers emissions and transfer of pollutants.Nevertheless, this intention did not go further. Not ever a legal framework was established by now.Ціль 1. Підвищення рівня суспільної екологічної свідомості Завданнями у цій сфері є:створення до 2015 року мережі загальнодержавної автоматизованої інформаційно-аналітичної системи забезпечення доступу до екологічної інформації, що включатиме, зокрема, національну систему кадастрів природних ресурсів, реєстри викидів та перенесення забруднюючих речовин, і до 2020 року - системи управління екологічною інформацією, відповідно до стандартів ЄС; |

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

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

|  |  |  |
| --- | --- | --- |
| **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 existingactivities which may significantly affect the environment;” | **Scoring Guide:**3 = Mandatory systems have been established to ensure the adequate flow of information have been established across the board, and as a routine, public authorities possess and update environmental information which is relevant to their function. 2 = Most public authorities have established mandatory systems to ensure the adequate flow of information, and as a routine, most public authorities possess and update environmental information which is relevant to their function1 = A minority of public authorities have established mandatory systems to ensure the adequate flow of information, and/or a minority of public authorities possess and update environmental information which is relevant to their function 0 = Public authorities typically have not established mandatory systems to ensure the adequate flow of information, and/or public authorities typically do not possess and update environmental information which is relevant to their functionHere the question is the existence of proper environmental information: the regular flow of timely, relevant, reliable, comparable etc. information from sources (facilities, monitoring stations, etc.) and the availability of it at the environmental and other relevant authorities. The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing) Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* whether a proper monitoring system for all environmental modalities is in place (ref.8, ref.9, ref.15)
* systematic availability of EIA documentation and environmental permits as a rich source of information on the environmentally most significant projects (ref.1, ref.14)
* the environmental NGO community as a source of environmental information, their role acknowledged and supported in information collection and processing (ref.2, ref.12)
* the market of environmental information and the role of expert organisations and individual experts in environmental information systems (ref.10)
* participation in environmental information collection and processing by authorities other than environmental ones, such as water, health, minerals and tourism, general statistical office (ref.3, ref.11, ref.13, ref.16)
* “public to public” charges for information, hindering the circulation of environmental information between relevant State bodies (ref.13, ref. 16)
* transparency and coordination between different data-bases, the possibility of free exchange (ref.4)
* environmental information available at local/municipal level (ref.7, ref.12)

Please justify your score and explain the factors you considered.Public authorities conduct monitoring of the state of the environment. It is conducted by some eleven different public authorities (and their local offices). Regulation on the State System of Environmental Monitoring approved by the Decree of the Cabinet of Ministers of Ukraine (30.03.1998 № 391) mandates the following public authorities to conduct the monitoring:the Ministry of Agrarian Policy and Foodthe Ministry of Ecology and Natural Resourcesthe State Agency on Exclusion Zone Management (Chernobyl)the State Service on Geology and Mineralsthe Ministry of Regional Development and Constructionthe State Service on Emergency Situationsthe State Space Agencythe State Sanitary and Epidemiological Servicethe State Agency of Forestrythe State Service on Water Resourcesthe State Service on Land Resources The information is posted on a governmental web-portal of the Information-Analytic Centre of State Environmental Monitoring <http://www.ecobank.org.ua/Pages/default.aspx>EIA documentation (Reports on OVNS) is not available. Furthermore, it is usually kept secret by both an organisation who developed it (a licensed for this) and a proponent. The current legislation in force does not require public authorities to keep Reports on OVNS even in case when certain permits are issues based on it. Environmental permits are kept by the issuing authorities. However, for example many environmental expertise’ conclusions of 2011 were lost in the course of reorganisation of the MinEcology and no one was brought to the responsibility for that. Data-bases of environmental permits of different issuing authorities are not all electronic, electronic one are different in technical aspects. There is no possibility of free exchange between these data-bases. When an environmental inspector carries out an inspection on a certain company s(he) would ask for the copies of all the environmental permits the management of the company itself, and not get them from some integrated governmental data-base and not even from the relevant issuing authorities. |
| 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, allinformation which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority isdisseminated immediately and without delay to members of the public who may be affected.” | **Scoring Guide:**3 = Practical measures have been taken to ensure that in the event of any imminent threat to human health or the environment, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected.2 = Practical measures have been taken to ensure that in the event of any imminent threat to human health or the environment, the necessary information to enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated without delay to members of the public who may be affected. 1 = Practical measures have been taken so that in the event of any imminent threat to human health or the environment, information to assist the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority should be disseminated to members of the public who may be affected 0 = No practical measures have been taken or any that have been taken are insufficient to ensure that in the event of any imminent threat to human health or the environment, information to assist the public to take measures to prevent or mitigate harm arising from the threat and that is held by a public authority is disseminated to members of the public who may be affected The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)Please note that the effectiveness of information provision in emergency situations is prima facie measured by prevented casualties and prevented material damage, while the indirect elements are the catastrophe preparedness and follow up (both from information dissemination angle). Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* prevalence of use of social media and Internet tools (e.g. websites, emails) in emergency situations (ref.1, ref.3)
* the role and responsibilities of operators (i.e. polluters) with regard to informing the public (ref.2)
* effectiveness of dissemination of risk-related information before (risk preparedness, forecasts etc.) and after (conclusions, liability etc.) emergency situations (ref.4)
* relevant cases under, and preparedness in respect of, the Environmental Liability Directive framework.

Please justify your score and explain the factors you considered.Some practical measures have been taken so that in the event of any imminent threat information to assist the public to take measures to prevent or mitigate harm arising from the threat is disseminated to members of the public who may be affected.The law says that the warning about the threat or emergency situations is insured by:1) functioning of the national, regional, local, centralized automated alert systems about the threat of or an emergency situation;2) centralized use of public and private telecommunications networks, including mobile communications, governmental telecommunication networks, as well as networks of national, regional and local radio and television and other technical means of transmission of information;3) automatic transfer of signals and messages about the threat of or an emergency situation;4) functioning at high risk facilities of automated systems for early detection and warning systems;5) the organizational and technical integration of various systems of centralized notification about the threat or emergency situations and automated systems for early detection and warning systems;6) operation in settlements and public places of signal loudspeaker devices and electronic information boards for transmission of information on civil protection.However, the current system is based on the old (Soviet) system where the main channel of transmitting of information was cable broadcasting, which is used by the population less and less every year.The mobile phone operators cooperate with the authorities, but some technical issues remain unsolved.The use of Internet tools (e.g. websites and emails) is not considered. For each case of emergency situation, a standard version of text message that take into account local peculiarities is developed in advance.Warning system covers cities and some villages and is almost non-existent in the rural areas.Article 20 of the Code of Civil Protection of Ukraine (№ 5403-VI, 2013)<http://zakon2.rada.gov.ua/laws/show/5403-17>does not list an obligation on warning in case of emergencies on operators. |
| 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 environmentalinformation 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 ofcharge. | **Scoring Guide:**3 = Practical measures have been taken by the government which always or almost always ensure that the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible.2 = Practical measures have been taken by the government which in most cases ensure that the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible.1 = Some practical measures have been taken by the government which in a minority of cases ensure that the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible.0 = No measures have been taken or the measures taken are not effective to ensure that the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible.However impressive the environmental information provision/collection systems may be under Indicator 1 above, this may be of limited use if the general public has little knowledge about it. The existence and effective functioning of the tools listed in Art. 5(2) b. shall be evaluated here. The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* existence of national, regional or local level meta databases for environmental information (ref.1)
* use of geographic information systems in order to reveal interrelationships between different databases relevant to environmental matters, use of interactive map services and suchlike (ref.1, ref.2)
* does meta data contain information on any costs of underlying data (ref.1)
* the existence of networks in connection with available environmental information sources (ref.3)

Please justify your score and explain the factors you considered.Although required by law, a single meta database for public information in the MinEcology does not exist.The MinEcology post on their web-page files in Microsoft Word and Microsoft Ecxel format of lists of some documents in their possession. Not a single document of 2016 is posted.Lists of documents of 2015 include letters received by the Ministry from the business, from the public (information requests), letters received from the Cabinet of Ministers, orders issues by the Ministry in 2015 – all in separate files and only covering period from Jan till May 2015. Lists of document of 2014 are included in some 12 files.Same for the year of 2013.These files do not include information on environmental permits issued.The Ministry of Ecology and the respective local departments do not maintain publicly accessible databases of environmental permits that they issue.MinEcology posted on its web-page conclusions of state environmental expertiza (somewhat comparable to EIA decisions) only after being ordered to do so by court.Points of contact with regard to access to environmental information are identified and posted on the official web-pages of public authorities (including environmental ones). |
| 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 lawimplementing this Convention,provided that such information is already available in electronic form.” | **Scoring Guide:**3 = The Party has taken practical measures to ensure that environmental information (including but not limited to the information set out in Art. 5(3)(a)-(d)) is progressively made available through electronic databases which are easily accessible to the public.2 = The Party has taken practical measures to ensure that the environmental information set out in Art. 5(3)(a)-(d) is progressively made available through electronic databases which are easily accessible to the public.1 = The Party has taken some practical measures to ensure that some of the environmental information set out in Art. 5(3)(a)-(d) is made available through electronic databases which are easily accessible to the public.0 = The Party has not taken practical measures or the measures taken have not been effective to ensure that the environmental information set out in art.5(3)(a)-(d) is progressively made available through electronic databases which are easily accessible to the public.The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)Please take into consideration that this indicator, as usual, measures environmental democracy, not the economic development of a given country. Therefore, in considering “easily accessible”, please determine your score without reference to the availability of relevant technology (both in large cities and in the countryside). Another aspect of “easily accessible” is arguably the availability (or otherwise) of search functions on websites allowing free text searches within the entire database. Interconnected databases, timeliness, access to documents regarding individual environmental cases, user friendly settings, and interactivity are important features amongst others. Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* easy electronic access to fresh environmental data, with interactive support (e.g. monthly electronic newsletters, information helpdesks) (ref.1, ref.5, ref.6, ref.7)
* widespread electronic access to several databases that are environmentally relevant (ref.2)
* timely, real time environmental information on the Internet (ref.9)
* electronic access to general type environmental documents such as plans and reports (ref.5)
* direct electronic access to environmental permitting, EIA and SEA data (ref.4, ref.7)
* well edited, easy to handle structures in the environmental electronic information systems (ref.3)
* any data available about the number of visitors to the relevant websites? (ref.10)
* in respect of texts of legislation, whether consolidated texts are available or only original unconsolidated versions

Please justify your score and explain the factors you considered.Reports on the state of the environment are available on-line on the official web-page of the MinEcology.Texts of legislation on or relating to the environment are available on the official web-database of the legislation of Ukraine. In case of amendments, the texts are timey updated.Since policies, plans and programmes on or relating to the environment are usually adopted by an act of the Parliament, the government or the bodies of local self-government they are usually accessible on the abovementioned web-database or the web-pages of the respective bodies of local self-government.Environmental agreements usually are not only not available online, but not accessible at all by the public. To give an example – Product sharing agreements on extraction on hydrocarbons concluded between the Government of Ukraine and foreign extracting companies (including Shell and Chevron) are kept secret by both the Government and the companies. Although required by law, the Ministry of Ecology and the respective local offices did not post on their web-pages conclusions of ecological expertise’s (somehow comparable to EIA decisions). Only after a court order Mycology reluctantly obliged. By that time, however, the amendments were introduced into the legislation abolishing ecological expertise for planned activities. Currently there is nothing comparable to EIA decision. There is a conclusion of an expert organisation (not of a public authority) on the Report on OVNS, which is not considered to be a permitting decision. These conclusions are not available either on-line, or upon request. **The majority of environmental permits are not accessible via electronic access**. Data (date, number, issuing authority, issued to whom etc.) on permits for mineral extraction is available online, but not the permits itself.Even if official websites track the number of visitors to the relevant websites, this information is not available to the public. A lot of information is becoming electronically available recently, e g.. through <http://data.gov.ua>  |
| 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 theenvironment, including information on the quality of the environment and information on pressures on the environment.” | **Scoring Guide:**3 = Yes, annually2 = Yes, biannually1 = Yes, every three or four years 0 = No The National report on the state of theEnvironment is prepared and posted on the Internet annually.Here is the link to the NRs 2009, 2010, 2011, 2012, 2013, 2014http://www.menr.gov.ua/dopovidi |
| Art. 5(4) | 1. How would you rate the quality and breadth of dissemination of the state of environment reports?
 | **Scoring Guide:**3 = Both the quality of the report (which includes both information on the quality of, and pressures on, the environment) and the breadth of dissemination of the report are of a very high standard.2 = Both the quality of the report (which includes both information on the quality of, and pressures on, the environment) and the breadth of dissemination of the report are good.1 = EITHER the quality of the report (including both information on the quality of, and pressures on, the environment) OR the breadth of dissemination of the report, are good (but not both).1= BOTH the quality of the report (including both information on the quality of, and pressures on, the environment) OR the breadth of dissemination of the report are just adequate (but not both).0 = No reports are prepared or any reports are of very poor quality and/or very poorly disseminated.The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)Please note in your comments any issues relating to content and/or breadth of dissemination: e.g.* content issues: holistic, systematic approach in the reports, scientific quality, style, structure etc. (ref. 3, ref.4)
* breadth of dissemination of such reports, amongst state, scientific and civic organisations (ref.1, ref.2)

Please justify your score and explain the factors you considered.The National Reports are annually published on the official website of the MinEcology. The accuracy of the information included within the report and the use of appropriate scientific approaches are highly doubted. |
| 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, andprogress reports on their implementation, prepared at various levels of government;(b) International treaties, conventions and agreements on environmental issues; and(c) Other significant international documents on environmental issues, as appropriate.” | **Scoring Guide:**3 = Yes, all international and national environmental legislation and policy documents drafted and adopted and also progress reports in respect of the implementation thereof 2 = Yes, the majority of applicable international and national environmental legislation and policy documents adopted and also progress reports in respect of the implementation thereof1 = Yes, a minority of international and national environmental legislation and policy documents adopted and also progress reports in respect of the implementation thereof0 = No, or very rarely.Please note that spatial planning documents should be considered as ‘relating to the environment’ here, because they represent one of the most important factors that determine the environmental situation in a country or in parts of it. Please justify your score and explain the factors you considered.Applicable international and national environmental legislation and policy documents (if adopted by an act of an appropriate authority) in the past 5 years have been available online.Progress reports on their implementation – not so much:As to international environmental legislation – in some cases yes, e.g. the MinEcology posts Aarhus Convention Implementation Reports on its website;As to national environmental legislation – the reports are not prepared and thus not disseminated.Environmental agreements (e.g. Product sharing agreements) are kept secret by the government. Spatial planning documents are not disseminated, furthermore before recently they were not accessible via a request ether (e.g. general plans\master plans of settlements). The public authorities deemed them to be for “official use only”. Due to the significant efforts of NGOs (including bringing various municipalities to administrative courts) this was changed. However, the spatial planning documents are still not available online.Forest management (planning) documents are also considered to be for “official use only” and although exist in electronic form, are not available online or provided upon request. |
| Art. 5(6) | 1. Has the government taken practical measures to encourage operators whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products, where appropriate?

Art. 5(6) provides:“6. Each Party shall encourage operators whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products, where appropriate within the framework of voluntary eco-labelling or eco-auditing schemes or by other means.” | **Scoring Guide:**3 = Yes, and all or almost all operators whose activities have a significant impact on the environment do indeed regularly inform the public of the environmental impact of their activities and products2 = Yes, and the majority of operators whose activities have a significant impact on the environment do indeed regularly inform the public of the environmental impact of their activities and products1 = 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 products0 = No, no practical measures have been taken by the Party OR operators whose activities have a significant impact on the environment rarely or never inform the public of the environmental impact of their activities and productsAccording to the experiences of early PRTR and TRI (Toxic Release Inventory) models, direct company-community communication is really effective in decreasing the dangers and the use in general of certain dangerous chemicals. However, this seldom takes place, therefore a solid long running governmental effort to encourage this communication, even with only sporadic occurrence of such communication in practice deserves a high score. Substantial information given to the concerned public via Internet should be also taken into consideration. Objective, interactive communication between operators and the concerned public deserves an even higher score. The reference cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)* the practice in respect of active environmental information dissemination by state-owned companies and their subsidiaries (ref.1)

Please justify your score and explain the factors you considered.Neither state or privately owned companies do so. The government created no incentive for that.Even if there is one or few companies (those with foreign investments are most likely to be the ones) doing that, that would be an exception from the rule. |
| Art. 5(7)(a) | 1. Does the Party publish the facts and analyses of facts which it considers relevant and important in framing major environmental policy proposals?

Art. 5(7)(a) provides:7. Each Party shall:(a) Publish the facts and analyses of facts which it considers relevant and important in framing major environmental policy proposals; | **Scoring guide:**3 = Yes, in the case of all or almost all major environmental policy proposals2 = Yes, in the case of a majority of environmental policy proposals1 = Yes, in the case of a minority of environmental policy proposals0 = No, neverPlease justify your score and explain the factors you considered.Rarely, but this is done. Recent examples: plans of implementation for 29 EU directives & regulations include analysis of the state of affairs, Waste Strategy consutlations, National Env Policy consultations, etc.  |
| Art. 5(7)(b) | 1. Does the Party publish data on an annual (or more regular) basis relating to access to environmental information requests (e.g. how many were received, how many satisfied, how many refused, which exemptions were used, etc),[[19]](#footnote-20) collected at a national level?

Art. 5(7)(b) provides:7. Each Party shall:(b) Publish, or otherwise make accessible, available explanatory material on its dealings with the public in matters falling within the scope of this Convention; | **Scoring Guide:**3 = Yes 2 = While such data are published, they are only published every 2-3 years 1 = While such data are sometimes published, they are not collected at the national level and/or they are published only every 4+ years 0 = No such data are never published (at the national level or otherwise)Please justify your score and explain the factors you considered.The MinEcology and other public authorities every month publish on their web-pages reports on access to information requests. The reports include information as to how many were received, how many satisfied, how many refused, which exemptions used.Here is the link to the reports of the MinEcology<http://www.menr.gov.ua/access/reports2> |
| Art. 5(7)(c) | 1. Does the Party provide in an appropriate form information on the performance of public functions or the provision of public services relating to the environment by government at all levels?

Art. 5(7)(c) provides:7. Each Party shall:(c) Provide in an appropriate form information on the performance of public functions or the provision of public services relating to the environment by government at all levels. | **Scoring guide:**3 = Yes, in the case of all or almost all public functions/services relating to the environment by government at all levels2 = Yes, in the case of a majority of public functions/services relating to the environment by government at all levels2 = Yes, in the case of all or almost all public functions/services relating to the environment by government at two of the following levels: national, regional, local1 = Yes, in the case of a minority of public functions/services relating to the environment by government at all levels1 = Yes, in the case of a majority of public functions/services relating to the environment by government at one of the following levels: national, regional, local0 = No, neverPlease justify your score and explain the factors you considered.The official governmental web-pages on all levels provide information on public functions and the provision of public services including those relating to the environment. However, the structure of the websites often is illogical, format of information – not user-friendly which makes it difficult to find appropriate information, even if it is there.  |
| Art. 5(8) | 1. Has the Party developed mechanisms with a view to ensuring that sufficient product information is made available to the public in a manner which enables consumers to make informed environmental choices?

