

## ANNEX I

# PROMOTING EFFECTIVE PUBLIC PARTICIPATION IN PUBLIC AFFAIRS UNDER 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

## Briefing note

Prepared by the ECE secretariat of the Convention and the Protocol

## Introduction

1. The adoption of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus, 1998) was a major step forward in the field of procedural environmental rights. For the first time, the interlinked rights of access to information, public participation and access to justice were addressed in a comprehensive way in a single international treaty.
2. 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> and is widely accepted as the leading example of the implementation of principle 10 of the Rio Declaration on Environment and Development.<sup>2</sup> The Aarhus Convention is an unprecedented instrument of international environmental law, representing a significant step forward both for the protection of the environment and for the consolidation of democracy. As the only existing legally binding instrument to implement principle 10, it has drawn global attention and has inspired the development of similar processes and instruments in other regions. It is open to accession by non-ECE countries, subject to approval of the Parties.
3. A number of countries with economies in transition including those from Central Asia - Kazakhstan, Kyrgyzstan, Tajikistan and Turkmenistan and Caucasian countries, namely Armenia, Azerbaijan and Georgia are Parties to the Convention. Also all other former Soviet countries such as Ukraine, Belarus, Republic of Moldova are Parties. In addition, most Balkan non-EU countries, such as Albania, Bosnia and Herzegovina, Montenegro, Serbia and the former Yugoslav Republic of Macedonia, are also Parties.
4. The Convention establishes that sustainable development can be achieved only through the involvement of all stakeholders, and links government accountability

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<sup>1</sup> See foreword by the Secretary-General of the United Nations, Mr Ban Ki-Moon in Jonas Ebbesson and others, “The Aarhus Convention: An Implementation Guide”, United Nations publications, 2014. ,

<sup>2</sup> See for example Birnie and Boyle, International Law and the Environment, 2001, p. 262.

- and environmental protection. It acknowledges that we owe an obligation to future generations. The Convention sets out the key elements of public participation and its provisions have become widely recognized as a benchmark for environmental democracy. They include access to environmental information, early and ongoing involvement of the public in decision-making, broad scope of participation, transparent and user-friendly processes, an obligation on authorities to take account of public input, a supportive infrastructure and an effective means of enforcement/appeal.
5. The Convention includes three main components: the right to know, the right to participate in decision-making and the right to redress or review. In general, the Convention is characterized by the following features relevant to human rights:
    - a. It requires Parties to guarantee rights of access to information, public participation in decision-making and access to justice in environmental matters. It also refers to the goal of protecting the right of every person of present and future generations to live in an environment adequate to health and well-being. These rights underlie the various procedural requirements in the Convention;
    - 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 imposes obligations on public authorities, which are broadly defined so as to cover governmental bodies from all sectors and at all levels and bodies performing public administrative functions. Bodies acting in a judicial or legislative capacity are excluded. The definition of “public authority” also covers the institutions of regional economic integration organizations which become Party to the Convention (e.g. the institutions of the European Union);
    - d. 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.
  6. An amendment to the Convention adopted in 2005 at the second meeting of the Parties underpins the rights of the public to participate in decision-making on genetically modified organisms. The Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums, adopted at the same meeting, reflect a growing recognition that where the environment is concerned, public involvement is important not only at national and local levels but also at the international level.
  7. Parties to the Convention are committed to promote the principles of the Aarhus Convention in international environmental decision-making process and within the framework of international organizations. In this regard, Parties regularly

