

7 November 2018

Subject: Input to the thematic report focusing on human rights obligations in the context of air pollution

Dear Mr. Boyd,

Thank you for the invitation to provide an input to your thematic report focusing on human rights obligations in the context of air pollution.

In response to your request, I am pleased to convey brief note prepared by the secretariat of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) and its Protocol on Pollutant Release and Transfer Registers (attached in annex I).

I thank you once again for the opportunity to support the important work carried out by the Office of the High Commissioner and the Human Rights Council, and I am looking forward to our cooperation in the future.

Yours sincerely,



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Chief of Section

Environment for Europe and Sustainable Development Section  
Environment Division

Mr. David Boyd  
United Nations  
Special Rapporteur on  
Human Rights and the Environment

## ANNEX I

# THE CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS AND ITS PROTOCOL ON POLLUTANT RELEASE AND TRANSFER REGISTERS AS TOOLS FOR EMPOWERING THE PUBLIC TO ADDRESS AIR POLLUTION

## Briefing note

Prepared by the ECE secretariat of the Aarhus Convention and the Protocol on PRTRs

## Introduction

1. Good governance; effective and inclusive decision-making; and effective access to information; as well as to remedies to ensure proper law enforcement provide a solid response to mitigating air pollution and improving air quality thereby helping to achieve Sustainable Development Goals, in particular Goals 3, 11, 12 and 16.
2. In this regard, the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, in short Aarhus Convention, and its Protocol on Pollutant Release and Transfer Registers (Protocol on PRTRs), stemming from Principle 10 of the Rio Declaration, offer comprehensive legal frameworks to support such response.
3. Adopted in 1998, the Aarhus Convention is an effective instrument of international environmental law, representing a significant step forward both for the protection of the environment, including air and atmosphere as its components, and implementing human rights standards. The Convention recognizes the right to a healthy environment and guarantees the interlinked rights of access to information, public participation and access to justice in a single international treaty. It imposes corresponding obligations on public authorities which are broadly defined in the Convention so as to cover governmental bodies from all sectors and at all levels and bodies performing public administrative functions.
4. With forty-six States and the European Union now Parties to the Convention, the Convention “remains the most ambitious venture in the field of environmental democracy under the auspices of the United Nations”<sup>1</sup>. It is a global instrument, open to accession by all UN Member States.
5. Article 10 of the Convention established reporting requirements for the Parties in order to continually review the implementation of the Convention. Decision 1/7 the Meeting of the Parties established the Compliance mechanism that has to be of a “non confrontational, non-judicial and consultative” nature and allow for “appropriate public involvement”. The Aarhus compliance mechanism is unprecedented among multilateral environmental agreements in the extent to which it gives the public, including NGOs, a role in triggering a review of a Party’s compliance<sup>2</sup>. The Convention’s compliance and reporting mechanisms, both of which provide a role for the public, have yielded valuable information on advances and the extent and nature of the challenges in implementation.

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<sup>1</sup> See foreword by the Secretary-General of the United Nations, “The Aarhus Convention: An Implementation Guide”, United Nations publications, 2014.

<sup>2</sup> <http://www.unece.org/env/pp/cc.html>

6. The Convention has the Kyiv Protocol on Pollutant Release and Transfer Registers which entered into force in 2009. It established a new legally binding international benchmark for reporting on emissions of pollutants from a wide range of potentially harmful activities to environmental media, including air. The Convention's provisions of access to information, participation and legal redress are mirrored in its Protocol. The Protocol, has currently 36 Parties, is open for accession to all UN Member States.

7. Good practices in the Convention's and Protocol's implementation that could support States' and stakeholders' efforts in addressing air pollution are regularly collected and could be found in the Aarhus Clearinghouse and PRTR.net platforms<sup>3</sup>.