Art. 5(8) provides:“8. Each Party shall develop mechanisms with a view to ensuring that sufficient product information is made available to the public in a manner which enables consumers to make informed environmental choices.” | **Scoring Guide:**3 = Yes, such mechanisms have been developed and sufficient product information is made available in a manner which enables consumers to make informed environmental choices.2 = Yes, such mechanisms have been developed and for many products sufficient information is available in a manner which enables consumers to make informed environmental choices1 = Yes, some mechanisms have been developed and for a minority of products sufficient information is available in a manner which enables consumers to make informed environmental choices 0 = No such mechanisms have been developed OR some mechanisms have been developed but they are not adequate to ensure that sufficient information is available in a manner which enables consumers to make informed environmental choices.When scoring please take into consideration both voluntary and regulatory mechanisms. The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)Please take into consideration, insofar as relevant *inter alia*:* the role and activities of market regulatory and consumer protection organisations, including NGOs (ref.1)
* ’Countries have developed a variety of mechanisms to ensure that sufficient product information is available to the public. These include both voluntary and regulatory mechanisms’ (ref.2)

Please justify your score and explain the factors you considered.No mechanisms has been developed so far 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.The Ministry of Health has developed the Draft Law of Ukraine "On information for consumers on food products" <http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=58324>in accordance with the Association Agreement between Ukraine and EU. According to the Agreement Ukraine has to align its legislation on sanitary and phytosanitary measures to protect the life and health of people, animals and plants to the EU legislation, as defined in Annex V to the Agreement.The draft law was developed taking into account the provisions of * the Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers,
* Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods,
* Commission Implementing Regulation (EU) No. 1337/2013 laying down rules for the application of Regulation (EU) No. 1169/2011 of the European Parliament and of the Council as regards the indication of the country of origin or place of provenance for fresh, chilled and frozen meat of swine, sheep, goats and poultry.
* Commission Implementing Regulation (EU) No 828/2014 of 30 July 2014 on the requirements for the provision of information to consumers on the absence or reduced presence of gluten in food.

The draft law was submitted to the Parliament in March 2016, but has not been considered yet. |
| 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 andpublicly accessible database compiled through standardized reporting. Such a system may include inputs, releases and transfers of a specified range of substances and products, including water, energy and resource use, from a specified range of activities to environmental media and to on-site and off-site treatment and disposal sites.” | **Scoring Guide:**3 = A coherent nationwide system of pollution inventories is established and maintained up-to-date on a structured, computerized and publicly accessible database compiled through standardized reporting, including inputs, releases and transfers of the substances and products and range of activities required under the PRTR Protocol, including to on-site and off-site treatment and disposal sites 2 = A coherent nationwide system of pollution inventories is established and maintained up-to-date on a structured, computerized and publicly accessible database compiled through standardized reporting. It includes inputs, releases and transfers of a specified range of substances and products, including water, energy and resource use, from a specified range of activities to environmental media and to on-site and off-site treatment and disposal sites, however it does not include all substances, products or activities required under the PRTR Protocol. 1 = A coherent nationwide system of pollution inventories has been established but is not currently up-to-date 1 = A nationwide system of pollution inventories has been established and maintained up-to-date but it is not very clear or coherent.1 = A nationwide system of pollution inventories has been established and maintained up-to-date but it covers a very limited range of substances, products, and activities.0 = No nationwide system of pollution inventories has yet been established.The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing) PRTR (Pollutant Release and Transfer Register) systems offer a win-win solution for the relevant state regulatory bodies, the operators dealing with certain hazardous materials and the concerned local communities concerning the possession of data on hazardous materials that are necessary to manage any emergency situations successfully. However, these complicated data processing systems are not equally popular in every legal system and there are countries where the cultivation of the PRTR legal institution is definitely declining. As a sign of that, data are frequently quite old in PRTR systems, so the age range of pollution covered by the systems, e.g. how old are the latest data, could be an important feature of evaluation. Take into consideration *inter alia*:* the scope of relevant information used in PRTR systems (ref.1)
* online PRTR databases available to the general public (ref.1)
* further elaboration and use of the PRTR data, such as producing public reports or easy to understand materials on hazardous materials and their possible effects (ref.2)

Please justify your score and explain the factors you considered.**Please note the following passage from the** [**Aarhus Implementation Guide (2014)**](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf) **– at p.115: “For Parties that have ratified the Protocol on PRTRs, the implementation of their obligations under the Protocol should also meet their obligations under article 5, paragraph 9. For those Parties not party to the Protocol, the Protocol nevertheless serves as an important guide to the implementation of this paragraph.”** |

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

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

##

## III. Public participation pillar

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

| **Aarhus provision** | **Legal indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 6(1)(a) | 1. How well have Art. 6(1)(a) and Annex I been enacted?

“1. Each Party:(a) Shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in annex I;” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at allIn addition to checking whether the wording of Article 6(1)(a) has been correctly enacted, it is also necessary to carefully check whether the legal framework requires all the activities in Annex I to be subject to this provision.**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incomplete enactmentUkraine is subject to non-compliance decision by MOP on this.the Law of Ukraine on the Protection of the Environment (N 1264-XII, 1991)<http://zakon2.rada.gov.ua/laws/show/1264-12>does not explicitly requires public participation with respect to decisions on whether to permit proposed activities likely to affect the environment. the Law of Ukraine on Ecological Expertiza (N 45/95-ВР, 1995)[http://zakon5.rada.gov.ua/laws/show/45/95-вр/print1467458930471345](http://zakon5.rada.gov.ua/laws/show/45/95-%D0%B2%D1%80/print1467458930471345)before 2011 required public participation with respect to decisions on whether to permit proposed activities likely to affect the environment (in the course of preparation by a compatant authority of the conclusion of ecological expertiza). Currently this law does not cover decisions on specific activities.The Law of Ukraine on Urban Development (N 3038-VI 2011)<http://zakon4.rada.gov.ua/laws/show/3038-17>, which currently covers construction projects likely to affect the environment, does not require public participation either in the course of issuance of a construction permit or in the course of state expertiza of project documentation. It, however, mentions public consultations in the course of preparation of project documentation on activities likely to adversely impact the environment (Article 31). Those are carried out by proponents in accordance with State Construction Norms on OVNS (SCN) – a low level normative act, what has never been officially published.The list of activities covered by the Law of Ukraine on Urban Development for which OVNS Report (somewhat comparable to EIA report) is prepared and public participation is carried out is established by the Decree of the Cabinet of Ministers of Ukraine from 28.08.2013 # 808. http://zakon3.rada.gov.ua/laws/show/808-2013-пIt does not cover all the activities enshrined in the annex I to the Convention. For example, the national list does not cover extensive water use activities listed in the Convention annex I. |
| Art. 6(1)(b) | 1. How well has Art. 6(1)(b) been enacted?

“1. Each Party:(b) Shall, in accordance with its national law, also apply the provisions of this article to decisions on proposed activities not listed in annex I which may have a significant effect on the environment. To this end, Parties shall determine whether such a proposed activity is subject to these provisions;” | **Scoring Guide:**3 = The Party has enacted a list of activities not listed in annex I that it deems may have a significant effect on the environment and which should therefore be subject to public participation under Article 6, AND the national legislation contains a mechanism allowing for this list to be updated by secondary legislation or administrative act2 = 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 act1 = The Party has enacted a specific mechanism providing for the creation of a list of activities not listed in annex I that it deems may have a significant effect on the environment and which should therefore be subject to public participation under Article 6. However, no such list has been created.0 = There is no enactment which provides for this provision to be operationalisedA score of 1 would include the situation where primary legislation has been made providing for a list of activities to be set out in secondary legislation or where primary/secondary legislation provides for the government to issue guidance on the matter, but no such legislation/guidance has been made. A score of 0 would cover the situation where there is no national legislation providing for the possibility of such a list. **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Effective enactmentThe list of activities for which OVNS Report is prepared and therefore public participation is carried out is established by the Decree of the Cabinet of Ministers of Ukraine from 28.08.2013 # 808http://zakon3.rada.gov.ua/laws/show/808-2013-пThe list includes activities not listed in annex I that it deems may have a significant effect on the environment and which should therefore be subject to state expertiza of project documentation and public participation in the course of preparation thereof. In many cases, while listing the same activities, the national list does not include or includes the lower thresholds than those used in the Annex I. For example, the Annex I lists ‘installations for the incineration of municipal waste with a capacity exceeding 3 tons per hour’ (para. 5). The national list includes management of municipal waste including incineration, but does not put any threshold (para.11).The list is adopted on the level of a governmental decree (secondary legislation), thus it is relatively easily amendable.  |
| Art. 6(1)(c) | 1. How well has Art. 6(1)(c) been enacted?

“1. Each Party:(c) May decide, on a case-by-case basis if so provided under national law, not to apply the provisions of this article to proposed activities serving national defence purposes, if that Party deems that such application would have an adverse effect on these purposes.” | **Scoring Guide:**3= The legal framework does not provide for proposed activities serving national defence purposes to be exempted from the provisions of article 6.2 = Enactment is fully in accord 1 = Minor errors 0 = Errors that are more than minor **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)The Law of Ukraine on Urban Development (N 3038-VI 2011)<http://zakon4.rada.gov.ua/laws/show/3038-17>does not allow not to apply the provisions of the Law and public participation provisions of the secondary legislation to proposed activities serving national defence purposes, or any other purposes. |
| Art. 6(2) | 1. How well has Art. 6(2) been enacted?

Art. 6(2) provides:“2. The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, inter alia, of:(a) The proposed activity and the application on which a decision will be taken;(b) The nature of possible decisions or the draft decision;(c) The public authority responsible for making the decision;(d) The envisaged procedure, including, as and when this information can be provided:(i) The commencement of the procedure;(ii) The opportunities for the public to participate;(iii) The time and venue of any envisaged public hearing;(iv) An indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public;(v) An indication of the relevant public authority or any other official body to which comments or questions can be submitted and of the time schedule for transmittal of comments or questions; and(vi) An indication of what environmental information relevant to the proposed activity is available; and(e) The fact that the activity is subject to a national or transboundary environmental impact assessment procedure.” | Scoring Guide:3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at allPlease refer to the [“Guidelines for assessing legal indicators” above](#_Guidelines_for_assessing)Incomplete enactmentAlthough previously applicable in the course of ecological expertiza procedure the Decree of the Ministry of Ecology from 18.12.2003 N 168 On public participation in environmental decision-making.<http://zakon5.rada.gov.ua/laws/show/z0155-04>and the Procedure for public involvement in discussion on making decisions which can affect the state of the environment, adopted by the Cabinet of Ministers (from 29 June 2011, 771)[http://zakon2.rada.gov.ua/laws/show/771-2011-п](http://zakon2.rada.gov.ua/laws/show/771-2011-%D0%BF)currently are not applicable in the context of Article 6 decisions. The only exception is a decision on a deliberate release of genetically modified organisms into the environment.Thus, the only act regulating public participation in terms of Article 6 is the State Construction Norms of Ukraine А.2.2-1-2003 onthe scope and content of OVNS materials for designing and construction of factories, buildings and installations (official link is not available).The act requires a proponent (not a public authority) to issue a public notice and sets the scope of it in Annex Г.In terms of Article 6(2) the Annex Г requires (para. 12) to publish only the following information on public participation: address, phone number and time for getting acquainted with the project documentation and OVNS and for submitting proposals. |
| Art. 6(3) | 1. How well has Art. 6(3) been enacted?

Art. 6(3) provides:“3. The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.” | Scoring Guide:3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at allPlease refer to the [“Guidelines for assessing legal indicators” above](#_Guidelines_for_assessing)Not enacted at allthe State Construction Norms of Ukraine А.2.2-1-2003 onthe scope and content of OVNS materials for designing and construction of factories, buildings and installations (official link is not available)contain no time-frames for any phases (allowing sufficient time for informing the public, for the public to prepare and participate effectively during the environmental decision-making). |
| Art. 6(4) | 1. How well has Art. 6(4) been enacted?

Art. 6(4) provides:“4. Each Party shall provide for early public participation, when all options are open and effective public participation can take place.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Ambiguous and incomplete enactmentthe State Construction Norms of Ukraine А.2.2-1-2003 onthe scope and content of OVNS materials for designing and construction of factories, buildings and installations (official link is not available)There is no public participation in the decision on the scope of the OVNS report.According to section 1.6. the whole procedure of preparation of the OVNS report starts with a preparation and publication by a developer and a proponent of a public notice. The notice shall contain some information on the project and its impact on the environment.On one hand, it looks like the public gets involved rather early in the process. However, the Annex Г that sets the scope of the public notice in para 12 also require to publish within the notice the information on address and hours for the public to get acquainted with the project documentation and the OVNS report. It is unclear from the OVNS whether public can comment both based on the information contained in the public notice and later after it has studies the project documentation and the OVNS report or public only gets involved when the OVNS report is prepared. The SCN sets no time frames. If the public gets involved only when the OVNS report is already prepared, that in accordance to para. 1.3. means that the assessment of environmental, social and technological factors of the possible alternatives (both technological and geographical) has been done and the chosen alternative has been justified and elaborated in detail – meaning public participation would happen in a time when most options are already closed. |
| Art. 6(5) | 1. How well has Art. 6(5) been enacted?

Art. 6(5) provides:“5. Each Party should, where appropriate, encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)the State Construction Norms of Ukraine А.2.2-1-2003 onthe scope and content of OVNS materials for designing and construction of factories, buildings and installations (official link is not available)containe no provision encouraging 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. |
| 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 thatis available at the time of the public participation procedure, without prejudice to the right of Parties to refuse to disclose certain information inaccordance with article 4, paragraphs 3 and 4. The relevant information shall include at least, and without prejudice to the provisions of article 4:(a) A description of the site and the physical and technical characteristics of the proposed activity, including an estimate of the expected residues and emissions;(b) A description of the significant effects of the proposed activity on the environment;(c) A description of the measures envisaged to prevent and/or reduce the effects, including emissions;(d) A non-technical summary of the above;(e) An outline of the main alternatives studied by the applicant; and(f) In accordance with national legislation, the main reports and advice issued to the public authority at the time when the public concerned shall be informed in accordance with paragraph 2 above.” | **Scoring Guide:**3 = Enactment is fully in accord, and national law does not require the public to have to make a request in order to have access to the information relevant to the decision-making. 2 = Minor errors **OR** enactment is fully in accord but the national law requires the public to have to make a request in order to have access to the information relevant to the decision-making1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incorrect and incomplete enactmentThe Law of Ukraine on Urban Development (N 3038-VI 2011)<http://zakon4.rada.gov.ua/laws/show/3038-17>does not require public participation in decision-making in the context of Article 6 by a permitting authority.the State Construction Norms of Ukraine А.2.2-1-2003 onthe scope and content of OVNS materials for designing and construction of factories, buildings and installations (hereinafter - SCN) section 1.6.requires a proponent (not a permitting authority) to organise public participation and take into account the comments recieved. 1.6. При виконанні ОВНС для видів діяльності й об'єктів, наведених у додатку Е, замовник або, за його дорученням, виконавець ОВНС через органи місцевої влади інформує населення про плановану діяльність, визначає місце і порядок проведення громадських слухань, відкритих засідань, збирає звернення громадян, здійснює роз­гляд та врахування зауважень і пропозицій.SCN (Annex Г) only requires to make available project documentation and the OVNS report. There is no requirement to provide access free of charge and as soon as the information becomes available.The scope of OVNS report - as prescribed by the SCN - covers most of the minimal list information to be disclosed namely information required by Article 6(6) para a-c and e. However, there is no requirement for inclusion of a non-technical summary of the above.Previously when the OVNS report was considered by an environmental authority which issues a conclusion of a state ecological expertiza, a document called a notice of environmental impact was prepared by a proponent as a resume of the OVNS report. The content of this notice was prescribed by the Law on Ecological Expertiza. Now when this law is no longer applicable to Article 6 decisions, it is unclear what the scope of the notice of environmental impact is. SCN mentions (sec. 1.8) preparation and publication of the notice of environmental impact by a proponent, but does not set its scope.Information required by Article 6(6) f is not covered.  |
| Art. 6(7) | 1. How well has Art. 6(7) been enacted?

Art. 6(7) provides:“7. Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant,any comments, information, analyses or opinions that it considers relevant to the proposed activity.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incomplite enactment the State Construction Norms of Ukraine А.2.2-1-2003 onthe scope and content of OVNS materials for designing and construction of factories, buildings and installations (hereinafter - SCN)does not explicitly includes the right of the public to submit any comments, information, analyses or opinions it considers relevant to the proposed activity, without the need to substantiate them. The SCN invisige collection, consideration and taking into accout of public suggestions and proposals by a proponent (section 1.6., 1.10). The SCN does not require to substantiate them either. |
| Art. 6(8) | 1. How well has Art. 6(8) been enacted?

Art. 6(8) provides:“8. Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incorrect enactmentthe State Construction Norms of Ukraine А.2.2-1-2003 onthe scope and content of OVNS materials for designing and construction of factories, buildings and installations (hereinafter - SCN), section 1.10Коригування матеріалів ОВНС за результатами громадського обговорення здій­снюється за рішенням замовника і генпроектувальника. The public participation takes place and its results are accounted for not by a permitting authority in the course of a decision-making process (issuance of a construction permit), but by a proponent in the course of development of the project documentation. The Law of Ukraine on Urban Development (N 3038-VI 2011)<http://zakon4.rada.gov.ua/laws/show/3038-17> and the respective implementing legislation does not require to take into account the results of public participation while issuing a construction permit or in the course of state expertiza of project documentation. |
| Art. 6(9) | 1. How well has Art. 6(9) been enacted?

Art. 6(9) provides:“9. Each Party shall ensure that, when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance with the appropriate procedures. Each Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incomplete enactmentThe Law of Ukraine on Urban Development (N 3038-VI 2011)<http://zakon4.rada.gov.ua/laws/show/3038-17>does not require apublic authority to promptly inform the public of the decision taken. However, the Law (Article 34) requires the Ministry of Regional Development and Construction to maintain a publicly accessible free of charge on-line register among other things of all construction permits. There is no requirement in the Law of Ukraine on Urban Development or the implementing legislation to prepare (either within the text of a permit or separately) and made publicly accessible the reasons and considerations on which the decision is based. |
| Art. 6(10) | 1. How well has Art. 6(10) been enacted?