- exchange information on best practices to promote the principles of the Convention in relevant international processes and forums under the auspices of the Working Group of the Parties. Moreover, the Aarhus Convention has been used as reference for the review of safeguard and information policies of other agencies of the United Nations (UNEP) as well as international financial institutions (World Bank, European Bank for Reconstruction and Development).
8. The Convention's innovative compliance and reporting mechanisms, both of which provide a role for the public, have yielded valuable information on the extent and nature of the challenges in implementation. They serve as an important reminder that the value of an international treaty lies not only in the quality of its text, or in how many Parties it has, but also in how well it is implemented.
  9. 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. According to decision 1/7 of the Meeting of the Parties, the Compliance Committee is required, *inter alia*, to consider communications from the public. Since October 2003, the Compliance Committee established under the mechanism has dealt with approximately 100 communications from NGOs and individuals and a submission from one government. It is the task of the Compliance Committee to investigate these claims through a process of dialogue with the Parties concerned. When a country is found to be in non-compliance, the Committee prepares a set of recommendations on the basis of its findings and assists the Parties concerned proceed to the necessary adaptations of their national legal systems. Drawing on the findings and recommendations of the Compliance Committee, the Meeting of the Parties, is ultimately the final arbiter as to whether or not there is a case of non-compliance and decides upon what action to take, if any. Parties are then expected to take the necessary measures in order to comply with the decisions of the Meeting of the Parties.
  10. The Convention requires that the compliance mechanism be of a "non-confrontational, non-judicial and consultative" nature and that it allow for "appropriate public involvement". The eight members of the Committee serve in their personal capacities as experts and thus do not represent the Governments of their countries, although they have to be nationals of Parties or Signatory States. NGOs have the right to nominate candidates for the Committee, whose members are elected by the Meeting of the Parties. Like human rights treaties, the Aarhus Convention could be seen as seeking to guarantee the rights of the public at least as much as those of the Parties *vis-à-vis* one another.
  11. Since its entry into force, the Convention has seen a number of important achievements in promoting environmental democracy at local, national and regional level, across the Eurasia continent. Laws and practices have been revised to bring them into line with the Convention. Members of the public are learning to use the Convention to make their governments more transparent and accountable. There is a growing body of jurisprudence based on the Convention and the legislation that implements it.

12. Public authorities across the UNECE region have established and are operating a number of special structures facilitating implementation of access to environmental information and public participation provisions. Several Parties have made considerable efforts to establish and further use modern technologies to promote e-governance. Electronic tools (webpages, web-portals, social networks) are increasingly used to disseminate environmental information and to hold public consultations.
13. A special and active role in this sphere is played by Aarhus Centres, which have been established by the OSCE in 14 countries including South and East Europe, Caucasus and Central Asia. Aarhus Centres cover both the national and regional levels by offering guidance to the public, performing awareness-raising activities, facilitating access to information and public participation and assisting Governments in the performance of their functions and in cooperating with the public. Furthermore, non-governmental organizations have been leading actors in monitoring and facilitating the implementation of the principles of the Convention throughout the UNECE region as well as in relevant international forums. They often are valuable partners in disseminating information, in raising awareness and in helping countries build the necessary capacities for greater access to information, public participation in decision-making and access to justice.
14. A number of guidance documents have been produced to facilitate the implementation of the Convention's three pillars at national and international level. The Implementation Guide of the Aarhus Convention is an essential reference for policy-makers, legislators and officials at all levels of government.<sup>3</sup> It contains important guidance for members of the public, including non-governmental organizations, seeking to exercise their rights, as well as for those in the private sector engaged in activities that are subject to the Convention. Furthermore, the wide distribution of a quick guide to the Convention<sup>4</sup> (published in the 6 official languages of the United Nations) and to the Protocol on PRTRs<sup>5</sup> (published in the 3 official languages of the ECE) aim to help raise awareness on the rights enshrined in these treaties. The Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters set out practical guidance on how to improve the implementation of the Convention's provisions on public participation in decision-making.<sup>6</sup>
15. Governmental authorities, non-governmental organizations as well as other international organizations are regularly producing guidance material to facilitate

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[http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus\\_Implementation\\_Guide\\_interactive\\_eng.pdf](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf)

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[http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus\\_brochure\\_Protecting\\_your\\_environment\\_eng.pdf](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_brochure_Protecting_your_environment_eng.pdf)

<sup>5</sup> [http://www.unece.org/fileadmin/DAM/env/pp/prtr/guidance/PRTR\\_simple\\_guide\\_web\\_2011\\_03\\_29.pdf](http://www.unece.org/fileadmin/DAM/env/pp/prtr/guidance/PRTR_simple_guide_web_2011_03_29.pdf)

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[http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Post\\_session\\_docs/ece\\_mp.pp\\_2014\\_2\\_added.2\\_eng.pdf](http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Post_session_docs/ece_mp.pp_2014_2_added.2_eng.pdf)