### **Access to information related to air quality and pollution**

8. The first pillar of the Aarhus Convention guarantees public access to environmental information that remains key enabler of greater governmental transparency and accountability, effective public participation, access to justice, prevention of adverse effects on health and changing consumer behaviour that are crucial for addressing air pollution. It covers both the 'passive' or reactive form of access to information, i.e. the obligation on public authorities to respond to public requests for information, and the 'active' form dealing with other obligations relating to providing environmental information, such as collection, update, public dissemination and so on.

9. The Convention has not defined the scope of environmental information in an exhaustive manner. Information on the state of air and atmosphere, factors, activities or measures having (or being likely to have) an impact on it and are considered as environmental information in accordance with article 2, para. 3, of the Convention without qualifying the form of the information or whether such information may be in the form of "raw" or "processed" data<sup>4</sup>. Such information has the cross-cutting nature, includes primary (raw) data, indicators, assessments and other forms, and is present in or closely linked with environmental monitoring, PRTRs, geospatial, statistical, hydrometeorological, health, Earth observation and other relevant (e.g. transport, energy) information systems held by various public authorities at the national and international<sup>5</sup> levels. Therefore, further efforts are needed to develop or improve framework allowing better data integration, public accessibility, re-use and assessments.

10. Through decision VI/1, the Meeting of the Parties to the Convention urged to ensure that the scope of environmental information is interpreted broadly in line with the requirements of the Convention when executive regulations, legislative and policy documents relating to access to environmental information are prepared, and in the process of taking decisions on the disclosure of

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<sup>3</sup> See <https://aarhusclearinghouse.unece.org/> and <https://prtr.unece.org/>

<sup>4</sup> The Aarhus Convention Compliance Committee found that raw data on the state of the air and the atmosphere constituted environmental information according to article 2, paragraph 3 (a), of the Convention. Accordingly, public authorities should ensure access to the requested information as required by article 4 of the Convention. Should the authority have any concerns about disclosing the data, they should provide the raw data and advise that they were not processed according to the agreed and regulated system of processing raw environmental data. The same applies for the processed data, in which case the authorities should also advise on how these data were processed and what they represent. See findings in communication ACCC/C/2010/53 (document ECE/MP.PP/C.1/2013/3), paras. 73-78, available from <http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-53/Findings/ece.mp.pp.c.1.2013.3.e.pdf>.

<sup>5</sup> See [http://www.unece.org/fileadmin/DAM/env/pp/a\\_to\\_i/1st\\_meeting/Presentations\\_meeting/Item5\\_Egorov\\_WHO.pdf](http://www.unece.org/fileadmin/DAM/env/pp/a_to_i/1st_meeting/Presentations_meeting/Item5_Egorov_WHO.pdf) e.g.

such information, and to engage the relevant environmental expertise in these processes for this purpose.

11. While the Aarhus Convention requires ensuring that public authorities collect and update environmental information, there is also an increasing attention to the new sources of environmental information, such as information collected and shared by the public (e.g. through citizen science or citizen engagement initiatives) or using remote sensing, big data, artificial intelligence, internet of things and other technologies. The important role of Aarhus Centres<sup>6</sup>, the media, public libraries and other information sites in facilitating public access to environmental information is also acknowledged by the Parties. Easy access to the information on air quality and pollution might be especially important for certain target groups which health conditions specifically depend on its quality<sup>7</sup>.

12. While passive form of access to information upon request still applies, the current trend under the Convention shifted towards more active dissemination of environmental information and the use of electronic information tools. Parties also welcomed initiatives to widen and improve public accessibility of environmental information, including through electronic information tools, such as single web access points (environmental portals<sup>8</sup>), air quality viewers<sup>9</sup> and mobile applications<sup>10</sup> (e.g. self-standing or integrated in meteo apps), and e-government,<sup>11</sup> open government data,<sup>12</sup> the Shared Environmental Information System in the pan-European region<sup>13</sup>, open research data and other similar initiatives. Such tools and should be designed, tested and implemented taking into account needs of the public and ensuring effective public participation. More detailed information is available in the collection of case studies on electronic information tools<sup>14</sup> and the report on the implementation of EIT recommendations<sup>15</sup>.