Art. 6(10) provides:“10. Each Party shall ensure that, when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 of this article are applied mutatis mutandis, and where appropriate.” | **Scoring Guide:**3 = The legal framework requires a**ll** reconsiderations or updates of operating conditions for activities referred to in paragraph 1 to be subject to a public participation procedure meeting **all** the requirements of paragraphs 2 to 9. 2 = The legal framework requires reconsiderations or updates of operating conditions for activities referred to in paragraph 1 to be subject to a public participation procedure meeting the requirements of paragraphs 2 to 9 “where appropriate.”1 = The legal framework requires reconsiderations and updates of operating conditions to be subject to a public participation procedure but not a procedure meeting the requirements of paragraphs 2 to 9. 0 = The legal framework does not require reconsiderations or updates of operating conditions to be subject to a public participation procedure.**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incomplete enactmentThe Law of Ukraine on Urban Development (N 3038-VI 2011), <http://zakon4.rada.gov.ua/laws/show/3038-17>термін будівництво включає нове будівництво, реконструкцію, реставрацію, капітальний ремонт об’єктів будівництва (частина третя статті 10). The term construction includes new construction, reconstruction, restoration and the capital repair (Article 10.3)Also, the Law of Ukraine On Architectural Activity (№ 687-XIV, 1999), http://zakon3.rada.gov.ua/laws/show/687-14Стаття 9Будівництво (нове будівництво, реконструкція, реставрація, капітальний ремонт) об'єкта архітектури здійснюється відповідно до затвердженої проектної документації, державних стандартів, норм і правил у порядку, визначеному Законом України «Про регулювання містобудівної діяльності».In Article 9 prescribes that construction (new construction, reconstruction, restoration and the capital repair) is carried out in accordance to the approved project documentation, state standards, norms and rules in the manner prescribes the Law of Ukraine on Urban Development (N 3038-VI 2011).Thus, the same domestic provisions on public participation appy to both new construction and reconstruction, restoration and the capital repair of the facilities included in the national list of activities approved by the Decree of the Cabinet of Ministers of Ukraine from 28.08.2013 # 808. Public participation as to life time extensions of nuclear reactors is happening in practice, but it is not required by law. The Law of Ukraine On the Procedure for Making Decisions on Locating, Designing and Building Nuclear Facilities and Objects Designed for Treating Radio-Active Waste That Are of National Significancehttp://zakon3.rada.gov.ua/laws/card/2861-15Any other reconsiderations or updates of the operating conditions for the respective activities are not covered by the public participation requirements. |
| 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 decisionson whether to permit the deliberate release of genetically modified organisms into the environment.” | **Scoring Guide:**3 = **All** decisions on whether to permit the deliberate release of GMOs into the environment are subject to **all** the provisions of article 6 (i.e. no carve out for “if feasible and appropriate”)2 = Decisions on whether to permit the deliberate release of GMOs into the environment are subject to the provisions of article 6 “to the extent feasible and appropriate”.1 = The legal framework requires decisions on whether to permit the deliberate release of GMOs into the environment to be subject to a public participation procedure but most of the provisions of article 6 are not enacted with respect to such decision-making. 0 = The legal framework does not require decisions on whether to permit the deliberate release of GMOs into the environment to be subject to a public participation procedure**In scoring this provision, you should have regard to (amongst other things) the** [**Lucca Guidelines**](http://www.unece.org/fileadmin/DAM/env/pp/documents/gmoguidelinesenglish.pdf)**. Since the GMO amendment is not yet in force you do not need to consider it for the purposes of this exercise.****Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Regulation of the Cabinet of Ministers of Ukraine of 2 April 2009 N 308 “On approval of the permit for state approbation (trials) of genetically modified organisms in the open environment.[http://zakon3.rada.gov.ua/laws/show/308-2009-п](http://zakon3.rada.gov.ua/laws/show/308-2009-%D0%BF)The legislation on GMOs merely mentions public hearings with regard to the permit, but does not set any procedure, not to say one comparable to Article 6 procedure on public participation.On the other hand, the Decree of MinEcology from 18.12.2003 N 168 On public participation in environmental decision-making<http://zakon5.rada.gov.ua/laws/show/z0155-04>covers decisions on the deliberate release of GMOs into the environment. The procedure established by the Decree may be regarded as application of Article 6 provisions “to the extent feasible and appropriate”. |

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

###

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

| **Aarhus provision** | **Practice indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 6(1)(a) and (b) | 1. Breadth of activities falling under Article 6(1)(a) and (b) in practice

Article 6(1) provides:“1. Each Party:(a) Shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in annex I;(b) Shall, in accordance with its national law, also apply the provisions of this article to decisions on proposed activities not listed in annex I which may have a significant effect on the environment. To this end, Parties shall determine whether such a proposed activity is subject to these provisions;” | **Scoring Guide:**3 = All activities listed in annex I plus one or more activities which the Party has determined pursuant to article 6(1)(b) to be subject to article 6.2 = All activities listed in annex I 1 = Most but not all activities listed in annex I OR all annex I activities are subjected to public participation in accordance with article 6 in practice, but the definition of each activity is interpreted narrowly.0 = A significant number of activities listed in annex I are not subject to public participation under article 6 in practice. The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)While there is no definition in the Convention, national practice usually defines the circle of cases that may have a significant effect on the environment and hence involve public participation in the decision-making procedures thereof. The approach “any activity in respect of which significant environmental effects cannot be excluded” should be scored the highest. At the other extreme, a general practice of adopting a restrictive interpretation of the proposed activities to which the provisions of Art. 6 apply, or the use of legal and non-legal methods to avoid public participation, shall receive the lowest score. Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* the definition of ‘permitting’ (falling under Art. 6(1)(a)) versus other types of decisions (arguably not captured) (ref.7)
* using hybrid bills (legislative decisions in respect of individual issues) in order to avoid permitting and public participation responsibilities (ref.8)
* how far article 6 is identified only with public participation in environmental impact assessment procedures (ref.1, ref.4, ref.5)
* the discretionary power to exempt certain projects from EIA or from public participation (ref.5, ref.6, ref.9)
* consideration of decision-making with regard to nuclear investments, operations and any modifications of facilities etc. (ref.2)
* consideration of decision-making in connection with waters (water management authorities) and forests (belonging to the agricultural administration) with a likely significant environmental impact (ref.3)

Please justify your score and explain the factors you considered.In the domestic legal framework public participation takes place not in the course of a decision-making process by a public authority on whether to permit proposed activities listed in annex I, but in the course of development of a project documentation by a proponent, who is solely responsible for organisation of public participation and taking into account of the result thereof. Thus, the scope of application of PP is not limited by the nature of a future decision.Public participation takes place even as to nuclear facilities for no matter what the nature of the future decision would be (even if it is an act of the parliament) the project documentation including the OVNS report is prepared (with public participation according to domestic standards).Article 6 public participation requirements with regard to specific activities are identified solely with OVNS procedure (somewhat comparable to environmental impact assessment procedure).Thus, the scope of application of public participation provisions is limited to construction projects. As mentioned above the List of activities for which development of OVNS report and thus public participation is required does not include activities not involving construction, e.g. activities on extensive use of water resources. |
| Art. 6(1)(c) | 1. Use of Article 6(1)(c) in practice

Article 6(1) provides:“1. Each Party:(c) May decide, on a case-by-case basis if so provided under national law, not to apply the provisions of this article to proposed activities serving national defence purposes, if that Party deems that such application would have an adverse effect on these purposes. | **Scoring Guide:**3 = Proposed activities serving national defence purposes which may have a significant effect on the environment are always or almost always subject to participation under Article 62 = The power to decide not to apply Article 6 to proposed activities serving national defence purposes which may have a significant effect on the environment is sometimes exercised in practice but only if it is established that the application would have an adverse effect on national defence1 = The power to decide not to apply Article 6 to proposed activities serving national defence purposes which may have a significant effect on the environment is always or almost exercised in practice in respect of all national defence activities narrowly defined (and without reference to actual effects)0 = The power to decide not to apply Article 6 to proposed activities serving national defence purposes is always or almost always exercised in practice in respect of all national defence activities broadly defined (and without reference to actual effects)In the event that your research reveals no examples of Article 6 being applied to proposed activities serving national defence purposes, please score this indicator as 0.My research revealed 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.” | **Scoring Guide:**3 = In practice, in all or almost all cases subject to article 6, the public concerned is informed, either by public notice or individually as appropriate, early in the environmental decision-making procedure, and in an adequate, timely and effective manner, inter alia, of all the information set out in subparagraphs (a)-(e) of Article 6(2).2 = In practice, in the majority of cases subject to article 6, the public concerned is informed, either by public notice or individually, in an early, adequate, timely and effective manner, inter alia, of all the information set out in subparagraphs (a)-(e) of Article 6(2).2= In practice, in all cases subject to article 6, the public concerned is informed, either by public notice or individually, of all the information set out in subparagraphs (a)-(e) of Article 6(2), though the notice could often be given in a more timely or effective manner,2 = In practice, in all cases subject to article 6, the public concerned is informed, either by public notice or individually, in an adequate, timely and effective manner, though one or more of the aspects set out in subparagraphs (a)-(e) of Article 6(2) may be lacking.1 = In practice, in a minority of cases subject to article 6, the public concerned is informed, by public notice or individually as appropriate, in an adequate, timely and effective manner, inter alia, of all the information set out in subparagraphs (a)-(e) of Article 6(2).1 = In practice, in most cases subject to article 6, the public concerned is informed but the notice may not be early, adequate timely or effective manner, and one or more aspects set out in subparagraphs (a)-(e) of Article 6(2) may be lacking.0 = In practice, the public concerned is rarely informed, either by public notice or individually, early in the environmental decision-making procedure, or in an adequate, timely and effective manner of the information set out in subparagraphs (a)-(e) of Article 6(2).The score here should be decided first of all on the basis of the comprehensiveness of notification by reference to the elements listed in Art. 6(2). A further important viewpoint is whether and how effectively the authorities tend to take into consideration traits of the concerned communities (especially marginalized groups on the basis of, for example, gender, language, ethnicity or age). The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)Insofar as possible and relevant, please take into consideration *inter alia*:* whether the form of notification takes into consideration the nature and size of the project (ref.1, ref.7)
* using a variety of methods of notification, both general forms (media, websites) and specific ones (targeted letters) (ref.2, ref.4, ref.5); the means of notification should fit the needs of the public concerned
* adequate, timely and effective notification including all matters listed in Art. 6(2) (a-e) and all accompanying information (ref.3)
* substantive and procedural information included in the notification, with bona fide attempts to attract the attention of the public concerned, with repeated and/or additional notifications, if appropriate (ref.4, ref.5, ref.6, ref.8)
* cases where the developer is solely responsible for notification (ref.6)

Please justify your score and explain the factors you considered.Developer/proponent is solely responsible for notification and public participation at all. Thus, some of the listed in Article 6 (2) information cannot be provided due to the fact that it does not exist. E.g. no public authority collects comments.In practice, the public is informed by a public notice in printed media. Since the legal framework does not set any requirement as to those media, the selection is not always adequate (e.g. the area of distribution of the media does not cover the communities likely to be affected by the planned activity). Individual notification is not practiced.As prescribed by the Annex Г of SCN the public notice usually contains information on public participation, but in the best case scenarios this information is limited to the address, phone number and hours for studying of the project documentation and the OVNS report and for submission of comments.Due it ambiguity of the SCN it is often that the public notice is only published when the OVNS report is already prepared. That means that the assessment of environmental, social and technological factors of the possible alternatives (both technological and geographical) has been done and the chosen alternative has been justified and elaborated in detail in the OVNS Report without public participation. So the public is notified after many of the options are already closed.Furthermore, in practice the prescribed content of notification (both substantive and procedural information) is not always respected. The form of notification is the same for all the projects and it does not take into consideration the nature and size of the project. |
| Art. 6(3) | 1. The time frames provided for public participation are

Art. 6(3) provides:“3. The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.” | **Scoring Guide:**3 = In all or almost all cases, the time frames for all phases are reasonable and sufficient, taking into account the nature, complexity and size of the proposed activity.2 = Time frames for all phases are reasonable and sufficient in the **majority of cases**, taking into account the nature, complexity and size of the proposed activity.2 = Across all cases, time frames are reasonable and sufficient for the **majority of phases**, but the time frame for one or more phase is often insufficient, taking into account the nature, complexity and size of the proposed activity.1 = Time frames are for all phases are reasonable and sufficient in a **minority of cases**, often failing to take into account the nature, complexity and size of the proposed activity.1= Across all cases, time frames are reasonable and sufficient in a **minority of phases**, often failing to take into account the nature, complexity and size of the proposed activity0 = Generally unreasonable and insufficient, failing to take into account the nature, complexity and size of the proposed activity.In considering the issue of ‘reasonable’ time-frames, please refer to pp.142-144 of the [Aarhus Implementation Guide (2014)](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf).The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing) Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* insufficient time given to participants in order to prepare and participate effectively (taking into consideration the nature, complexity, size and potential effects of the proposed activity and the volume and complexity of the documentation as well as such features as organisational procedures [e.g. time needed for consultations with members, outside experts, etc.], and whether for example a limited consultation period runs over public holidays/celebration days, etc.) (ref.2, ref.5, ref.7)
* occurrence of cases where the construction (or similar steps towards realising the project or activity) have already happened by the time the parties receive their notifications (ref.1)
* general arrangements for regular/frequent participants (such as mailing lists) (ref.3)
* from the side of the participants: are they able and willing to meet the deadlines set? (ref.4, ref.6)

Please justify your score and explain the factors you considered.As explained in the legal indicators the legal framework does not establish any time frames for any phases of public participation. There is also no requirement in the law for the timescales to be sufficient. Since there are no legally binding requirements as to the timeliness, schedules are established by each proponent on a case by case basis, thus the practice significantly varies. The cases are known when a public notice was published just a few days (sometimes including holidays etc.) prior to a public hearing or an insufficiently short time was given for preparation and submission of comments. General arrangements for regular/frequent participants (such as mailing lists) are not in place. |
| Art. 6(4) | 1. Do the authorities, in practice, provide for early public participation, when all options are open and effective public participation can take place

Art. 6(4) provides:“4. Each Party shall provide for early public participation, when all options are open and effective public participation can take place.” | **Scoring Guide:**3 = Yes, always or almost always2 = Yes, in a majority of cases 1 = Yes, but only in a minority of cases 0 = No, neverThe references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)Note that this indicator partly overlaps with the notification indicator, but notification does not mean in all instances the onset of the public participation procedure itself (e.g. the parties might have to wait for some meaningful information to arrive in the procedure). Please take into consideration, insofar as possible and where relevant, *inter alia*:* all options are open vs. some parameters could still be changed, in order to enhance public acceptance of the project (ref.1, ref.4)
* “providing for participation” as a genuine attempt to trigger, enhance and support public participation (ref.2)
* participation in the drafting stage of basic documents in the decision-making procedure (ref.3)
* open options in a tiered decision-making procedure, ensuring “early public participation” from the beginning of each new tier (ref.5, ref.6)
* is public participation required in practice at the scoping and/or screening phases in EIA procedures? (ref.7)

Please justify your score and explain the factors you considered.There is no public participation at the scoping and/or screening phases in OVNS procedures.Due to lack of clear requirements in the SCN, often the public gets involved only when the OVNS report is already prepared. That means that the assessment of environmental, social and technological factors of the possible alternatives (both technological and geographical) has been done and the chosen alternative has been justified and elaborated in detail in the OVNS Report without public participation. Thus, public participation often happens only after the main choice of alternatives has already been done by a developer. |
| 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 thatis available at the time of the public participation procedure, without prejudice to the right of Parties to refuse to disclose certain information inaccordance with article 4, paragraphs 3 and 4. The relevant information shall include at least, and without prejudice to the provisions of article 4:(a) A description of the site and the physical and technical characteristics of the proposed activity, including an estimate of the expected residues and emissions;(b) A description of the significant effects of the proposed activity on the environment;(c) A description of the measures envisaged to prevent and/or reduce the effects, including emissions;(d) A non-technical summary of the above;(e) An outline of the main alternatives studied by the applicant; and(f) In accordance with national legislation, the main reports and advice issued to the public authority at the time when the public concerned shall be informed in accordance with paragraph 2 above.” | **Scoring Guide:**3 = Access to all information relevant to the decision-making (included, but not limited to the information listed in Art. 6(6)(a)-(f)) is always or almost always provided free of charge and without the need for the public to make a request. 2 = Access to all information listed in Art. 6(6)(a)-(f)) is always or almost always provided free of charge and without the need for the public to make a request. 2 = Access to all information relevant to the decision-making (included, but not limited to the information listed in Art. 6(6)(a)-(f)) is is always or almost always provided free of charge though the public may need to make a request for such access. 1 = Access to all information listed in Art. 6(6)(a)-(f)) is always or almost always provided free of charge though the public may need to make a request for such access.1 = Access to all information listed in Art. 6(6)(a)-(f)) is always or almost always provided without the public needing to make a request for such access, though a fee may be charged for access.1 = Access to some but not all information listed in Art. 6(6)(a)-(f)) is always or almost always provided free of charge (the public may or may not need to make a request for such access).0=Access to no or only a minority of the information listed in Art. 6(6)(a)-(f)) is typically provided free of charge (the public may or may not need to make a request for such access).In considering the issue of “minimum information”, please find a list of examples at para 88 of the [Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters](http://www.unece.org/fileadmin/DAM/env/pp/Publications/2015/1514364_E_web.pdf)Please take into consideration not only the list of information but also the quality and usefulness of it. Furthermore, please consider if the information provided is balanced and presents different aspects of the proposed activity. Please justify your score and explain the factors you considered.The content of the public notice is prescribed by the SCN. The content of the notice itself covers information listed in Article 6 (6) a-b. Furthermore, the SCN require a proponent to include in the public notice information on address and hours for the public to study the project documentation including OVNS report. The information listed in Article 6 (6) c and e would typically be included in the OVNS report.A non-technical summary is not required by law and thus is not included. Before 2011 a notification of environmental impacts was required and its content was set by the Law on State Ecological Expertiza. The notification was defiened as a summary of the OVNS report prepared and published for the public with the view of public participation in preparation of a conclusion of state ecological expertiza (somewhat comparable to EIA decision). Currently, since the provisions of the law on the content of the notification are no longer applicable, in practice a non-technical summary is not always prepared and published. The information is typically available on the site, in the office of a proponent or of local authorities for studying and making copies. However, there have been cases when access to this documentation on request was denied bases on a volume of the requested information (cases when a requester lives in another region and it is not feasible to travel just to study the documents).Furthermore, although SCN require to provide access to project documentation and the OVNS report the proponents often claim intellectual property rights on this information and deny access. |
| Art. 6(7) | 1. In practice, the public is enabled to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity

Art. 6(7) provides:“7. Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant,any comments, information, analyses or opinions that it considers relevant to the proposed activity.” | **Scoring Guide:**3 = In all or almost all cases, the public is entitled to submit in writing or at a public hearing, any comments, information, analyses or opinions that it considers relevant to the proposed activity. In practice, hearings are routinely held for decisions to permit article 6 activities.2 = In all or almost all cases, the public is entitled to submit in writing or at a public hearing if one is held, any comments, information, analyses or opinions that it considers relevant to the proposed activity.1 = In all or almost all cases, the public is entitled to submit in writing or at a public hearing if one is held, comments, information, analyses or opinions but the public authority can decide not to take into account comments, information etc which it does not consider relevant to the proposed activity.1 = In some but not all cases, the public is entitled to submit any comments, information, analyses or opinions that it considers relevant to the proposed activity.0 = The public is rarely or never entitled to submit comments in practice on decisions to permit article 6 activities.The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* limiting the scope of possible opinions to *strictu sensu* environmental issues or even less (ref.1)
* possibilities of verbal submissions of opinions at a public hearing, the scope for direct exchange with the representatives of the developer and the authorities (ref.2)
* possibilities for the expression of opinions in hybrid decision-making procedures (ref.3)
* any substantive or formal requirements regarding the opinions which may be submitted (such as a requirement for ‘motivated’, reasoned opinions, specific written form etc.) (ref.4, ref.6, ref.7)
* potential for the developer or the developer’s experts to filter or rephrase public opinion for the authorities (ref.5)

Please justify your score and explain the factors you considered.There where cases in the past when developers required public comments to be substantiated or references to the appropriate legislative provisions. However, in the recent years developers tend to accept any comments, information, analyses or opinions.Nevertheless, due to lack of clarity in the law even now the practice varies.  |
| Art. 6(8) | 1. In practice, how is due account typically taken of the outcome of the public participation?

Art. 6(8) provides:“8. Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.” | **Scoring Guide:**3 = Public authorities always or almost always publish a response document after a public consultation, documenting the comments submitted and the authority’s response (positive or negative) with clear and sufficient reasons2 = In the majority of cases, public authorities produce a response document including the authority’s response (positive or negative) to the comments submitted with clear and sufficient reasons 2= Public authorities always or almost always produce such a response document including the authority’s response (positive or negative) but the reasons for accepting/rejecting the comments are normally very brief or generalized (e.g. “against government policy” without explaining which policy it would be against).1 = Public authorities produce a response document including the authority’s response (positive or negative) to the comments submitted with clear and sufficient reasons in a minority of cases 1= Public authorities often produce a response document including the authority’s response (positive or negative) but the reasons for accepting/rejecting the comments are normally very brief or generalized.0 = Public authorities very rarely or never produce such a response documentFor a discussion of such response documents, see the box on p.156 of the [Aarhus Convention Implementation Guide (2014)](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf).Please justify your score and explain the factors you considered.The law does not require that and public authorities do not take in due account the outcome of the public participation while issuing a construction permit. |
| Art. 6(9) | 1. In practice, is the public promptly informed and are decisions provided in writing together with reasons and considerations?