- public access to information and public participation in decision-making (e.g. public participation handbooks, codes of practice, consultation guides).
16. These efforts are accompanied by capacity-building activities at local, national and regional level (training workshops for public officials, civil servants, non-governmental organizations, legal professionals).
  17. The entering into force of the Kiev Protocol on Pollutant Release and Transfer Registers in 2009 established a new legally binding international benchmark for reporting on emissions of pollutants from a wide range of potentially harmful activities. The Convention's provisions of access to information, participation and legal redress are mirrored in its Protocol. In common with the Convention, the Protocol is open to accession by non-ECE countries. Parties to the Protocol need not be Parties of the Convention. The Protocol, signed by 36 States and the European Community, is open for accession to all States and regional economic integration organizations.<sup>7</sup>.
  18. Whereas the Convention primarily establishes obligations on public authorities towards the public, the Protocol introduces a new dimension in that it implies reporting obligations for the private sector and may therefore be seen as a tool promoting corporate accountability in a specific context. PRTR reporting systems invite the public to participate in the regulatory system, both by monitoring the environmental performance of facilities and sectors and by engaging in dialogue with companies and government agencies on ways of improving such performance.
  19. The Aarhus Clearinghouse for Environmental Democracy (<http://aarhusclearinghouse.unece.org>) and PRTR.net (<http://prtr.net/>) have emerged as leading global repositories of information on activities relevant to the Convention, the Protocol and principle 10 of the Rio Declaration on Environment and Development. These tools are important sources of information on citizens' environmental rights. The Clearinghouse provides a forum for the collection, dissemination and exchange of information on laws, policies, existing jurisprudence and good practices relevant to the Convention, its Protocol on PRTRs and principle 10 of the Rio Declaration. PRTR.net is a global portal to Pollutant Release and Transfer Register (PRTR) information and activities from countries and organizations around the world. It aims to assist countries in the development, implementation and improvement of PRTR programmes.
  20. The Convention and its Protocol may be of interest to States outside the ECE region in a number of ways: as instruments to which such States might eventually accede, as an inspiration for developing similar instruments in other regions or as models for development of national legislative frameworks. They could also serve as valuable reference points if there were a decision to develop a global instrument, either binding or non-binding, on procedural environmental rights. In her statement at the occasion of the entry into force of the Convention, former UN High Commissioner for Human Rights Mary Robinson said that the Convention is

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<sup>7</sup> More information on the Protocol is available on [www.unece.org/env/pp/prtr.htm](http://www.unece.org/env/pp/prtr.htm).

“a remarkable achievement not only in terms of protection of the environment but also in terms of the promotion and protection of human rights.”

21. The Aarhus Convention has already acted as a model example for initiatives in other regions and forums aimed at applying the principles contained in the Convention, namely the initiative to develop a regional instrument for the implementation of principle 10 of the Rio Declaration in Latin America and the Caribbean. Where requested and within available resources, the secretariat and Parties to the Convention are offering advisory support to the process in Latin America and the Caribbean and to initiatives in other regions and forums. The UNECE has also been supporting the United Nations Environment Programme in its efforts to promote the Bali guidelines on the application of principle 10.

### **Regional trends<sup>8</sup>**

22. During the fourth 2014 reporting cycle, the legislation of Parties in Eastern Europe, the Caucasus and Central Asia continued to be subject to amendment and new developments, mainly with regard to access to information and public participation. Parties of this subregion also reported on the establishment and operation of special structures facilitating implementation of access to environmental information and public participation provisions. A special and active role in this sphere is played by the Aarhus Centres, which cover both the national and regional levels. Aarhus Centres offer guidance to the public, perform awareness-raising activities, facilitate access to information and public participation and assist Governments in the performance of their functions and in cooperating with the public.
23. In Eastern Europe, the Caucasus and Central Asia, Parties have made significant progress in facilitating public access to environmental information through institutional, legislative, or practical measures such as E-governance initiatives. The role of the OSCE Aarhus Centres has been key in this process.
24. On the issue of public participation, Parties of the subregion are continuing their efforts to develop draft laws on environmental impact assessment (EIA), including the necessary public participation provisions. These countries have a mechanism of public ecological expertise, but this has not been successfully implemented in practice. Public participation in the preparation of plans, programmes, executive regulations or normative acts is not systematic, and relevant, detailed regulations on public participation in this field are absent or inadequate.
25. Access to justice remains a major challenge in Eastern Europe, the Caucasus and Central Asia, primarily because a number of obstacles continue to exist for the public (mainly NGOs) in this area.