13. The Meeting of the Parties further invited Parties, signatories, partner organizations and other stakeholders to take necessary measures to ensure public access to real-time, as appropriate, up-to-date, accurate and functional environmental information, and to promote its interoperability, sharing and accessibility in forms and formats meeting the needs of different users.

14. Implementing article 5, paras. 6 and 8, of the Convention, the Parties reported on the use of various tools (e.g. eco-labelling; “green” public procurement methods, Eco-Management and Auditing Schemes) to stimulate business operators to inform the public regularly of the environmental impact of their activities and products as well as to ensure that sufficient product

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<sup>6</sup> <https://aarhus.osce.org/>

<sup>7</sup> See [http://www.unece.org/fileadmin/DAM/env/pp/mop6/HLS/Sweden\\_HLS-panel\\_2rev.pptx](http://www.unece.org/fileadmin/DAM/env/pp/mop6/HLS/Sweden_HLS-panel_2rev.pptx)

<sup>8</sup> See e.g. Ireland (<http://www.epa.ie/irelandsenvironment/>), Slovakia (<http://www.enviroportal.sk/>), Serbia ([www.ekoregistar.sepa.gov.rs](http://www.ekoregistar.sepa.gov.rs))

<sup>9</sup> See e.g. Ireland (<http://www.epa.ie/air/quality/>), Spain (<https://sig.mapama.gob.es/calidad-aire/>), the former Yugoslav Republic of Macedonia (<http://air.moecpp.gov.mk/#>)

<sup>10</sup> See e.g. Sweden [http://www.unece.org/fileadmin/DAM/env/pp/mop6/HLS/Sweden\\_HLS-panel\\_2rev.pptx](http://www.unece.org/fileadmin/DAM/env/pp/mop6/HLS/Sweden_HLS-panel_2rev.pptx)

<sup>11</sup> E-government initiatives encompass activities of the public authorities to deploy information and communication technologies for improving knowledge and information in the service of the public.

<sup>12</sup> Open government data initiatives encompass activities to make information or data produced or commissioned by governments available for everyone to access, reuse and redistribute without any restrictions.

<sup>13</sup> <http://www.unece.org/environmental-policy/environmental-monitoring-and-assessment/envema.html>

<sup>14</sup> [http://www.unece.org/env/pp/aarhus/tfai/case\\_studies.html](http://www.unece.org/env/pp/aarhus/tfai/case_studies.html)

<sup>15</sup> See [http://www.unece.org/fileadmin/DAM/env/pp/wgp/WGP-21/Documents/English/ECE\\_MP.PP\\_WG.1\\_2017\\_4\\_E.pdf](http://www.unece.org/fileadmin/DAM/env/pp/wgp/WGP-21/Documents/English/ECE_MP.PP_WG.1_2017_4_E.pdf) and [http://www.unece.org/fileadmin/DAM/env/pp/wgp/WGP-21/Documents/WGP21\\_2Inf\\_Summary\\_EIT\\_Rec.pdf](http://www.unece.org/fileadmin/DAM/env/pp/wgp/WGP-21/Documents/WGP21_2Inf_Summary_EIT_Rec.pdf)

information is made available to the public in a manner which enables consumers to make informed environmental choices. Many countries encourage companies operating within their borders to promote Corporate Social Responsibility (CSR) by voluntarily adopting high social and environmental standards according to international norms and principles and by encouraging companies to make these standards public and easily accessible in their reports and strategies<sup>16</sup>. At its twenty-second meeting, the Working Group of the Parties noted the importance of facilitating effective public access to environment-related product information and its links to implementation of Sustainable Development Goals.