Art. 6(9) provides:“9. Each Party shall ensure that, when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance with the appropriate procedures. Each Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based.” | **Scoring Guide:**3 = In all or almost all cases the public is promptly informed of the decision, and the full text of the decision is accessible, including an explanation of how the outcomes of the public participation were taken into account.2= In all or almost all cases the public is promptly informed of the decision, and the full text of the decision is accessible, but frequently no explanation is provided of how the outcome of public participation was taken into account.2 = In a majority of cases the public is promptly informed of the decision, and the full text of the decision is accessible, including an explanation of how the outcomes of the public participation were taken into account.1= In a majority of cases, the public is informed of the decision, and the full text of the decision is accessible, including an explanation of how the outcomes of the public participation were taken into account, but this does not happen promptly.1= In a majority of cases, the public is promptly informed of the decision, and the full text of the decision is accessible, but no explanation is provided of how the outcomes of the public participation were taken into account.1 = In a minority of cases the public is promptly informed of the decision, and the full text of the decision is accessible, including an explanation of how the outcomes of the public participation were taken into account. 0 = Never or only very rarely is the public promptly informed of the decision, using all the mediums used to notify the public at the start of the public participation procedure, and the full text of the decision is accessible, including an explanation of how the outcomes of the public participation were taken into account.Regarding promptitude, please see the [Aarhus Convention Implementation Guide (2014)](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf), at p.157, and also paragraph 137 of the [Maastricht Recommendations on Public Participation](https://www.unece.org/fileadmin/DAM/env/pp/Publications/2015/1514364_E_web.pdf).Please take into consideration that the reasoning is an especially important part of the decision - first of all, because it largely determines the scope and content of any legal remedies. An example of good practice may feature reasoning that explains the factual, expert and legal bases of the decision. The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* the modalities and form of dissemination of information about the decision (ref.1)
* explanations, reasoning broken down to the level of indicating responses to individual comments provided by the public (ref.1)
* do the time periods for informing the public take account of relevant time frames for initiating review procedures? (ref.2)

Please justify your score and explain the factors you considered.The State Architectural and Construction Inspection of Ukraine maintains an online free of charge register of all issued permitting decisions including construction permits. The register is available here <http://91.205.16.115/declarate/list.php>However, the register includes only certain information on the permits (who issued, to whom, as to what, number etc.), but does not contain an actual text of the documents.As of November 26th the register contained 61 construction permits issues in November 2016 in Ukraine, so the promptiness is insured. |
| Art. 6(10) | 1. In practice, where a public authority reconsiders or updates the operating conditions for an activity referred to in Article 6(1), how frequently are the public participation provisions of the Convention applied?

Art. 6(10) provides:“10. Each Party shall ensure that, when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 of this article are applied mutatis mutandis, and where appropriate.” | **Scoring Guide:**3= In practice, a**ll** reconsiderations or updates of operating conditions for activities referred to in paragraph 1, are subject to public participation procedures meeting **all** the requirements of paragraphs 2 to 9. 2 = In practice, reconsiderations or updates of operating conditions for activities referred to in paragraph 1, are subject to a public participation procedure meeting the requirements of paragraphs 2 to 9“where appropriate.”1 = In practice, reconsiderations and updates of operating conditions are subject to public participation procedures but not a procedure meeting the requirements of paragraphs 2 to 9. 0 = In practice, reconsiderations or updates of operating conditions are not subject to public participation procedures.Please refer to page 159 of the Aarhus Convention Implementation Guide (2014) regarding the “and where appropriate” language of Art. 6(10).Please consider that time in environmental matters is often an important factor, because as time goes on projects might turn out to have unexpected environmental effects or simply the knowledge about these effects develops; therefore, even if the operation of the activity has not changed, the reconsideration or updating of its operating conditions might raise substantial new issues. The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* the relevance of changes in the legal environment in respect of the activity/project (such as new binding conditions and deadlines – therefore time lags in themselves might amount to significant modification even without any modification in the technical plan) (ref.1)
* whether full (or partial) access to participation is given in the case of reconsiderations or updates of operating conditions (ref.1)
* the question of “where appropriate” and the size of the facility and the level of public interest in it (ref.1)
* any applications of the CJEU’s judgments in Cases C-275/09 Brussels airport and/or C-121/11 Pro-Braine, to the effect that the mere renewal of an existing permit to operate a project cannot, in the absence of any works or interventions involving alterations to the physical aspect of the site, be classified as a ‘project’ for the purposes of the EIA Directive, with the result that public participation obligations are not applied (ref.2)

Please justify your score and explain the factors you considered.In practice, only project documentation for reconstruction, restoration and the capital repair of facilities are subject to the same public participation provisions in accordance to domestic standards as new construction. The domestic provisions on public participation do not meet the requirements of paragraphs 2 to 9 Article 6.Although not required by law, decisions on life time extensions of nuclear reactors go through public participation procedure. |
| 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 decisionson whether to permit the deliberate release of genetically modified organisms into the environment.” | **Scoring guide:****3=** In practice, **all** decisions on whether to permit the deliberate release of GMOs into the environment have been subject to public participation procedures that comply with **all** the provisions of article 6 (i.e. no carve out for “if feasible and appropriate”)2 = In practice, decisions on whether to permit the deliberate release of GMOs into the environment have been subject to public participation procedures that comply with the provisions of article 6 “to the extent feasible and appropriate”.1 = In practice, decisions on whether to permit the deliberate release of GMOs into the environment have been subject to a public participation procedure but most of the provisions of article 6 were not applied with respect to such decision-making. 0 = In practice, decisions on whether to permit the deliberate release of GMOs into the environment have not been subject to a public participation procedureWhere this has never arisen on the facts, i.e. the Party has not in practice considered permitting the deliberate release of a genetically modified organism into the environment, please note this fact in your comment and do not provide a score. If we do not obtain a score for each Party, the results of this indicator will be ‘hived off’ (i.e. will not count towards the overall score), and will be considered separately in the report.At least in one case (listed on the ministerial web-page) the MinEcology refused to issues a permit for the deliberate release of a genetically modified organism into the environment. There was no public participation in this decision-making process. |

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

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

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

| **Aarhus provision** | **Legal indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 7, first sentenceIndicator 1 | 1. How well has the phrase “the preparation of plans and programmes relating to the environment” been enacted?

The first sentence provides:“Each Party shall make appropriate practical and/or other provisions for the public to participate during **the preparation of plans and programmes relating to the environment**, within a transparent and fair framework, having provided the necessary information to the public.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at allIssues to consider include:are all plans and programmes relating to the environment covered by the enactment? How is “relating to the environment” defined, e.g. what level of connection with the environment is needed (e.g. only if the plan would have a significant impact or environmental component, or any connection to the environment would be enough? Does the Party define “relating to the environment” narrowly by reference to the authority responsible for the plan/programme). The broader the interpretation given to “the preparation of plans and programmes relating to the environment” in the enactment, the higher the score.**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incomplite enactmentArticle 7 is implemented only with regard to purely environmental programs developed by the MinEcology and special planning documents of local level.the Law of Ukraine on the Protection of the Environment (N 1264-XII, 1991)<http://zakon2.rada.gov.ua/laws/show/1264-12>Центральні та місцеві органи виконавчої влади, а також органи місцевого самоврядування під час розробки екологічних програм залучають громадськість до їх підготовки шляхом оприлюднення проектів екологічних програм для їх вивчення громадянами, підготовки громадськістю зауважень та пропозицій щодо запропонованих проектів, проведення публічних слухань стосовно екологічних програм.According to Article 6 public authorities during preparation of environmental programs involve public in the process by promulgation of the drafts of environmental programs for their consideration and preparation of comments and suggestions by the public and carrying out of public hearings.According to the Law on On State Special Programs (№ 1621-IV, 2004)<http://zakon3.rada.gov.ua/laws/show/1621-15> (Article 3) environmental programs are those that aim at implementation of national environmental measures, environmental disaster prevention and response.Environmental programs are developed by the MinEcology.Also, the The Law of Ukraine on Urban Development (N 3038-VI 2011)<http://zakon4.rada.gov.ua/laws/show/3038-17>in Article 21 envisage public participation in preparation of special planning documents of local level (general/master plans of cities, zoning plans and detailed plans of territory). |
| Art. 7(1), first sentenceIndicator 2 | 1. How well has “having provided the necessary information to the public” been enacted for the purpose of Article 7(1)?

The first sentence provides:“Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, **having provided the necessary information to the public.**” | **Scoring guide**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at allPlease consider that enactment is fully in accord where the legislation specifically addresses the information to be provided to the public and defines “necessary information” broadly. A narrow definition of necessary information should result in a score of 1.Effective enactmentthe Law of Ukraine on the Protection of the Environment (N 1264-XII, 1991)<http://zakon2.rada.gov.ua/laws/show/1264-12>Центральні та місцеві органи виконавчої влади, а також органи місцевого самоврядування під час розробки екологічних програм залучають громадськість до їх підготовки шляхом оприлюднення проектів екологічних програм для їх вивчення громадянами, підготовки громадськістю зауважень та пропозицій щодо запропонованих проектів, проведення публічних слухань стосовно екологічних програм.According to Article 6 public authorities during preparation of environmental programs involve public in the process by promulgation of the drafts of environmental programs for their consideration and preparation of comments and suggestions by the public and carrying out of public hearings.The Law of Ukraine on Urban Development (N 3038-VI 2011)<http://zakon4.rada.gov.ua/laws/show/3038-17>Artilce 21 3. Сільські, селищні, міські ради та їх виконавчі органи зобов’язані забезпечити:1) оприлюднення прийнятих рішень щодо розроблення містобудівної документації на місцевому рівні з прогнозованими правовими, економічними та екологічними наслідками;2) оприлюднення проектів містобудівної документації на місцевому рівні та доступ до цієї інформації громадськості;Relevant public authorities are required to publish their decisions to develop plans and actual drafts of these plans. They have an obligation to insure public access to these documents.  |
| Art. 7, second sentence | 1. How well the second sentence of Art. 7 been enacted?

The second sentence provides:“Within this framework [i.e. the framework mentioned in the first sentence], article 6, paragraphs 3, 4 and 8, shall be applied.”Article 6(3): “The public participation procedure shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.”Article 6(4): “Each Party shall provide for early and effective public participation, when all options are open and effective public participation can take place.”Article 6(8): “Each Party shall ensure that in the decision-making due account is taken of the outcome of the public participation.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incomplete enactmentThe Decree of MinEcology from 18.12.2003 N 168 On public participation in environmental decision-making<http://zakon5.rada.gov.ua/laws/show/z0155-04>establishes that period for public consultations on environmental programs, plans and strategies cannot exceed 3 months for nationwide and 2 month for local, but the Decree is silent on the minimal period for public consultations. It establishes that the results of public consultations shall be taken into account to the farthest extent possible.2.2. Особа, яка приймає рішення, визначає тривалість громадського обговорення в залежності від виду запланованого рішення. Тривалість громадського обговорення не може перевищувати: 3 місяців - для міждержавних, державних, регіональних програм, планів, стратегій, концепцій; 2 місяців для місцевих програм, планів дій, стратегій;2.6.Особа,  яка  приймає  рішення,  призначає  дату та місце проведення громадського обговорення та повідомляє про це суб'єктів громадського обговорення не пізніше ніж за 30 днів до моменту його проведення через засоби масової інформації.2.11. Результати (громадського обговорення) повинні бути максимально враховані при підготовці проекту рішення. The Law of Ukraine on Urban Development (N 3038-VI 2011)<http://zakon4.rada.gov.ua/laws/show/3038-17>Article 21 (4) establishes that draft planning documents shall be published no later than in one month since they are submitted to a local authority.4. Оприлюднення проектів генеральних планів, планів зонування територій, детальних планів територій здійснюється не пізніш як у місячний строк з дня їх надходження до відповідного органу місцевого самоврядування.Neither the Law, nor a Procedure for holding public hearings for taking into account public interests in the course of preparation of draft urban planning documents on a local level, approved by a Decree of the Cabinet of Ministers of Ukraine # 555 from 25 may 2011, [http://zakon5.rada.gov.ua/laws/show/555-2011-п](http://zakon5.rada.gov.ua/laws/show/555-2011-%D0%BF)set timeframes for the public to prepare and participate effectively during the decision-making.The Law prescribe public participation to happen during the course of development of the respective planning document prior to their adoption by public authorities (Article 21). The law (Article 21) establishes a procedure for taking into account the comments received among other setting up of a Conciliation Commission for resolution of disputable comments. The law establishes that in the result of public participation the project documentation is amended in accordance to non- disputable comments, disputable comments resolved by the Conciliation Commission as well as disputable comments, if accepted by a decision-making authority. |
| Art. 7, third sentence | 1. How well has the third sentence of Art. 7 been enacted?

The third sentence provides:“The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incomplete and erroneous enactmentThe Decree of MinEcology from 18.12.2003 N 168 On public participation in environmental decision-making<http://zakon5.rada.gov.ua/laws/show/z0155-04>define ‘public conserned’ for the purpose of the procedure is establishes.The definition of “the public concerned” reads – the public affected by decision-making that adversely impact or likely to impact the state of the environment (це громадськість, на яку впливає реалізація рішень з питань, що справляють чи можуть справити негативний вплив на стан довкілля).The Law of Ukraine on Urban Development (N 3038-VI 2011)<http://zakon4.rada.gov.ua/laws/show/3038-17>Article 21 (7) establishes an exhaustive list of the persons eligible to participate in public consultations. The approach is rather narrow. Physical persons not residing on the territory for which a planning document is developed and environmental NGOs are not allowed to participate.7. Пропозиції до проектів містобудівної документації на місцевому рівні мають право надавати:1) повнолітні дієздатні фізичні особи, які проживають на території, щодо якої розроблено відповідний проект містобудівної документації на місцевому рівні;2) юридичні особи, об’єкти нерухомого майна яких розташовані на території, для якої розроблено відповідний проект містобудівної документації на місцевому рівні;3) власники та користувачі земельних ділянок, розташованих на території, щодо якої розробляється документація, та на суміжній з нею;4) представники органів самоорганізації населення, діяльність яких поширюється на відповідну територію;5) народні депутати України, депутати відповідних місцевих рад. |
| Art. 7, fourth sentence | 1. How well has the fourth sentence of Art. 7 been enacted?

“To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Not enacted at allThe framework Law of Ukraine on the Protection of the Environment (N 1264-XII, 1991)<http://zakon2.rada.gov.ua/laws/show/1264-12>or any other law establishes public rights to participation in the preparation of policies in general or relating to the environment in particular.Hovever, strategies are adopted by president, government or parliament. The last two bodies go through regulatory or legislative procedure respectively, which includes public consultation stage. |

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

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

###

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

| **Aarhus provision** | **Practice indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 7Indicator 1 | 1. In practice, are all plans and programmes relating to the environment subject to public participation during their preparation?

Article 7 provides:“Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework, article 6, paragraphs 3, 4 and 8, shall be applied. The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.” | **Scoring Guide:**3 = Yes, in all or almost all cases2 = Yes, in most cases1 = No, there are a significant number of cases where the public is given no possibility to participate during the preparation of a plan or programme relating to the environment.0 = No, never, or rarelyThe references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)Note that in the most legal systems there are not clear definitions of plans, programmes or policies and this allows for public participation to be outmanoeuvred in some instances. This first indicator for Article 7 examines the very existence of the possibility of participation in the cases of the preparation of plans and programmes. Spatial plans should be considered plans ‘relating to the environment’ for these purposes. Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* definitional elements in respect of plans, programs and policies, such as references to the author of the document (e.g. legislative or administrative bodies or both) (ref.4)situations that operate at the boundary between Article 6 and Article 7 Aarhus (ref.1)
* the situation in respect of financial, investment etc. plans (ref.7)
* the use of “ouster clauses” (legislative arrangements that exclude or limit court review of certain cases) to avoid public participation obligations (ref.2)
* number of major plans that are in fact the subject of substantial public discussion (ref.3)
* EU level environmental policy formulation and public participation in respect thereof (ref.5)
* any differences in treatment between planning procedures based on legal provisions and ‘loser’ planning procedures (e.g. unregulated phases of planning behind the scenes with no public participation) (ref.10, ref.15)

Guidance on how to identify a plan or programme relating to the environment for the purposes of article 7 is provided in paragraphs 154 and 155 of the [Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters](https://www.unece.org/fileadmin/DAM/env/pp/Publications/2015/1514364_E_web.pdf). Please justify your score and explain the factors you considered.With regard to Article 7 public participation is clearly envisaged only with regard to purely environmental programs and spatial plans of local level.There is no public participation in spatial plans of regional and national level. There is usually no public participation in preparation of programs developed by any other branches of the Government (apart from the Ministry of Ecology) e.g. in water, land, minerals, forest, agriculture, transport, energy etc. areas. Furthermore, a certain culture of public participation is building up within the Ministry of Ecology at least with regard to plans, programs, policies and normative acts. Notwithstanding the nature of the document the same public participation provisions (established by the Decree of MinEcology from 18.12.2003 N 168 On public participation in environmental decision-making<http://zakon5.rada.gov.ua/laws/show/z0155-04>) would normally apply. For example, public consultations were organised by the Ministry of Ecology with regard to the National Action Plan on the Protection of the Environment for 2011-2015, [http://zakon2.rada.gov.ua/laws/show/577-2011-р](http://zakon2.rada.gov.ua/laws/show/577-2011-%D1%80) |
| Art. 7Indicator 2 | 1. In practice, is the public able to prepare and participate effectively during the preparation of plans and programmes relating to the environment? In particular:

– is all necessary information provided to the public?– is there early public participation when all options are open?– are there reasonable timeframes that enable the public to prepare and participate effectively?– is due account taken of the outcome of the public participation?Article 7 provides:“Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework, article 6, paragraphs 3, 4 and 8, shall be applied. The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.” | **Scoring Guide:**3 = Yes, in all or almost all cases2 = Yes, in most cases1 = Only in a minority of cases0 = No, never, or rarelyThe references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)This second indicator for Article 7 examines the quality of public participation, namely if the members and organisations of the public receive notification about the start of the planning procedure in advance in due time, how the section of the public that is enabled to participate is selected, how due account is taken of the public’s opinion in the planning decision, etc. Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* any plans made subject to referendum? (ref.6)
* access to numerical data concerning public participation in strategic decision-making (ref.9, ref.12)
* participation possibilities only (or greater) for handpicked parts of the public, such as a bias in favour of narrow interest groups when determining those who can participate (ref.18)
* any differences in treatment between planning procedures based on legal provisions and ‘looser’ planning procedures (e.g. unregulated phases of planning behind the scenes with no public participation) (ref.10, ref.15)
* possibility to participate in the preliminary (idea gathering, brainstorming etc.) phases of the general decision-making procedures (ref.11)
* availability of draft plans on the Internet (ref.17)
* public notice regarding the onset of the planning procedure; early participation (ref.14, ref.21, ref.23)
* reasonable time given to the public to form its opinion (ref.20, ref.21, ref.22, ref.23)
* genuine possibility of the public influencing the content of plans (ref.13)
* public participation in the monitoring of the implementation of plans (such as progress reports) (ref.16)
* form of public consultations (e.g. only electronic, or personal exchange, hearings etc.) (ref.19)
* feedback from the evaluation of public comments (ref.19)

Please justify your score and explain the factors you considered.With regard to environmental plans and programs the Ministry of Ecology usually respects and follows its Decree from 18.12.2003 N 168 On public participation in environmental decision-making<http://zakon5.rada.gov.ua/laws/show/z0155-04>This document does require necessary information to be provided to the public, sets some timeframes (though not all necessary timeframes), require participation before a document is adopted, due account is taken of the outcome of participation.As to spatial documents of local level, although a rather clear procedure is established by law, even in the recent years public had problems with access to general plans of the settlements both in the course of its development and after the adoption. In the last five years civil society organisations launched campaigns (including tens of lawsuits) aiming at declassification of general plans. |
| Article 7Indicator 3 | 1. In practice, are all policies relating to the environment subject to public participation during their preparation?

Article 7 provides:“Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework, article 6, paragraphs 3, 4 and 8, shall be applied. The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.” | **Scoring Guide:**3 = Yes, in all or almost all cases2 = Yes, in most cases1 = No, there are a significant number of cases where the public is given no possibility to participate during the preparation of a policy relating to the environment.0 = No, never, or rarelyGuidance on how to identify a policy relating to the environment for the purposes of article 7 is provided in paragraphs 156 of the [Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters](https://www.unece.org/fileadmin/DAM/env/pp/Publications/2015/1514364_E_web.pdf)The national legal framework and practice do not define and regulate policy development and adoption procedures, not to say require public participation in it. Policy choices are often made in framework laws, like the Law on Protection of the Environment contain a number of policy provisions. On the other hand, usually policy documents (strategies) are adopted by an act of the Parliament or the Government.The most recent *Main Principles (Strategy) of the National Environmental Policy of Ukraine for the Period until the Year 2020* was adopted by the law № 2818-VI, 2010.Public had an opportunity to participate in its preparation.In practice, if a policy document is developed by the Ministry of Environment (to be adopted either by the Parliament, the Government or the Ministry itself) public participation takes place. Not so much, if developed by any other branch of the Government.  |
| Article 7Indicator 4 | 1. In practice, are the opportunities for the public to participate in the preparation of policies relating to the environment effective? For example, do the opportunities meet the public participation requirements set out elsewhere in article 7 (necessary information provided to the public, reasonable timeframes, early participation when all options are open, due account taken of the outcome of participation)?
 | **Scoring Guide:**3 = Yes, in all or almost all cases2 = Yes, in most cases1 = No, there are a significant number of cases where the opportunities for the public to participate during the preparation of a policy relating to the environment are not effective.0 = No, never, or rarelyWhen the Ministry of Ecology developes a draft of a policy, it usually respects the requirements of the Decree of MinEcology from 18.12.2003 N 168 On public participation in environmental decision-making<http://zakon5.rada.gov.ua/laws/show/z0155-04>This document does require necessary information to be provided to the public, sets some timeframes (though not all nesseary timeframes), participation before a document is adopted, due account is taken of the outcome of participation. |

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

###

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

| **Aarhus provision** | **Legal indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 8, first sentence | 1. How well has the first sentence of Art. 8 been enacted?

The first sentence provides:“Each Party shall strive to promote effective public participation at an appropriate stage, and while options are still open, during the preparation bypublic authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incomplete enactmentLaws of Ukraine do not explicitly require public participation 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.The Law on the Protection of the Environment in Articles 9 and 21 lists respectively citizens’ and NGOs participatory rights in preparation of legal acts which may impact the environment.**Стаття 9.** Екологічні права громадян УкраїниКожний громадянин України має право на:б) участь в обговоренні та внесення пропозицій до проектів нормативно-правових актів, .., які можуть негативно впливати на стан навколишнього природного середовища, внесення пропозицій до органів державної влади та органів місцевого самоврядування, юридичних осіб, що беруть участь в прийнятті рішень з цих питань;**Стаття 21.** Повноваження громадських організацій у галузі охорони навколишнього природного середовищаи) брати участь у підготовці проектів нормативно-правових актів з екологічних питань;These rights where introduced to the Law as measures implementing the Aarhus Convention in 2002. No specific requirements on the details of public participation with regard to Articles 6, 7 or 8 (timeframes, access to information, an obligation to take into account) were introduced into the law. The Ministry of Ecology, however, enacted its Decree from 18.12.2003 N 168 On public participation in environmental decision-making.<http://zakon5.rada.gov.ua/laws/show/z0155-04>This Decree regulates public participation including in development or normative acts. However, since it was adopted on the level of the Ministry (not on the level of the Cabinet of Ministers), it is binding only on the Ministry itself and its local offices (while they still existed).This Decree was in force when ACCC made its conclusions and recommendations as to lack of clear and consistent legal framework on public participation in decisions on specific activities in Ukraine. Later in 2011, the Cabinet of Ministers adopted the Procedure for public involvement in discussion on making decisions which can affect the state of the environment (from 29 June 2011, 771). [http://zakon2.rada.gov.ua/laws/show/771-2011-п](http://zakon2.rada.gov.ua/laws/show/771-2011-%D0%BF)This act is applicable to * Normative acts,
* Conclusions of state ecological expertiza (a decision somewhat comparable to EIA decision that was abolished in 2011)
* Some local special plans,
* Plans on some environmental measures funded from the environmental funds

Prepared by central and local governmental bodies, implementation of which can negatively impact the environment. The procedure is advisory in nature for bodies of local self-government.Furthermore, the Law on the Principles of Regulatory Policy in Economic Activity <http://zakon3.rada.gov.ua/laws/show/1160-15>(Article 4-6, 9) provides for public participation in the course of development of legally binding acts regulating to economic activities including environmental laws and regulations. Thus, not all, but some laws, executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment are subject to public participation. |
| Art. 8(a) | 1. How well has Art. 8(a) been enacted?

Art. 8(a) provides:“To this end [i.e. the end mentioned in the first sentence of Art. 8], the following steps should be taken:(a) Time-frames sufficient for effective participation should be fixed;” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incomplite enactmentthe Law on the Principles of Regulatory Policy in Economic Activity <http://zakon3.rada.gov.ua/laws/show/1160-15>**Стаття 9.** Оприлюднення проектів регуляторних актів з метою одержання зауважень і пропозицій Строк, протягом якого від фізичних та юридичних осіб, їх об'єднань приймаються зауваження та пропозиції, встановлюється розробником проекту регуляторного акта і не може бути меншим ніж один місяць та більшим ніж три місяці з дня оприлюднення проекту регуляторного акта та відповідного аналізу регуляторного впливу. The period for public commenting should be not less than 1 month and not more than 3 months from the day the draft of a regulatory act was released.The Decree of MinEcology from 18.12.2003 N 168 On public participation in environmental decision-making<http://zakon5.rada.gov.ua/laws/show/z0155-04>establishes that period for public consultations on normative acts cannot be less than 3 months, but the Decree is silent on the minimal period for public consultations. It also established that draft normative acts shall be made public 30 days in advance prior to the beginning of the period for public consultations.2.2. Особа, яка приймає рішення, визначає тривалість громадського обговорення в залежності від виду запланованого рішення. Тривалість громадського обговорення не може перевищувати: 3 місяців - для міждержавних, державних, регіональних програм, планів, стратегій, концепцій, проектів нормативно-правових актів; здійснення діяльності, яка справляє чи може справити негативний вплив на стан довкілля, або рішень щодо витрат, пов'язаних із здійсненням природоохоронних заходів за рахунок Державного фонду охорони навколишнього природного середовища;2.15. При розгляді проектів нормативно-правових актів у сфері використання природних ресурсів чи охорони довкілля їх текст повинен бути опублікований в засобах масової інформації не пізніше ніж за 30 днів до початку громадського обговорення.the Procedure for public involvement in discussion on making decisions which can affect the state of the environment, adopted by the Cabinet of Ministers (from 29 June 2011, 771)[http://zakon2.rada.gov.ua/laws/show/771-2011-п](http://zakon2.rada.gov.ua/laws/show/771-2011-%D0%BF)requires public comments to be accepted at least during the period of 30 days from the date of publication of the notification of public consultations.10. Пропозиції (зауваження) подаються у письмовій чи усній формі, надсилаються електронною поштою із зазначенням прізвища, імені, по батькові та адреси особи, яка їх подає, протягом строку, передбаченого процедурою громадського обговорення, але не менш як протягом 30 днів з дати опублікування повідомлення про його проведення. |
| Art. 8(b) | 1. How well has Art. 8(b) been enacted?

Art. 8(b) provides:“To this end [i.e. the end mentioned in the first sentence of Art. 8], the following steps should be taken:(b) Draft rules should be published or otherwise made publicly available;” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incomplete enactmentthe Law on the Principles of Regulatory Policy in Economic Activity <http://zakon3.rada.gov.ua/laws/show/1160-15>**Стаття 9.** Оприлюднення проектів регуляторних актів з метою одержання зауважень і пропозицій Кожен проект регуляторного акта оприлюднюється з метою одержання зауважень і пропозицій від фізичних та юридичних осіб, їх об'єднань. Про оприлюднення проекту регуляторного акта з метою одержання зауважень і пропозицій розробник цього проекту повідомляє у спосіб, передбачений статтею 13 цього Закону. У випадках, встановлених цим Законом, може здійснюватися повторне оприлюднення проекту регуляторного акта. Проект регуляторного акта разом із відповідним аналізом регуляторного впливу оприлюднюється у спосіб, передбачений статтею 13 цього Закону, не пізніше п'яти робочих днів з дня оприлюднення повідомлення про оприлюднення цього проекту регуляторного акта. The law requires publication of the draft regulatory acts in the official printed media and on the Internet.The Decree of MinEcology from 18.12.2003 N 168 On public participation in environmental decision-making<http://zakon5.rada.gov.ua/laws/show/z0155-04>requires publication of the draft normative acts in the media 30 days prior public consultation period.2.15. При розгляді проектів нормативно-правових актів у сфері використання природних ресурсів чи охорони довкілля їх текст повинен бути опублікований в засобах масової інформації не пізніше ніж за 30 днів до початку громадського обговорення.the Procedure for public involvement in discussion on making decisions which can affect the state of the environment, adopted by the Cabinet of Ministers (from 29 June 2011, 771)[http://zakon2.rada.gov.ua/laws/show/771-2011-п](http://zakon2.rada.gov.ua/laws/show/771-2011-%D0%BF)contain inconsistent provisions: some envisage provision of the access to the draft decision, other only to the content of the draft decision.4. Громадське обговорення передбачає:   забезпечення доступу громадськості до проекту рішення, документів, на підставі яких приймається таке рішення, та іншої необхідної інформації;8. Під час підготовки до проведення громадського обговорення його організатор інформує громадськість про:   зміст проекту рішення;13. Організатор громадського обговорення визначає дату та місце проведення громадських слухань і забезпечує відповідне інформування громадськості про:   короткий зміст проекту рішення; |
| Art. 8(c) | 1. How well has Art. 8(c) been enacted?

Art. 8(c) provides:“To this end [i.e. the end mentioned in the first sentence of Art. 8], the following steps should be taken:(c) The public should be given the opportunity to comment, directly or through representative consultative bodies.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incomplete enactmentthe Law on the Principles of Regulatory Policy in Economic Activity <http://zakon3.rada.gov.ua/laws/show/1160-15>**Стаття 9.** Оприлюднення проектів регуляторних актів з метою одержання зауважень і пропозицій Кожен проект регуляторного акта оприлюднюється з метою одержання зауважень і пропозицій від фізичних та юридичних осіб, їх об'єднань. The law establishes a possibility for the public to directly comment on the draft regulatory acts.Both the Decree of MinEcology from 18.12.2003 N 168 On public participation in environmental decision-making<http://zakon5.rada.gov.ua/laws/show/z0155-04>andthe Procedure for public involvement in discussion on making decisions which can affect the state of the environment, adopted by the Cabinet of Ministers (from 29 June 2011, 771)[http://zakon2.rada.gov.ua/laws/show/771-2011-п](http://zakon2.rada.gov.ua/laws/show/771-2011-%D0%BF)give public the opportunity to comment, directly or through representative consultative bodies. |
| Art. 8, final sentence | 1. How well has the final sentence of Art. 8 been enacted?

The final sentence provides:“The result of the public participation shall be taken into account as far as possible.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incomplete enactmentthe Law on the Principles of Regulatory Policy in Economic Activity <http://zakon3.rada.gov.ua/laws/show/1160-15>**Стаття 9.**Усі зауваження і пропозиції щодо проекту регуляторного акта та відповідного аналізу регуляторного впливу, одержані протягом встановленого строку, підлягають обов'язковому розгляду розробником цього проекту. За результатами цього розгляду розробник проекту регуляторного акта повністю чи частково враховує одержані зауваження і пропозиції або мотивовано їх відхиляє.The law requires the result of the public participation to be considered and taken into account or refused with the reasons provided.Both the Decree of MinEcology from 18.12.2003 N 168 On public participation in environmental decision-making<http://zakon5.rada.gov.ua/laws/show/z0155-04>andthe Procedure for public involvement in discussion on making decisions which can affect the state of the environment, adopted by the Cabinet of Ministers (from 29 June 2011, 771)[http://zakon2.rada.gov.ua/laws/show/771-2011-п](http://zakon2.rada.gov.ua/laws/show/771-2011-%D0%BF)require the result of the public participation to be taken into account. |

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

###

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

| **Aarhus provision** | **Practice indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 8Indicator 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 bypublic authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment.To this end, the following steps should be taken:(a) Time-frames sufficient for effective participation should be fixed;(b) Draft rules should be published or otherwise made publicly available;(c) The public should be given the opportunity to comment, directly or through representative consultative bodies.The result of the public participation shall be taken into account as far as possible. | **Scoring Guide:**3 = Yes, in all or almost all cases2 = Yes, in most cases1 = 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 environment0 = No, never, or rarelyNote: this includes all draft legislation/regulations at **all levels of government**, including local government and municipalities (including with respect to spatial plans where they are adopted by normative acts) that **may have a significant effect on the environment**.The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)Legislative decision-making performed or prepared by public authorities might take place at several levels of the State, including municipalities. Also, there may be several stages within one procedure. Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* public participation in drafting secondary legislation (such as decrees of the Government or ministers, statutory instruments, etc.) (ref.15)
* existence of regulatory impact assessment (ref.6)
* public participation in respect of the drafting of local ordinances (ref.9)

Please justify your score and explain the factors you considered.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 Law on the Principles of Regulatory Policy in Economic Activity <http://zakon3.rada.gov.ua/laws/show/1160-15>is enforced in practice.The public has real opportunities to participate in draft regulatory acts (that regulate economic activities). For instance, all normative acts imposing new or revising environmental permits, standards ets would fall within this category. The law covers both bodies of the state government (central and local) and bodies of the local self-government.Yet this will not cover all all draft executive regulations and other generally legally binding rules that may have a significant effect on the environment.The Decree of MinEcology from 18.12.2003 N 168 On public participation in environmental decision-making<http://zakon5.rada.gov.ua/laws/show/z0155-04>only covers normative acts prepared by the MinEcology.the Procedure for public involvement in discussion on making decisions which can affect the state of the environment, adopted by the Cabinet of Ministers (from 29 June 2011, 771)[http://zakon2.rada.gov.ua/laws/show/771-2011-п](http://zakon2.rada.gov.ua/laws/show/771-2011-%D0%BF)is not enforced in practice. |
| Art. 8Indicator 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:1. Time-frames sufficient for effective participation;
2. Draft rules published or otherwise made publicly available;
3. The public has opportunity to comment, directly or through representative consultative bodies
4. 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 bypublic authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment.To this end, the following steps should be taken:(a) Time-frames sufficient for effective participation should be fixed;(b) Draft rules should be published or otherwise made publicly available;(c) The public should be given the opportunity to comment, directly or through representative consultative bodies.The result of the public participation shall be taken into account as far as possible. | **Scoring Guide:**3 = Yes, in all or almost all cases2 = Yes, in most cases1 = 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 environment0 = No, never, or rarelyNote: this includes all draft legislation/regulations at **all levels of government**, including local government and municipalities that **may have a significant effect on the environment**.The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)The quality and effectiveness of public participation in the preparation of legislative materials by public authorities depend on a line of factors, familiar from Art. 6. Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* accessibility of legislative drafts (ref.1, ref.3)
* NGOs’ or expert organisations’ role as facilitators (ref.1, ref.13, ref.14)
* direct consultations with advisory boards, commissions, working groups with NGO participation, accredited organisations (ref.2, ref.3, ref.7)
* early participation and participation in the preliminary phases of drafting (ref.5, ref.11)
* sufficient time allowed to the public for forming its opinion? (ref.4, ref.8, ref.16)
* existence of regulatory impact assessment (ref.6)
* “e-democracy” interactive participation modes on the Internet (ref.10, ref.15)
* fairness of the participation procedure (ref.11, ref.12, ref.14, ref.17, ref.18)
* significant modification of drafts after public participation (only or not only because of the participation process) (ref.4)

Please justify your score and explain the factors you considered.Since I scored practice indicator 1 – 1, I am scoring this one not higher then 1.In my opinion the public participation procedures on laws, executive regulations and other generally applicable legally binding rules covered by the Law on the Principles of Regulatory Policy in Economic Activity <http://zakon3.rada.gov.ua/laws/show/1160-15>meet the requirements of article 8 both in law and practice.MinEcology with regard to its normative acts in the last at least 3 years normally met the requirements of article 8.Nevertheless, significant modification of drafts after public participation does happen. For example, the mentioned above Procedure for public involvement in discussion on making decisions which can affect the state of the environment, adopted by the Cabinet of Ministers (from 29 June 2011, 771) was subject to public participation. The public had very few comments on a rather sophisticated draft developed by the EU funded technical support project, but while debated and adopted by the Cabinet of Minister in a matter of 1 day the draft was significantly modified (cut more than in half). That raised a huge wave of protests in civil society which unfortunately did not have an effect. The Procedure is in force, but due to its deficiency is hardly enforced. The other state and local authorities (in cases other then covered by the Law on the Principles of Regulatory Policy in Economic Activity) don’t met the requirements of article 8.  |

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

Something is wrong with the numbering in the text of the practice indicator 2 – it starts with 6…

##

## IV. Access to justice pillar

### Access to justice – Legal indicators

| **Aarhus provision** | **Legal indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 9(1)First para | 1. How well has the first paragraph of Art. 9(1) been enacted?

The first paragraph provides:“1. Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court oflaw or another independent and impartial body established by law.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Effective enactmentthe Law on Access to Public Information (№ 2939-VI, 2011) <http://zakon4.rada.gov.ua/laws/show/2939-17>Стаття 23. Право на оскарження рішень, дій чи бездіяльності розпорядників інформації1. Рішення, дії чи бездіяльність розпорядників інформації можуть бути оскаржені до керівника розпорядника, вищого органу або суду.2. Запитувач має право оскаржити:1) відмову в задоволенні запиту на інформацію;2) відстрочку задоволення запиту на інформацію;3) ненадання відповіді на запит на інформацію;4) надання недостовірної або неповної інформації;5) несвоєчасне надання інформації;6) невиконання розпорядниками обов'язку оприлюднювати інформацію відповідно до статті 15 цього Закону;7) інші рішення, дії чи бездіяльність розпорядників інформації, що порушили законні права та інтереси запитувача.3. Оскарження рішень, дій чи бездіяльності розпорядників інформації до суду здійснюється відповідно до [Кодексу адміністративного судочинства України](http://zakon4.rada.gov.ua/laws/show/2747-15).The law provides for a possibility to challage various acts and omissions of a public authority violating access to information right to 1) a head of the public authority, 2) a superior public authority, or 3) a court of law.Independence and impartiality of head of public authorities and superior public authorities when reviewing refusal ets in access to information of their subordinate officials or offices is highly doubted. There is no independent and impartial body other than a court of law with authority to review refusals in access to environmental information. |
| 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 expeditiousprocedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent andimpartial body other than a court of law.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incomplete enactment the Law on Access to Public Information (№ 2939-VI, 2011) <http://zakon4.rada.gov.ua/laws/show/2939-17>Стаття 23. Право на оскарження рішень, дій чи бездіяльності розпорядників інформації1. Рішення, дії чи бездіяльність розпорядників інформації можуть бути оскаржені до керівника розпорядника, вищого органу або суду.There is no independent and impartial body other than a court of law with authority to review refusals in access to environmental or any other information information.The Law provides for a possibility to challenge acts, omissions or decisions of providers of information to heads of relevant public authorities or superior public authorities (e.g. a refusal of Lviv Regional Environmental Inspectorate can be challenged to the State Environmental inspectorate of Ukraine). The general procedure of administrative appeals is established by the Law on Citizens Appeals (№ 393/96-ВР, 1996) [http://zakon2.rada.gov.ua/laws/show/393/96-вр](http://zakon2.rada.gov.ua/laws/show/393/96-%D0%B2%D1%80) These administrative review procedures are expeditious (a complain shall be resolved in 30 days, with a possibility of extension up to 45 days) and free of charge, however they cannot be regarded as independent, impartial and overall effective. Furthermore, the law covers only natural persons, and does not cover any judicial persons (including NGOs). In Ukraine, administrative review is complimentary. There is no requirement to use administrative appeal before turning to courts.  |
| Art. 9(1)Third para, 1st sentence | 1. How well has the first sentence of the third paragraph of Art. 9(1) been enacted?