15. Public access to information might be restricted in accordance with article 4, paras. 3 and 4, of the Aarhus Convention. At the same time, article 4, para. 3 (d) requires that within this framework, information on emissions which is relevant for the protection of the environment shall be disclosed. The grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and whether the information requested relates to emissions into the environment.

16. The Convention's Protocol on Pollutant Release and Transfer Registers aims to enhance public access to information through the establishment of coherent, nationwide pollutant release and transfer registers (PRTRs). PRTRs provide detailed information on emissions released into air that can support governmental decision-making, keep the public informed, benchmark industries and assess consumers' behaviour in order to mitigate air pollution. PRTR data on releases into air has increasingly being used for policy-making related to e.g. urban planning and health.

### **Public participation in decision-making relating to air quality, releases into air and pollution prevention**

17. The second pillar of the Convention guarantees public participation in decision-making on activities that may have significant effect on the environment (including environmental impact assessment and permitting procedures) and during the preparation of plans, programmes, policies and legislation relating to the environment, including air quality, releases into air and pollution prevention. Parties should ensure that in the decision due account is taken of the outcome of the public participation. Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters<sup>17</sup> can be helpful to design and implement proper public participation procedures.

18. In addition, new online platforms have been established in several countries to facilitate access to information related to particular projects that might have impact on the environment, including on air quality<sup>18</sup>.

19. If the public is able to participate in decision-making related to the environment from the outset, it is likely that the final outcome of a project or policy or legislative change will be more acceptable to them, more sustainable and less harmful to the environment. It also means that hidden or

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<sup>16</sup> For more information, see document AC/TF.AI-3/Inf.3 available from [http://www.unece.org/fileadmin/DAM/env/pp/a\\_to\\_i/3rd\\_meeting/Docs/Inf.3\\_2014\\_A2PI\\_Outlook-final.pdf](http://www.unece.org/fileadmin/DAM/env/pp/a_to_i/3rd_meeting/Docs/Inf.3_2014_A2PI_Outlook-final.pdf) and the material of the Task Force on Access to Information for its third meeting: <http://www.unece.org/env/pp/aarhus/tfai3.html>.

<sup>17</sup> Available from <http://www.unece.org/index.php?id=49142&L=0>

<sup>18</sup> See e.g. Czechia ([https://portal.cenia.cz/eiasea/view/eia100\\_cr](https://portal.cenia.cz/eiasea/view/eia100_cr)); France (<https://www.projets-environnement.gouv.fr/pages/home/>); Slovakia (<http://enviroportal.sk/en/eia>) and Ukraine (<http://eia.menr.gov.ua/>)

unexpected aspects of a proposed activity or adverse impact on vulnerable groups can be uncovered early, helping to avoid costly mistakes.

### **Access to justice in cases relating to air quality and air pollution**

20. The Convention's third pillar grants members of the public a right to access to justice in environmental matters. In particular, article 9, para 3, of the Convention, requires that members of the public have access to administrative or judicial review procedure to challenge acts or omissions by private persons and public authorities which contravene provisions of domestic law relating to the environment, including air quality, releases into air and pollution prevention. This proved to be an effective tool not only to ensure timely and effective access to information and public participation in decision-making procedure but also compliance and enforcement of law relating to air quality, releases into air and pollution prevention. Courts of several Parties, including Belgium<sup>19</sup>, Germany<sup>20</sup>, the Netherlands<sup>21</sup>, and the United Kingdom<sup>22</sup>, were dealing with cases brought by non-governmental organizations or individuals on air-related matters.

21. Further considerable efforts are needed to eliminate existing barriers for members of the public related to standing, costs, length of procedure, scope of review, remedies and legal assistance mechanisms. Strengthening judicial specialization in environmental law and the capacities of courts and other review bodies in using environmental expertise remain crucially important and contributing for successful implementation of Sustainable Development Goals, in particular SDG Target 16.3.