The first sentence of the third paragraph provides:“Final decisions under this paragraph 1 shall be binding on the public authority holding the information.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incomplite enactmentFinal court decisions are binding.The Law on Citizens Appeals (№ 393/96-ВР, 1996) [http://zakon2.rada.gov.ua/laws/show/393/96-вр](http://zakon2.rada.gov.ua/laws/show/393/96-%D0%B2%D1%80)does not contain a provision establishing that final decisions taken by administrative authorities are binding. |
| Art. 9(1)Third para, 2nd sentence | 1. How well has the second sentence of the third paragraph of Art. 9(1) been enacted?

The second sentence of the third paragraph provides:“Reasons shall be stated in writing, at least where access to information is refused under this paragraph [i.e. Art. 9(1)].” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Effective enactmentFinal court decisions are reasoned both in cases when courts allow or refuse access.the Law on Citizens Appeals (№ 393/96-ВР, 1996) [http://zakon2.rada.gov.ua/laws/show/393/96-вр](http://zakon2.rada.gov.ua/laws/show/393/96-%D0%B2%D1%80) also requres answers to complains to be in writing.**Стаття 19.** Органи державної влади і місцевого самоврядування, підприємства, установи, організації незалежно від форм власності, об'єднання громадян, засоби масової інформації, їх керівники та інші посадові особи в межах своїх повноважень зобов'язані:…письмово повідомляти громадянина про результати перевірки заяви чи скарги і суть прийнятого рішення; |
| 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 interestor, alternatively,(b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below [i.e. Art. 9(3)], of other relevant provisions of this Convention.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at allPlease note that the breadth of enactment of “sufficient interest” and “impairment of a right” is considered in the next indicator.**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incomplete enactmentThere is no provision in the the Law of Ukraine on the Protection of the Environment (N 1264-XII, 1991)<http://zakon2.rada.gov.ua/laws/show/1264-12>or in the Law of Ukraine on Urban Development (N 3038-VI 2011)<http://zakon4.rada.gov.ua/laws/show/3038-17>establishing public access to a review procedure to challenge legality of decisions on specific activities.Nevertheless, the Code of Administration Judiciary(№ 2747-IV, 2005)<http://zakon4.rada.gov.ua/laws/show/2747-15>(Article 6) vests everyone with the right to go to the administrative court, if a person considers that her rights, freedoms and legitimate interests were violated by a decision, act or omission of a public authority. According to the Code of Administration Judiciary (Article 17.2) the jurisdiction of administrative courts covers all disputes between natural and legal persons with public authorities on challenges of their decisions, acts or omissions.The standard of review (Article 2.3) covers both substantive and procedural legality. |
| Art. 9(2)Second para | 1. How well has the second paragraph of Art. 9(2) been enacted?

The second paragraph provides:“What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above [i.e. Art. 9(2)(a)]. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above [i.e. Art. 9(2)(b)].” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at allPlease consider in scoring this indicator the breadth of any enacted definition of “sufficient interest” and “impairment of a right”. The broader the definitions, the higher the score (and vice versa). **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incomplete enactmentFor an administrative court to accept a claim it is enough to merely declare a violation of one’s right (Article 6 (1) of the Code of Administrative Judiciary of Ukraine. For an administrative court to render a decision on substantive and procedural legality a plaintiff must maintain and prove a violation of her/his rights, freedoms or legitimate interests (it is implied from the provisions of the Code, e.g. the purpose of the Code (Article 2) is the protection of rights, so a claim cannot be brought and considered, if it is not needed for the protection of one’s rights).What constitutes an impairment of a right (e.g. of a right to a safe environment) is not determined by national law. The national legal framework does not also require courts to determine an impairment of a right consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention.The laws also do not contain a specific provision insuring that NGOs are deemed to have rights capable of being impaired for the purpose of access to justice within the scope of this Convention. |
| 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.”z | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at allPlease consider, *inter alia*, how “national law relating to the environment” has been enacted in the legal framework. Enactment will be fully in accord where the legal framework covers any national law relating to the environment (including e.g. energy, transport, infrastructure etc). An enactment that defines “national law relating to the environment” narrowly (e.g. as covering just “environmental law” narrowly conceived) should be considered as containing errors that are more than minor.Please note that the wording “where they meet the criteria, if any, laid down in its national law” is the subject of a separate indicator below, so should not be assessed for the purpose of this indicator. **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incomplete and incorrect enactmentThe Law of Ukraine on amendment to certain legal acts (N 254-IV, 2002)<http://zakon2.rada.gov.ua/laws/show/254-15>was adopted for the purpose of implementation of the Convention after its ratification.In terms of standing with regard to Article 9(3) the law introduced just one additional right to the list of rights of natural persons in the field of environmental protection.Article 9 оскарження у судовому порядку рішень, дій або бездіяльності органів державної влади, органів місцевого самоврядування, їх посадових осіб щодо порушення екологічних прав громадян у порядку, передбаченому законом;a right of judicial appeal of decisions, acts or omissions of public authorities, local authorities, their official as to violation of environmental rights in accordance with the procedure established by the law.In terms of standing of NGOs in relevant to Article 9(3) cases no amandments were introduced either by this law or ever.No other environmental/related laws also contain provisionsensuring that 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.General judicial procedural provisions would only allow members of the public to have access to judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment only, if a plaintiff would maintain (and prove) an impairment of a certain right. The right to safe environment does not mean by law and has not been interpreted in a way of being impaired by any acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.Thus, Article 9 (3) has not been correctly enacted into the national legal framework. |
| Art. 9(3)Indicator 2 | 1. The criteria, if any, enacted in national law which members of the public must meet as a precondition for the purpose of Article 9(3) provide for

Art. 9(3) provides:“3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above [i.e. Art. 9(1) and (2)], each Party shall ensure that, **where they meet the criteria, if any, laid down in its national law,** members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.” | **Scoring Guide:**3 = Very broad access to justice (e.g. in the sense that there are no enacted criteria restricting access, or the enacted rules on standing and prior participation are such as to provide for very broad access to justice) 2 = Broad access to justice (e.g. in the sense that the enacted rules on standing and prior participation are such as to provide for broad access to justice)1 = Restrictive access to justice (e.g. in the sense that the enacted rules on standing and prior participation are such as to provide for only restrictive access to justice)0 = Very restrictive or non-existent access to justice (e.g. in the sense that the enacted rules on standing and prior participation are such as to provide for very restrictive or non-existent access to justice)By “prior participation” we are referring to any rules which provide for access to justice only for those who have participated in the earlier decision-making/administrative process, or which require an argument to have been raised by a member of the public during an earlier stage in the decision-making process if it is to be raised subsequently by that member of the public. This would qualify as a major restriction in terms of access to justice, because NGOs and local communities are typically not in the position to participate in numerous first instance procedures just for the sake of preserving the right to potentially pursue a legal remedy later.There are no rules on “prior participation”. The national law does not lay down any criteria on members of the public to 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. However, in practice lack of explicit rights to sue and lack or any criteria creates a situation when the question of impairment of a right (which is a precondition for deciding a case on the merit) is completely left to judges’ discretion. In the result practice varies significantly. |
| Art. 9(4)1st sentenceIndicator 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.”t | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incomplete enactmentJudicial procedures do provide adequate and effective remedies, including injunctive relief. The Code of Administrative Judiciary of Ukraine (№ 2747-IV, 2005)<http://zakon4.rada.gov.ua/laws/show/2747-15>**Стаття 162.** Повноваження суду при вирішенні справи 2. У разі задоволення адміністративного позову суд може прийняти постанову про: 1) визнання протиправними рішення суб'єкта владних повноважень чи окремих його положень, дій чи бездіяльності і про скасування або визнання нечинним рішення чи окремих його положень, про поворот виконання цього рішення чи окремих його положень із зазначенням способу його здійснення; 2) зобов'язання відповідача вчинити певні дії; 3) зобов'язання відповідача утриматися від вчинення певних дій; 4) стягнення з відповідача коштів; 5) тимчасову заборону (зупинення) окремих видів або всієї діяльності об'єднання громадян; 6) примусовий розпуск (ліквідацію) об'єднання громадян; 7) примусове видворення іноземця чи особи без громадянства за межі України; 8) визнання наявності чи відсутності компетенції (повноважень) суб'єкта владних повноважень. Суд може прийняти іншу постанову, яка б гарантувала дотримання і захист прав, свобод, інтересів людини і громадянина, інших суб'єктів у сфері публічно-правових відносин від порушень з боку суб'єктів владних повноважень.Furthermore, in accordance with the Civil Code of Ukraine, everyone has the right to require termination of an activity of an individual or an entity that leads to destruction, damage, or pollution of the environment.Judicial review in administrative or civil courts in Ukraine does not automatically halt the contested decision, act or omission. Therefore, it is also nessesary to consider an interim injunctive relief (Article 117 of the Code of Administrative Judiciary of Ukraine), issued while the case is still pending.Procedural codes provide for a possibility of an interim injunctive relief. However, 1) additional court fee is paid for filing an application for an interim injunctive relief; 2) application shall be substantiated and proofs provided; 3) it is a discretion of a judge whether to grant or not an interim injunctive relief.Administrative review procedures (the Law on Citizens’ Appeals) do not provide for adequate and effective remedies, including injunctive relief. |
| Art. 9(4)1st sentenceIndicator 2 | 1. How well has the first sentence of Art. 9(4) been enacted insofar as it relates to fair and equitable procedures?

The first sentence provides:“In addition and without prejudice to paragraph 1 above, **the procedures referred to in paragraphs 1, 2 and 3 above [i.e. Art. 9(1), (2) and (3)] shall** provide adequate and effective remedies, including injunctive relief as appropriate, and **be fair, equitable, timely and not prohibitively expensive**.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incomplete enactmentJudicial procedures are prescribed by law to be fair and equitable. Constitution and the procedural codes enshrine guaranties of that. In many cases, they are prohibitively expensive. The administrative authorities, although prescribed by law to objectively, fully and timely deal with complaints (Article 19, the Law on Citizens’ Appeals http://zakon3.rada.gov.ua/laws/show/393/96-вр), hardly can be deemed fair and equitable, when dealing with complains as to decisions, acts and omissions of their subordinates. The law does not guarantee that. |
| Art. 9(4)1st sentenceIndicator 3 | 1. How well has the first sentence of Art. 9(4) been enacted insofar as it relates to timely procedures?

The first sentence provides:“In addition and without prejudice to paragraph 1 above, **the procedures referred to in paragraphs 1, 2 and 3 above [i.e. Art. 9(1), (2) and (3)] shall** provide adequate and effective remedies, including injunctive relief as appropriate, and **be** fair, equitable, **timely** and not prohibitively expensive.” | **Scoring guide**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Effective enactmentNational legal framework does not include a specific provision requiring review procedures relevant to the Convention to be timely.However, procedural codes as to judicial proceedings and the Law on Citizens Appeals as to administrative review procedure establish timeframes for these procedures. These timeframes are reasonable. |
| Art. 9(4)1st sentenceIndicator 4 | 1. How well has the first sentence of Art. 9(4) been enacted insofar as it relates to ‘not prohibitively expensive’ procedures?

The first sentence provides:“In addition and without prejudice to paragraph 1 above, **the procedures referred to in paragraphs 1, 2 and 3 above [i.e. Art. 9(1), (2) and (3)] shall** provide adequate and effective remedies, including injunctive relief as appropriate, and **be** fair, equitable,timelyand **not prohibitively expensive**.” | **Scoring guide**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Not enacted at allNeither framework law on the Protection of the Environment, nor any other law requires these procedures not to be prohibitively expensive.Furthermore, the Law on Court Fees (№ 3674-VI, 2011) http://zakon2.rada.gov.ua/laws/show/3674-17in the lists of the cases and plaintiffs that are exempt from the court fees does not provide for NGOs or for the any cases relevant to the Convention, not even access to information cases.The following general court fees apply for non-material claims (including access to information cases, challenges of any decisions, acts or omissions of public authorities or private parties). For natural persons – 0.4 minimal monthly wageFor legal persons (including NGOs) – 1 minimal monthly wage.In material claims (damages) the court fee is calculated as a percentage of the amount claimed. Furthermore, there is no free legal aid in cases relevant to the convention. The Law on Free Legal Aid (N 3460-VI, 2011) <http://zakon3.rada.gov.ua/laws/show/3460-17/page>guaranties free legal aid in criminal cases and in some civil cases (not relevant to the Convention) to low income people and other vulnerable groups (does not include NGOs).On the top of that recent changes to the Constitution limits representation in courts only to attorneys starting from Jan 1st 2017. No exceptions for cases relevant to the Convention are made.The Constitution of Ukraine[http://zakon2.rada.gov.ua/laws/show/254к/96-вр/page4](http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/page4)**ПЕРЕХІДНІ ПОЛОЖЕННЯ**11) представництво відповідно до [пункту 3](http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/paran5262#n5262) частини першої статті 131**-1** та [статті 131**-2**](http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/paran5268#n5268) цієї Конституції виключно прокурорами або адвокатами у Верховному Суді та судах касаційної інстанції здійснюється з 1 січня 2017 року; у судах апеляційної інстанції - з 1 січня 2018 року; у судах першої інстанції - з 1 січня 2019 року.In my opinion, all mentioned above create a situation, when court procedures relevant to the Convention become prohibitively expensive.Administrative review procedures are free of charge. |
| Art. 9(4)2nd sentence | 1. How well has the second sentence of Art. 9(4) been enacted?

The second sentence provides:“Decisions under this article [i.e. Art. 9] shall be given or recorded in writing.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Effective enactmentAll procedural codes and the Law on Citizens’ AppealsAll court decisions and decisions of public authorities in administrative review procedures are given in writing.  |
| Art 9(4)3rd sentence | 1. How well has the third sentence of Art. 9(4) been enacted?

The third sentence provides:“Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all**Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incomplete enactmentThe State Register of Court Decisions contains all decisions rendered by the courts of Ukraine. The Register is publicly accessible 24/7 online. Yet the Register takes out personal data from the text of the court decisions. The State Register of Court Decisions is available here http://www.reyestr.court.gov.ua/Nevertheless, every person can request access to actual texts of court decisions on cases to which he or she was not a party in accordance to the procedure prescribed by the Law On Access to Judicial Decisions (№ 3262-IV, 2005)<http://zakon5.rada.gov.ua/laws/card/3262-15>The request has to be justified.**Стаття 9.** Ознайомлення із судовим рішенням та виготовлення його копії за зверненням особи, яка не бере (не брала) участі у справі  1. Особа, яка не бере (не брала) участі у справі, якщо судове рішення безпосередньо стосується її прав, свобод, інтересів чи обов’язків, може звернутися до апарату відповідного суду з письмовою заявою про:  1) надання можливості ознайомитися із судовим рішенням у приміщенні суду;  2) надання можливості виготовити копії судового рішення за допомогою власних технічних засобів;  3) виготовлення копії судового рішення апаратом суду.  2. У заяві особа повинна обґрунтувати, чому вона не змогла ознайомитися із судовим рішенням у Реєстрі, а також чому вона вважає, що судове рішення безпосередньо стосується її прав, свобод, інтересів чи обов’язків.Decisions of administrative authorities are not actively disseminated, but could be accessed by filing a request on public information. |
| Art. 9(5)Indicator 1 | 1. How well has Art. 9(5) been enacted insofar as it relates to the provision of information?

Art. 9(5) provides:“5. In order to further the effectiveness of the provisions of this article [i.e. Art. 9], each Party shall ensure that **information is provided to the public on access to administrative and judicial review procedures** and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.” | **Scoring Guide:**3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at all **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Incomplete enactmentThe Law on Access to Public Information <http://zakon3.rada.gov.ua/laws/show/2939-17>requires public authorities to include information on review procedures into the refusals to requsts on access to public information. The Law also requires public authorities to actively provide information to the public on access to administrative and judicial review procedures of their decisions, acts and omissions with regard to access to information on their official web-pages.**Стаття 15. Оприлюднення інформації розпорядниками**1. Розпорядники інформації зобов'язані оприлюднювати:4) порядок складання, подання запиту на інформацію, оскарження рішень розпорядників інформації, дій чи бездіяльності;The framework Law on the Protection of the Environment, the EIA and SEA laws, nor any other sectoral environmental laws do not require information to be provided to the public on access to administrative and judicial review procedures of decisions, acts or omissions of public authorities or private parties on matter relevant to the conventional provisions.Courts post general information on access to justice (only procedural aspects) on their web-pages, but this information is complicated, not user friendly and useful essencially only to lawyers. |
| Art. 9(5)Indicator 2 | 1. How well has Art. 9(5) been enacted insofar as it relates to considering the establishment of appropriate assistance mechanisms?

Art. 9(5) provides:“5. In order to further the effectiveness of the provisions of this article [i.e. Art. 9], each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and **shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.”** | 3 = Enactment is fully in accord 2 = Minor errors 1 = Errors that are more than minor 0 = Has not been enacted at allWhile the second clause of Art. 9(5) is of the form “shall consider”, this is still capable of being an enactable obligation. For example, a State could enact a national law establishing an advisory body to consider and report on the question of the establishment of appropriate assistance mechanisms. **Please refer to the** [**“Guidelines for assessing legal indicators” above**](#_Guidelines_for_assessing)Ukraine did not enact a national law establishing an advisory body to consider and report on the question of the establishment of appropriate assistance mechanisms.General court fees apply in cases relevant to the Convention and although some procedural codes give discretion to judges to waive or reduce the fee, they almost never use it.The Law on Legal Aid (N 3460-VI, 2011)<http://zakon3.rada.gov.ua/laws/show/3460-17>(establishing free legal aid system for low-income people and other vulnerable groups, does not include any NGOs) does not cover cases relevant to the conventional provisions.  |

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).

###

### Access to justice – Practice indicators

| **Aarhus provision** | **Practice indicators** | **Guidance note** |
| --- | --- | --- |
| Art. 9(1), first para | 1. In practice, has the Party ensured access to a review procedure before a court of law or another independent and impartial body established by law in respect of information requests?