22. Next year, this issue will also be addressed by the Aarhus Convention Task Force on Access to Justice<sup>23</sup>. The discussion will focus on cases relating to air quality (e.g. permits for industrial installations and plans and projects concerning infrastructure, land use and air quality management).

### **Public participation in international forums relating to air quality or releases into air<sup>24</sup>**

23. Article 3, para. 7, of the Aarhus Convention requires Parties to promote the application of the principles of this Convention in international decision-making processes and within the framework of international organizations in matters relating to the environment, including those related to air quality or releases into air.

24. To facilitate the implementation of this provision, the Convention's Parties adopted the Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums<sup>25</sup>. The Almaty Guidelines, for example, are applicable to the processes of the

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<sup>19</sup> See [https://www.rechtbanken-tribunaux.be/sites/default/files/public/content/download/files/greenpeace\\_vlaamsgewest101018.pdf](https://www.rechtbanken-tribunaux.be/sites/default/files/public/content/download/files/greenpeace_vlaamsgewest101018.pdf)

<sup>20</sup> See

<sup>21</sup>

See

[http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/TF11-2018/statements\\_and\\_presentations/11TFAJ\\_Item3\\_3\\_DEV\\_TheNetherlands\\_Pikkemaat.pdf](http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/TF11-2018/statements_and_presentations/11TFAJ_Item3_3_DEV_TheNetherlands_Pikkemaat.pdf)

<sup>22</sup> See <https://aarhusclearinghouse.unece.org/resources/united-kingdom-supreme-court-ambient-air-quality-case-c-40413-summary-link-judgment>

<sup>23</sup> More information will be available in due course from <http://www.unece.org/env/pp/tfaj/meetings.html>

<sup>24</sup> More information on promoting principles of the Aarhus Convention in international decision-making processes and within the framework of international organizations is available from <http://www.unece.org/env/pp/ppif.html>

<sup>25</sup> Decision II/4 on the Application of the Convention in International Forums (ECE/MP.PP/2005/2/Add.5) [http://www.unece.org/env/pp/mop2/mop2.doc.html/](http://www.unece.org/env/pp/mop2/mop2.doc.html#/)

European Environment and Health Process<sup>26</sup>, United Nations Framework Convention on Climate Change, the Convention on Long-range Transboundary Air Pollution, the Basel, Rotterdam, Stockholm and Minamata Conventions<sup>27</sup> dealing with chemicals, and others. To facilitate the work in this area, the checklist of measures to be borne in mind when developing a national action plan to systematically promote the principles of the Convention in all international forums dealing with matters relating to the environment has been prepared under the auspices of the Aarhus Convention.

25. The regular exchange of information on best practices and challenges regarding promotion of the principles of the Aarhus Convention in relevant international processes takes place under the auspices of the Working Group of the Parties to the Aarhus Convention.

## Conclusions

26. To sum up, the Aarhus Convention is characterized by the following features relevant to the implementation of human rights obligations in air-related matters:

- (a) It requires Parties to guarantee rights of access to information, public participation in decision-making and access to justice in environmental matters, included those related to air quality and pollution, in order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to health and well-being. The Protocol on PRTRs to the Convention further details Parties' obligations to collect, update and make publicly accessible information on releases into air through establishing and maintaining PRTRs. These rights underline the various procedural requirements and corresponding obligations of public authorities;
- (b) It establishes minimum standards to be achieved but does not prevent any Party from adopting measures which go further in the direction of providing access to information, public participation or access to justice. The Convention prohibits discrimination on the basis of citizenship, nationality or domicile against persons seeking to exercise their rights under the Convention;
- (c) It contains a general requirement on Parties to promote the application of its principles within the framework of international bodies and processes in matters relating to the environment, including air as its component.

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<sup>26</sup> For additional information, see <http://www.unece.org/env/pp/aarhus/wgp21.html> (PPIF session)

<sup>27</sup> For additional information, see <http://www.unece.org/env/pp/aarhus/wgp22.html> (PPIF session)