The first paragraph of Article 9(1) provides:“1. Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another independent and impartial body established by law.” | **Scoring Guide:**3 = Access to a review procedure before a court or another independent and impartial body is provided for any person making a request for information within the scope of the definition of environmental information in article 2(3) 2 = Access to a review procedure before a court or another independent and impartial body is provided for any person making a request for environmental information but due to the narrow interpretation of environmental information in practice, not all environmental information requests are covered.2 = Access to a review procedure before a court or another independent and impartial body is provided with respect to requests for environmental information but due to a narrow reading of “any person”, not all persons have access (eg foreign citizens, legal persons).1 = Persons making information requests may have access to a review procedure, but that procedure is not independent or impartial (e.g. the review procedure is to be made to the authority that decided the information request).0 = No, there is no access to a review procedure before either a court of law or other body (whether impartial and independent or not) to challenge the handling of requests for environmental information. Take note that this indicator is about the existence and breadth of application of review procedures before a court or other independent/impartial body against a decision in access to information cases, while the next indicator is about the existence *and quality* of other remedies (internal review or review by an independent and impartial body other than a court of law) where a review by court is provided for.**Please justify your score and explain the factors you considered**The interpretation of “any person” includes both natural persons (including foreigners) and judicial persons. Registered NGOs would be included, but informal groups would not. Although the Law on Access to Public Information allows all requesters (including informal groups) to submit requests and further challenge refusals etc., the procedural codes limit plaintiffs only to natural or judicial persons.Access to review procedures is not limited due to the breadth of interpretation of “environmental information”, because a broader concept of possibility to challenge the handling of requests for public information is widely accepted.  |
| Art. 9(1), second paraIndicator 1 | 1. Where the Party provides for such a review by a court of law, does the Party in practice ensure access to a procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law?

The second paragraph of Article 9(1) provides:“In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an expeditious procedure established by law that is **free of charge or inexpensive** for reconsideration by a public authority or review by an independent and impartial body other than a court of law.” | **Scoring Guide:**3 = Access is provided to both a reconsideration by the public authority that handled the request and to an independent and impartial review body, and such access is free of charge.2 = Access is provided to both a reconsideration by the public authority that handled the request and to an independent and impartial review body, and such access is inexpensive2= Access is provided to an independent and impartial review body, and such access is free or inexpensive.1 = Access is provided to a reconsideration by the public authority that handled the request, and such access is free or inexpensive.1=Access is provided to both a reconsideration by the public authority that handled the request and to an independent and impartial review body, but such access is neither free nor inexpensive.0 = Access has not been provided to either a reconsideration by the public authority that handled the request or to an independent and impartial review body. Note that this indicator is not applicable in countries where access to justice in environmental information matters is ensured solely by means other than court procedures. **Please justify your score and explain the factors you considered.**There is noindependent and impartial review body other than court of law.The Ombudsman has an authority to trigger administrative responsibility proceedings of the violations of access to public information provisions, but the Ombudsman has no power to review and overturn a refusal etc.Administrative appeals are handled either by a superior public official (head of a public authority), or by superior authority. Administrative appeals are free of charge. |
| Art. 9(1), second paraIndicator 2 | 1. Where the Party provides for such a review by a court of law, does the Party in practice ensure access to an **expeditious** procedure established by law for reconsideration by a public authority or review by an independent and impartial body other than a court of law?

The second paragraph of Article 9(1) provides:“In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an **expeditious procedure** established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law.” | **Scoring Guide:**3 = Access to a reconsideration by the public authority that handled the request *and* to a review by an independent and impartial body other than a court of law are ensured, and both procedures are expeditious.2 = Access to an independent and impartial review procedure other than a court of law is ensured and the procedure is expeditious (but this should be scored as 1 where a prior reconsideration by the public authority that handled the request is required, and that procedure is not expeditious).1 = Access to a reconsideration by the public authority that handled the request is ensured and the procedure is expeditious, but access has not been provided to an independent and impartial review body.1 = Access to a reconsideration by the public authority that handled the request *and* to a review by an independent and impartial body other than a court of law are ensured, but neither procedure is expeditious.0 = Access has not been provided to either a reconsideration by the public authority that handled the request or to an independent and impartial review body.Note that this indicator is not applicable in countries where access to justice in environmental information matters is ensured solely by means other than court procedures. **Please justify your score and explain the factors you considered.**Access is not provided to an independent and impartial review body.The Law of Citizens’ Appeals requires complaints to be handled within 1 month (in exceptional cases can be prolonged up to 45 days). In practice these timeframes are respected. The Code of Administrative Offences <http://zakon2.rada.gov.ua/laws/show/80731-10/page14> in Article 212-3establishes fines for public officials for violations of the provisions of the Law of Citizens’ Appeals. |
| 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 interestor, 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 ofsubparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.The provisions of this paragraph 2 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law. | **Scoring Guide:**3 = Yes, in all cases2 = Yes, in the majority of cases 1 = No, in a minority of cases0 = No, not at allThe references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)Please consider in scoring this indicator that whenever restrictive conditions (such as possession of directly neighbouring land or any procedural conditions) have developed in practice for the sufficient interest test or the impairment of right test, the score should be lower. Please note that standing for NGOs in similar cases is examined by the following indicator.Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* procedural conditions re access to justice (such as a requirement to have participated in the entirety of previous processes, which could present a financial barrier) (ref.1)
* how far the direct impairment of rights is a condition of access to justice, especially in cases where the direct connection to any person is rather difficult to establish, such as wildlife protection (ref.3, ref.6, ref.8, ref.9)

**Please justify your score and explain the factors you considered.**Previous participation is not a precondition for access to justice neither in environmental, nor in any other field.Direct impairment of one’s rights is a condition of access to justice. The law does not require “impairment of a right” to be interpreted consistently with the objective of giving members of the public concerned wide access to justice within the scope of the Aarhus Convention. Although obliged to apply the Convention directly, courts are reluctant to do so and rely merely on the provisions of the procedural legislation.The judicial interpretation of “impairment of a right” varies significantly and, since there are basically no standards, depands on a judge’s own opinion.**Cases on protection of naturally protected areas, in which courts said that plaintiffs do not have standing, because they do not owe land within the naturally protected areas in question, are not rare.** A right to safe environment is not interpreted as far as to include a right to sue in the protection of natural sites or wildlife. On the other hand, different judicial practice exists as well.In one of its cases the High Administrative Court of Ukraine (uphold by the decision of the Supreme Court of Ukraine), said that since the land plot in question belongs to natural protected fund of Ukraine, it is a national treasure which is given a special protection. Given the public interest in the protection of national treasures, everyone has a right to go to court for its protection.This decision, however, does not have a precedential value. <http://reyestr.court.gov.ua/Review/20656090> |
| 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 interestor, 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 anotherindependent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subjectto 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 ofsubparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.The provisions of this paragraph 2 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law. | **Scoring Guide:**3 = Always, in all cases and the requirements in article 2(5) are not restrictive2= In all cases, though the requirements in article 2(5) are quite restrictive2 = In most cases, and the requirements in article 2(5) are not restrictive1=In most cases, though the requirements in article 2(5) are quite restrictive1 = In a minority of cases.0 = Rarely or never.The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)Please take into consideration that when standing for an NGO is subject to additional conditions, such as certain provisions in their bylaws, certain geographical, or practical requirements, the score should be lower.Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* procedural conditions re access to justice (such as a requirement to have participated in the entirety of previous processes, which could present a financial barrier) (ref.1)
* how far the direct impairment of rights is a condition of access to justice for NGOs, especially in cases where the direct connection to any person is rather difficult to establish, such as wildlife protection (ref.3, ref.6, ref.8, ref.9)
* access to justice for NGOs not directly dealing with environmental protection (focusing on topics such as human rights, public health etc.) (ref.7)

**Please justify your score and explain the factors you considered.**The provision of the Convention that NGOs shall be deemed to have rights capable of being impaired for the purpose of access to justice in cases relevant to public participation has not been transposed into the domestic legal system.The framework law on the Protection of the Environment, the Law on Civil Associations, or the laws on Regulation of Urban Planning Activities do not contain provisions on standing of NGOs in these cases. Thus, the courts apply general principles. Usually, if an NGO is registered and in its statute (by-law) the protection of the environment is listed as one of the major objectives, the NGO would be given standing in an environmental case. Informal groups cannot be a plaintiff. There are no requirements as to how old and numerous an NGO shall be to qualify as a plaintiff.Participation in the previous processes is not a precondition to access to justice.Although the most recent law on NGOs does not divide NGOs into local, national and international, as the previous law did, the courts still sometimes argue that an NGO in the West of Ukraine would not have standing in a case that concerns an activity in the East. Furthermore, the closer the dispute is to environmental issues (natural protected areas, OVNS) the higher the chance of being granted standing, the further (construction rules, land allocation) the chances are lessening. In the case mentioned in the previous indicator, an NGO claims on a cancelation of the Ministerial decree on land allocation were dismissed by an appellate court because of the courts conclusion that a land plot in question did not have a natural protection site statues and thus an environmental NGOs was regarded as improper plaintiff. The decision was subsequently overturned by the High Administrative Court of Ukraine.  |
| 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 interestor, 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 anotherindependent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subjectto the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below [i.e. Art. 9(3)], of other relevant provisions of this Convention.What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.The provisions of this paragraph 2 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law. | **Scoring Guide:**3 = Members of the public concerned meeting the relevant conditions specified in art 9(2) in practice can challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, other provisions of the Aarhus Convention as provided for under national law. What constitutes a “decision”, “act” or “omission” subject to the provisions of article 6 Aarhus, is interpreted broadly.2 = Members of the public concerned meeting the relevant conditions specified in Art 9(2) in practice can challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6. What constitutes a “decision”, “act” or “omission” subject to the provisions of article 6 Aarhus, is interpreted broadly.2 = Members of the public concerned meeting the relevant conditions specified in art 9(2) in practice can challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, other provisions of the Aarhus Convention as provided for under national law. Under this scenario, “decision”, “act” or “omission” is not interpreted broadly.1 = Members of the public concerned meeting the relevant conditions specified in art 9(2) in practice can challenge the substantive and/or procedural legality of any decision, act or omission subject to the provisions of article 6. Under this scenario, “decision”, “act” or “omission” is not interpreted broadly.0 = Members of the public concerned are not granted access in practice to challenge the legality of decisions, acts or omissions subject to article 6. Please note that Parties may extend access to justice beyond decisions, acts or omissions subject to Article 6 of Aarhus (e.g. extending to include article 7 or 8 or article 3(4) of Aarhus). The highest score of 3 captures this possibility.The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing). Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:Art 9(2) refs:* access to alternative dispute resolution, state supervision bodies in environmental and public participation matters (such as environmental, future generation, health etc. or general ombudsman, civil or administrative prosecutors, state auditors, environmental board etc.) (ref.10, ref.11)
* interpretation of what amounts to an environmental case in court practice (ref.5)
* court review of individual projects that were permitted by a decision of normative/legislative nature (ref.3)
* access to justice in long, tiered decision-making procedures (ref.4)
* the directions and trends in the development of the court practice concerning NGO participation (ref.2)
* the effect (if any) of decisions of the European Court of Justice (ref.3)
* availability of data on the numbers and outcomes of legal remedies in environmental matters (ref.10, 11, 12,13)

**Please justify your score and explain the factors you considered.**There is no alternative dispute resolution in Ukraine, as well as any state supervision bodies in environmental and public participation matters. There is general Ombudsman, but his powers are very limited and the decisions are not binding.The environmental laws (except for the very recent EIA Law) are generally silent on the right of the public to challenge substantive and procedural legality of decisions, acts or omissions by public authorities subject to the provisions of article 6 and, other provisions of the Aarhus Convention, but it is also silent on any limitations on this right.The Constitution of Ukraine, however, establishes the universal jurisdiction of the courts in Ukraine, meaning that a court cannot dismiss a claim on the basis that a possibility to bring this claim is not established in the relevant legislation.The Code of Administration Judiciary (Article 6) vests everyone with the right to go to the administrative court, if a person considers that her rights, freedoms or legitimate interests were violated by a decision, act or omission of a public authority. What constitute a “decision”, an ”act”, or an “omission” of a public authority is interpreted broadly.According to the Code of Administration Judiciary (Article 17.2) the jurisdiction of administrative courts covers all deputes between physical or legal persons with public authorities on challenges of their decisions, acts or omissions including those in environmental matters (subject to the provisions of article 6 and, other provisions of the Aarhus Convention).The standard of review (Article 2.3) covers both substantive and procedural legality.There are some Article 6 decisions that according to national legislation are of legislative nature (related to nuclear energy). Laws of Ukraine are not challengeable in administrative courts. The constitutional court of Ukraine has very limited jurisdiction and is not open for submissions from the public. As of today, public submissions are only allowed as to official interpretation of laws. In the recent years all EPLs claims (an environmental NGO) regarding construction of new nuclear power plant units were dismissed, based on the argument that although not normative in nature, the law by which the decision on construction was taken is not challengeable in courts. |
| Art. 9(3) | 1. In practice, has the Party ensured that members of the public meeting the relevant criteria (if any), have access to administrative and/or judicial procedures to challenge acts or omissions which contravene provisions of national law relating to the environment?

Art. 9(3) provides:“3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above [i.e. Art. 9(1) and (2)], each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.” | **Scoring Guide:**3 = There are no or very minimal criteria laid down in national law for members of the public to have access AND “acts” and “omissions” are interpreted broadly in practice AND “national law relating to the environment” is interpreted broadly in practice (i.e. including law regarding other sectors that may impact the environment).2 = Members of the public have access to administrative and/or judicial procedures to challenge acts or omissions which contravene provisions of national law relating to the environment though not all the three aspects highlighted above are present.1 = Members of the public have access to administrative and/or judicial procedures to challenge acts or omissions which contravene provisions of national law relating to the environment, however:The criteria laid down in national law for members of the public to have access are quite restrictiveAND “acts” and “omissions” are interpreted quite restrictively in practice AND “national law relating to the environment” is interpreted quite restrictively in practice. 0 = In practice, access to such procedure(s) is not provided If there are no criteria laid down in national law for members of the public to have access, article 9(3) is effectively a quasi *actio popularis.* In line with this, in several countries it opens the possibility of legal remedies in environmental cases to anyone, irrespective of whether he or she has any personal interest in the case. The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing). Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:Art. 9(3) refs:* NGO participation in challenging administrative cases significant for the environment (ref.6)
* general requirements for selecting those NGOs that might have standing before courts in environmental cases, such as period in existence, assets, size of the membership etc. (ref.7)
* access to justice for foreign NGOs (ref.7)
* interpreting national law “in a way which, to the fullest extent possible, is consistent with the objectives laid down in Article 9(3) of the Aarhus Convention” – as a way of overcoming the absence of an EU Directive on access to justice (ref.8)
* “environmental case equals only EIA” (ref.3)
* access to justice in the case of planning documents, especially spatial planning (e.g. Constitutional Court) (ref.7)
* NGO participation in environmental criminal cases (ref.4, ref.5)
* the role of ombudspersons in ensuring access to justice in environmental cases other than infringement of rights for access to information or participation (ref.8)
* courts failing to deal with all parts of complaints (ref.1)
* implementation of court decisions and selection of measures for such implementation in the context of “omissions” (ref.2)
* interpreting national law “in a way which, to the fullest extent possible, is consistent with the objectives laid down in Article 9(3) of the Aarhus Convention” – as a way of overcoming the absence of an EU Directive on access to justice (ref.8)
* any interpretation of the phrase “acts and omissions” (Art. 9(3)) to exclude “decisions” (contrast with the “any decision, act or omission” language of Art. 9(2))
* availability of data on the numbers and outcomes of legal remedies in environmental matters (ref.11, 12, 13, 14)
* access to alternative dispute resolution, state supervision bodies in environmental and public participation matters (such as environmental, future generation, health etc. or general ombudsman, civil or administrative prosecutors, state auditors, environmental board etc.) (ref.11, ref.12)

**Please justify your score and explain the factors you considered.**There is no alternative dispute resolution in Ukraine, as well as any state supervision bodies in environmental and public participation matters. There is general Ombudsman, but his powers are very limited and the decisions are not binding.The environmental laws are generally silent on the right of the public to challenge decisions, acts or omissions by private actors that violate the substantive legal norms relating to the environment, but it is also silent on any limitations to this right.In accordance with the Civil Code of Ukraine, everyone has the right to require termination of an activity of an individual or an entity that leads to destruction, damage, or pollution of the environment.Furthermore, the procedural legislation provides for the right to seek a legal remedy in every case when a person claims that her rights, freedoms or interests were violated. This combined with the Constitutional norm on the universal jurisdiction of the courts in Ukraine, gives the public a right to challenge in courts actions / omissions by private persons "violating the provisions of law relating to the environment", by claiming a violation of their right to a safe environment, or another their right or interest in preserving the environment by contested actions/omissions. The legislation of Ukraine limits criminal prosecution to state authorities. The public has no right to initiate or participate in criminal proceedings on matters relating to the environment. |
| Art. 9.(4) Indicator 1 | 1. Do procedures within the scope of article 9, paragraphs 1, 2 and 3, provide adequate and effective remedies, including injunctive relief as appropriate?

Article 9(4), first sentence provides:“4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive.  | **Scoring guide**3 = Legal remedies are adequate and effective, including injunctive relief wherever appropriate, for all procedures within the scope of article 9, paragraphs 1, 2 and 3.2 = In the majority of cases, legal remedies for procedures within the scope of article 9, paragraphs 1, 2 and 3 are adequate and effective, including injunctive relief as appropriate.2= Legal remedies are adequate and effective, including injunctive relief as appropriate, for most but not all procedures within the scope of article 9, paragraphs 1, 2 and 3.1 = In the minority of cases, legal remedies for procedures within the scope of article 9, paragraphs 1, 2 and 3 are adequate and effective, including injunctive relief as appropriate 1= Legal remedies are adequate and effective, including injunctive relief as appropriate, for only a minority of procedures within the scope of article 9, paragraphs 1, 2 and 3.0 = Legal remedies are not adequate and effectiveNote that effectiveness and adequacy should be evaluated above the most direct features examined in the following indicators (fairness, equity, timeliness, and affordable). Injunctive relief may be an important proxy for this, but you can consider other features, too, such as adequate compensation or restitution, according to the Party’s legal framework or practice.The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing). Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* factors in respect of injunctive relief, such as preventing pollution (ref.1, ref.3)
* injunctive relief as an effective remedy in EIA and IPPC cases (ref.2)
* bonds or any other financial burdens on those persons seeking injunctive relief (ref.4)

**Please justify your score and explain the factors you considered.**Judicial review in administrative or civil courts in Ukraine does not automatically halt the contested decision, act or omission.Therefore, I will separately consider remedies available upon the decision of the case and interim injunctive relief, issued while the case is still pending.Administrative courts are entitled by the law to annul a contested decision, to order a public authority to take an action or to refrain from taking a certain action. Courts routinely annul both individual (e.g. permits) and normative decisions, order public authorities to take action, e.g. order public authorities to provide information upon a request).Civil courts are entitled by the law to order termination of an activity destructing, damaging, or polluting the environment and to collect damages (both material and moral).As to an interim injunctive relief – procedural codes provide for such a possibility. However, 1) additional court fee is paid for filing an application for an interim injunctive relief; 2) application shall be substantiated and proofs provided; 3) it is a discretion of a judge whether to grant or not an interim injunctive relief; 4) according to the data of the State Register of Court Decisions in 2015 only 19 out of 300 (6 %) applications for interim injunctive relief were granted by administrative courts.Furthermore, in civil cases defendants are entitled to collect damages caused to them by interim injunctive relief, if the case is resolved on their behalf. Reasonable fear to be ordered by the court to pay these damages stops NGOs and citizens from applying for an interim 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.” | **Scoring guide**3 = Access to justice for all or almost all procedures and/or cases within the scope of article 9, paragraphs 1, 2 and 3 is fair and equitable 2 = Access to justice for the majority of procedures and/or cases within the scope of article 9, paragraphs 1, 2 and 3 is fair and equitable.1 = Only a minority of procedures and/or cases within the scope of article 9, paragraphs 1, 2 and 3 are fair and equitable.0 = Few or no procedures and/or cases within the scope of article 9, paragraphs 1, 2 and 3 are fair and equitable.The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing). Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* due notification of all parties and sending the findings to all of them (ref.1, ref.2)
* specialisation and training of judges in respect of environmental cases (ref.5)
* investigation of facts by the courts upon their own initiative is possible and practical or it is fully left to the parties (ref.6)
* availability of specialised legal aid (ref.10)
* the role of several kinds of experts in the procedure, and ways of ensuring their unbiased, professional contribution (ref.11)
* interpretation of the “fairness” as between the claimant and respondent, appreciation that complainants concern points of public interest (ref.12)
* opinions, beliefs and misbeliefs of legal/professional circles concerning access to justice for NGOs, such as that this is time consuming, expensive, biased, apt for abuse, or on the positive side, problem sensitivity, specific factual and professional viewpoints channelled into the procedures etc. (ref.14)

**Please justify your score and explain the factors you considered.**All the procedural and material burdens associated with the judicial proceedings are borne by the plaintiffs. Even in administrative court proceedings where according to the law it is public authority who has to prove that its decisions, acts or omissions were legal, the burden of prove lies upon a plaintiff (in all categories of cases, including in environmental).There is no specialisation and there are hardly any trainings for judges in respect of environmental cases.Investigation of facts is fully left to the parties. Furthermore, the courts still tend to accept only official documents (issued by public authorities) and reluctant to accept into evidence affidavits and statements of private experts, scientists etc.There is no general or specialised legal aid availability in environmental cases.There is no appreciation that complainants concern points of public interest. Moreover, it is still hard to believe for the majority of attorneys and judges that a natural person or an NGO would protect a public interest; thus attorney don’t do probono and judges are very sceptical when considering these cases; even the defendants often think that NGOs are bought by competitors or just working off the donors money. |
| Art. 9.(4) Indicator 3 | 1. Are procedures within the scope of article 9, paragraphs 1, 2 and 3 timely?

Article 9(4), first sentence provides:“4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive.” | **Scoring guide**3 = Access to justice for all or almost all procedures and/or cases within the scope of article 9, paragraphs 1, 2 and 3 is timely 2= Access to justice for the majority of procedures and/or cases within the scope of article 9, paragraphs 1, 2 and 3 is timely.1 = Only a minority of procedures and/or cases within the scope of article 9, paragraphs 1, 2 and 3 are timely.0 = Few or no procedures and/or cases within the scope of article 9, paragraphs 1, 2 and 3 are timely.The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing). Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* the average duration of court procedures, including further applications and remedies if available and the trends in respect thereof (ref.3, ref.9, ref. 13)
* specialisation and training of judges in respect of environmental cases (ref.5)
* investigation of facts by the courts upon their own initiative is possible and practical or it is fully left to the parties (ref.6)
* opinions, beliefs and misbeliefs of legal/professional circles concerning access to justice for NGOs, such as that this is time consuming, expensive, biased, apt for abuse, or on the positive side, problem sensitivity, specific factual and professional viewpoints channelled into the procedures etc. (ref.14)

**Please justify your score and explain the factors you considered.**No special timeframes for environmental cases are established.Although general time frames for various stages of court proceedings are set in the law, they are often disregarded. There are also no procedural means for a plaintiff to speed up court proceedings. It is a regular practice for a judge to ask a plaintiff to submit an application for prolongation of the proceedings, even when plaintiffs don’t want that, they rarely disobey a judge.Also there is no requirement in the law limiting a number of times a case can be reconsidered in various instances. In big/political/new-type cases it happens that a case bounce back and force from a high court to a local court, goes back up again and again sent all the way back for reconsideration.In administrative courts it normally takes at least one year to get an enforseble decision (of an appelete court) and 3-6 more month to get that decision executed. It is at least twice longer in civil courts.It also often happens that a case instaead of being sent back to a local court (which issues executive orders) is sent up to the respective high court for the second appeal. In this situation although the decision is final a plaintif can not get it executed, for a mere reason of a case (paper materials) phisicly being in the respective high court. Second appeal can take another year. |
| Art. 9.(4) Indicator 4 | 1. Are procedures within the scope of article 9, paragraphs 1, 2 and 3 not prohibitively expensive?

Article 9(4), first sentence provides:“4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. “ | **Scoring guide**3 = Access to justice for all or almost all procedures and/or cases within the scope of article 9, paragraphs 1, 2 and 3 is not prohibitively expensive 2= Access to justice for the majority of procedures and/or cases within the scope of article 9, paragraphs 1, 2 and 3 is not prohibitively expensive.1= Only a minority of procedures and/or cases within the scope of article 9, paragraphs 1, 2 and 3 are not prohibitively expensive.0 = Few or no procedures and/or cases within the scope of article 9, paragraphs 1, 2 and 3 are not prohibitively expensive.The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing). Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* the level of costs in connection with legal remedies, the practice of bearing the costs and levying of them, the application of the loser pays principle, the interpretation of the term prohibitively expensive (ref.3, ref.4, ref.7, ref.8, ref.10, ref.11, ref.12)
* the average duration of court procedures, including further applications and remedies if available and the trends in respect thereof (ref.3, ref.9, ref. 13)
* specialisation and training of judges in respect of environmental cases (ref.5)
* availability of specialised legal aid (ref.10)
* the role of several kinds of experts in the procedure, and ways of ensuring their unbiased, professional contribution (ref.11)
* opinions, beliefs and misbeliefs of legal/professional circles concerning access to justice for NGOs, such as that this is time consuming, expensive, biased, apt for abuse, or on the positive side, problem sensitivity, specific factual and professional viewpoints channelled into the procedures etc. (ref.14)

**Please justify your score and explain the factors you considered.**Due to amendment to the legislation of 3 years ago court fees themselves make judicial proceeding prohibitively expensive. Administrative court proceedings are as expensive as civil court proceedings. There are no exemptions for environmental cases or NGOs as plaintiffs. For an NGO a simple access to information case costs 1 minimal monthly wage (0.4 for natural persons). Some years ago it was almost free of charge. Although administrative and civil courts have a discretion to reduce, waive or postpone payment of a court fee they seldom do that. There is no free legal aid in environmental cases.There is no culture among law firms and lawyers of taking pro bono cases. As of today the law allows court representation by legal professionals (which is cheaper). Starting from Jan 1st 2017 only attorneys are allowed to conduct representation in high courts, from Jan 1st 2018 – in appellate courts, from Jan 1st 2019 – in local courts.There are very few public interest lawyers. Legal clinics in university usually deal with simple cases; they are not known for taking environmental cases. Looser pays principle applies. There are no exceptions or caps for environmental or public interest cases.It is only in administrative court proceedings that a defendant public authority cannot claim representation fees. They can, however, claim all other expenses. Courts are known to apply loser pays principle to environmental NGOs in full extent. Administrative review proceedings are free of charge. |
| Art. 9(4)Indicator 3 | 1. In practice, are decisions of review bodies under Article 9 given or recorded in writing and publicly accessible?

The second and third sentences of Art. 9(4) provide:“Decisions under this article [i.e. Art. 9] shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.” | **Scoring Guide:**3 = All decisions of such review bodies are given or recorded in writing and are publicly accessible, including *inter alia* interim decisions and decisions on costs, and all decisions include reasons. 2 = All decisions of such review bodies are given or recorded in writing and are publicly accessible, including *inter alia* interim decisions and decisions on costs, though reasons are not routinely included in the decisions. 2= The majority of decisions of such review bodies are given or recorded in writing, and are publicly accessible, including *inter alia* interim decisions and decisions on costs, and those decisions include reasons 1=The majority of decisions of such review bodies are given or recorded in writing, and are publicly accessible, including *inter alia* interim decisions and decisions on costs though reasons are not routinely included in the decisions.1 = A minority of decisions of such review bodies are given or recorded in writing and are publicly accessible. 0 = Very few decisions of such review bodies are given or recorded in writing.**Please justify your score and explain the factors you considered.**All judicial and administrative decisions are given in writing. All judicial decisions (including interim decisions and decisions on costs) are publicly accessible (via on-line State Register of Court Decisions). Administrative review decisions are accessible upon request (to those who were not parties to the procedings).Both judicial and administrative decisions include reasons.  |
| Art. 9(5), first clause | 1. In practice, how would you rate efforts to ensure that information is provided to the public on access to administrative and judicial review procedures?

Art. 9(5) provides:“5. In order to further the effectiveness of the provisions of this article [i.e. Art. 9], each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.” | **Scoring Guide:**3 = Excellent 2 = Good 1 = Fair 0 = PoorThe references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing). Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* the user-friendliness of such information from the public’s perspective
* the availability of information about lawyers, their expertise and experience, their costs, and their willingness (or otherwise) to act on a ‘no win, no fee’ basis (where applicable)
* the effect of any restrictions on advertising by lawyers and law firms (e.g. what they can and cannot say)
* availability of public interest environmental lawyers, and law clinics at universities (ref.1, ref.3)
* environmental specialisation of judges and prosecutors (ref.2)
* case studies available for the public on relevant issues (ref.3)
* also see the factors listed at the bottom on p.205 of the [Aarhus Implementation Guide (2014)](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf)

**Please justify your score and explain the factors you considered.**Public authorities do not disseminate (either via their web-pages or otherwise) information to the public on administrative and judicial review procedures of their decisions, acts or omissions. The only exception – some public authorities complying with the Law on Access to Public Information include information on review procedures into the refusals to requests on access to public information and on their official web-pages.This information, however, usually is limited merely to the possibility of review procedures (does not include information on a specific administrative authority or a court to conduct the review, the timeframes for the review, etc.).Public authorities do not conduct awareness razing activities for the public on access to justice issues. Court administrations and courts sometimes conduct such activities on access to justice in general, but not specifically in environmental matters. These activities are usually funded by international organisations.NGOs conduct awareness razing activities and publish manuals and case studies, but their resources are very limited.Courts post general information on access to justice (only procedural aspects) on their web-pages, but this information is complicated, not user friendly and useful essentially only to lawyers.There is no unified register of lawyers with information on their expertise and experience, their costs, and their willingness (or otherwise) to act on a ‘no win, no fee’ basis. Lawyers and lawfirms advertise themselves in media and internet. Information on their expertise and experience is limited; costs are usually negotiated on a case by case basis. There are very few lawyers who would act on a ‘no win, no fee’ basis. |
| Art. 9(5), second clause | 1. In practice, has the government considered the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice, and has it acted on those considerations?

Art. 9(5) provides:“5. In order to further the effectiveness of the provisions of this article [i.e. Art. 9], each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.” | **Scoring Guide:**3 = Yes, and appropriate and effective assistance mechanisms are in place2 = Yes, the government has considered this and has taken some actions in this area, though some financial and other barriers to access to justice remain.1 = Evidence that the government has considered this pursuant to Aarhus but it has taken no action or only rather limited action and significant financial and/or other barriers remain.0 = No evidence of consideration or action |

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

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

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

### National reporting and overall framework

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

| **Aarhus provision** | **Practice indicators** | **Guidance note** |
| --- | --- | --- |
| Article 10(2) | 1. Has the country/Party reported regularly on its implementation of the Aarhus Convention?[[20]](#footnote-21)

Article 10(2) provides:“2. At their meetings, the Parties shall keep under continuous review the implementation of this Convention on the basis of regular reporting by the Parties […]” | **Scoring Guide:**3 = Report(s) on implementation have been made for each relevant ordinary Meeting of the Parties since the later of: (i) The entry into force of the Convention for the Party or (ii) The second session of the MOP in 2005; such report(s) have always been submitted on time, and for reports since 2007 have complied with the guidance prepared by the Compliance Committee in terms of process and content2 = Report(s) on implementation have been made for each ordinary Meeting of the Parties since the later of: (i) The entry into force of the Convention for the Party or (ii) The second session of the MOP in 2005; such report(s) have typically been submitted on time, and for reports since 2007 have broadly complied with the guidance prepared by the Compliance Committee in terms of process and content, albeit with some weaknesses1 = Report(s) on implementation have not been made for all ordinary Meetings of the Parties since the later of: (i) The entry into force of the Convention for the Party or (ii) The second session of the MOP in 2005; OR such report(s) have been made but they have typically been submitted late, and/or for reports since 2007 they have typically been deficient in terms of complying with the guidance prepared by the Compliance Committee re process and content0 = Report(s) on implementation have not been made for any ordinary Meeting of the Parties since the later of: (i) The entry into force of the Convention for the Party or (ii) The second session of the MOP in 2005Page 21 of the [Aarhus Implementation Guide (2014)](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf) provides:“With respect to reviewing implementation, article 10, paragraph 2, of the Convention requires the Parties at their meetings to keep under continuous review the implementation of the Convention on the basis of regular reporting by the Parties. The Meeting of the Parties, through decision I/8 adopted at its first session, agreed that each Party should prepare, for each ordinary meeting of the Parties, a report on the legislative, regulatory or other measures that it has taken to implement the provisions of the Convention, including their practical implementation, in accordance with the format annexed to that decision. At its fourth session (Chisinau, 29 June–1 July 2011), the Meeting of the Parties adopted a revised reporting format and requested Parties to use the revised format annexed to decision IV/4 in future reporting cycles. The Meeting of the Parties also invited Parties to follow the guidance on reporting requirements prepared by the Compliance Committee.”The Compliance Committee’s [Guidance on Reporting Requirements (2007)](http://www.unece.org/fileadmin/DAM/env/documents/2007/pp/ece_mp_pp_wg_1_2007_L_4_e.pdf) contains information about deadlines for submitting reports, amongst other things.Reports on implementation have been made for all ordinary Meetings.The first Report on implementation by Ukraine for the Second Meeting of the Parties (2005) was submitted later then the recommended deadline.The rest of the reports were submitted on time (180 days prior the respective MOP).However, the reports have typically been deficient in terms of complying with the guidance prepared by the Compliance Committee on process and content.Although the Ministry of the Environment, which prepared the reports, did usually organise public hearings of the draft reports, it was made just once for each report (no public participation as to the scope of the report) and much later then recommended by the Secretariat (usually in November).As to 2017 reporting cycle, as of today October 27, 2016 not even a first preliminary draft outline of the content of the report was prepared not to say disseminated for national consultation. |
| Art. 3(1) – access to information | 1. In practice, is there a clear, transparent and consistent framework to implement the access to information pillar of the convention?

Art. 3(1) provides:“Each Party shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the information, public participation and access-to-justice provisions in this Convention, as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention.” | **Scoring Guide:**3= in practice, the entire framework for implementing the access to information pillar is very clear, transparent and consistent in all respects2= in practice, most major aspects of the framework for implementing the access to information pillar is clear, transparent and consistent (though some minor aspects may be less clear or consistent).1= in practice, the framework for implementing the access to information pillar is not very clear, transparent and not necessarily consistent.0= in practice, the framework for implementing the access to information pillar is very unclear, not transparent, not consistent - or non-existent.The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)Note that Article 3.1 is frequently referred to as an overall benchmark of the enactment and implementation of the Convention. While its first part refers to the enactment of the provisions of the Convention into the national law, the second part of this paragraph clearly refers to the necessity of introducing and maintaining proper enforcement measures, such as how easy is to find the proper agencies/public authorities, how far their competences are clear. Please justify your score and explain the factors you considered.The Law on Access to Public Information properly enacts the overwhelming access to environmental information provisions of the Convention. In some cases, it even goes beyond that is required by the Convention (shorter timeframes for reply, wider definition of a public authority, first 10 pages are always free of charge). Nevertheless, enforcement of these legal provisions legs behind. Not enough practical measures (e.g. useful information on what is available posted on the web, on-line data-bases of environmental information introduced and regularly updated) have been introduced to facilitate proper access to environmental information. There are literally no awareness raising or outreach efforts on the part of the public authorities. |
| Art. 3(1) – public participation | 1. In practice, is there a clear, transparent and consistent framework to implement the public participation pillar of the convention?

Art. 3(1) provides:“Each Party shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the information, public participation and access-to-justice provisions in this Convention, as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention.” | **Scoring Guide:**3= in practice, the entire framework for implementing the public participation pillar is very clear, transparent and consistent in all respects2= in practice, most major aspects of the framework for implementing the public participation pillar is clear, transparent and consistent (though some minor aspects may be less clear or consistent).1= in practice, the framework for implementing the public participation pillar is not very clear, transparent and not necessarily consistent. 0= in practice, the framework for implementing the public participation pillar is very unclear, not transparent, not consistent - or non-existent.The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)Note that Article 3(1) is frequently referred to as an overall benchmark of the enactment and implementation of the Convention. While its first part refers to the enactment of the provisions of the Convention into the national law, the second part of this paragraph clearly refers to the necessity of introducing and maintaining proper enforcement measures, such as how easy is to find the proper agencies/public authorities, how far their competences are clear. The score shall be higher if there are specific institutions or departments at environmental authorities and at other relevant bodies that overlook, support etc. public participation.Whilst all of these scenarios may not be relevant or may not yet have been tested in the context of the Party, please consider insofar as possible and where relevant, *inter alia*:* institutions in place that foster the culture of participation (ref.1, ref.7)
* attention to local level public participation (ref.1, ref.4) institutions, including interdepartmental working groups etc. established for research and development of public participation (ref.3)
* institutional, organisational measures within the judiciary in order to support more effective public participation (ref.2)
* developments of public participation infrastructure more generally than environmental matters (ref. 3)
* in some instances there are problems even with the correct translation of the Convention into the relevant national language (ref.5)
* are the responsibilities of certain branches of government in relation to public participation understood clearly enough? (ref.6)

Please justify your score and explain the factors you considered.The current legal framework on public participation was considered by the ACCC to be deficient in many respects.There is practically no culture of public participation in Ukraine and the legal framework itself no matter how clear and consistent, will not bring about a full compliance with the conventional provisions. Unfortunately, as of today no institutions to foster the culture of participation, to organise outreach and awareness raising activities are set up or envisaged to be set up in any near future. On October 4th, 2016 the Parliament of Ukraine has finally adopted the Law on EIA and the Law on SEA that to a large extent enacted conventional provisions on public participation into domestic legal framework. Nevertheless, the President of Ukraine has executed his veto right with regard to these laws.  |
| Art. 3(1) – access to justice | 1. In practice, is there a clear, transparent and consistent framework to implement the access to justice pillar of the convention?

Art. 3(1) provides:“Each Party shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the information, public participation and access-to-justice provisions in this Convention, as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention.” | **Scoring Guide:**3= in practice, the entire framework for implementing the access to justice pillar is very clear, transparent and consistent in all respects2= in practice, most major aspects of the framework for implementing the access to justice pillar is clear, transparent and consistent (though some minor aspects may be less clear or consistent).1= in practice, the framework for implementing the access to justice pillar is not very clear, transparent and not necessarily consistent.0= in practice, the framework for implementing the access to justice pillar is very unclear, not transparent, not consistent - or non-existent.The references cited below, together with relevant background material, can be found [here](https://drive.google.com/file/d/0B3A-dRNkr_7BVm9ZNkRhTVZPZXM/view?usp=sharing)Note that Article 3.1 is frequently referred to as an overall benchmark of the enactment and implementation of the Convention. While its first part refers to the enactment of the provisions of the Convention into the national law, the second part of this paragraph clearly refers to the necessity of introducing and maintaining proper enforcement measures, and practical implementation measures, too, such as how easy it is to find the proper agencies/public authorities, to what extent their competences are clear, etc. Please justify your score and explain the factors you considered.Very few amendments have ever been introduced into domestic legal framework with regard to access to justice. Some of those few were erroneous. General legal framework on access to justice accommodates some of the convention requirements, but on other it is unclear, not consistent or or non-existent. On practice minority of Aarhus Convention access to justice requirments are met. |

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

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