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<sup>8</sup> For detailed information on regional trends see the synthesis report on the status of implementation of the Convention available at:  
[http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Category\\_II\\_documents/ece.mp.pp.2014.6\\_aec.pdf](http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Category_II_documents/ece.mp.pp.2014.6_aec.pdf)

26. Little progress has been made with respect to establishing pollutant release and transfer registers (PRTRs) in the subregion, with the exception of some studies on the possibility of implementing PRTR systems and some pilot PRTRs. Parties are not making progress in ratifying the GMO amendment, and their national legislation in this area is still in the process of development.
27. The principle obstacles towards implementation of the Convention and ratification of the GMO amendment and the Protocol on PRTRs are mainly the lack of the necessary financial and qualified human resources and technical facilities and a low level of awareness about environmental rights, environmental legislation in general, and specifically the provisions of the Convention, among government officials and the general public.
28. Parties in the EU and Norway have also been taking action to improve implementation of the Convention and its Protocol on PRTRs mainly through amendments to their legislation. Numerous online information systems, databases and PRTRs have become publicly available while emphasis was on making information more easily understandable to the general public. Furthermore information can be provided upon request in electronic form and mostly free of charge. A common trend in the region has been the institutionalization of special bodies or structures, such as ombudsmen, commissions or appeal boards, aimed at facilitating access to environmental information.
29. Improvements have also been made in procedures, the use of electronic tools to enable public participation, and introducing special consultative bodies throughout this subregion. However, differences between Parties in the EU and Norway remain: many do not offer systematic opportunities for public discussions of draft plans, programmes, executive regulations and normative acts in the field of the environment, while for others this is common practice.
30. As in other subregions, access to justice continues to be the most problematic pillar of the Convention in the EU and Norway. For instance, recourse to the courts is complicated in many countries, as legislation remains unclear with respect to different aspects of standing, fees and other elements of litigation. As a result, it is not a widespread practice for members of the public to apply to the courts to seek redress of their environmental rights. Positive court decisions in such cases are seldom handed down. In some countries courts are taking a positive approach to cases related to the Aarhus Convention, while in others a negative trend of limiting access to justice for members of the public in environmental cases is observed. In this connection, different initiatives have been launched in order to identify and target the main obstacles to access to justice, namely, financial constraints and standing limitations for NGOs. The findings of the Aarhus Convention's Compliance Committee are also helping Parties to identify the main challenges in the implementation of article 9 of the Convention and to find solutions. As a result, a few Parties initiated changes in their national legislation to improve access to justice for the public in environmental matters.
31. Parties in South-Eastern Europe (SEE) are continuing to develop their national legislation and align it with EU legislation. Furthermore, electronic databases of environmental information, websites of governmental bodies in the environmental

- sphere, regulations, mechanisms and practice on involving the public in decision-making are also being developed.
32. Aarhus Centres have been playing an important role in the implementation of the Convention's provisions in the subregion by assisting the general public and governmental authorities in collecting and disseminating information, facilitating public participation and awareness-raising activities and initiating and participating in the drafting of relevant legislation.
  33. Effective implementation of access to justice provisions in SEE countries is hampered, however, by ongoing judicial reforms and a low awareness among the public of their rights under the Convention. SEE Parties provided limited information on the practical implementation of article 9 or case law in Aarhus cases.

### **The way forward<sup>9</sup>**

34. Based on the challenges observed in implementing the Convention and its Protocol on PRTRs in the UNECE region a number of suggestions have been put forward, and Parties have been invited to:
  - a. Strive for full implementation of the Convention's access to information provisions by ensuring broader access to environmental information and documents, and by the launching and operation of electronic databases and information registers on environmental media and issues (air, water, land, biodiversity, etc.) with up-to-date, reliable information that is available online in electronic format and with a user-friendly interface. Regular updates of the information available on the web pages of the public authorities and improvements of their web pages at the national and local levels should be sought;
  - b. Strive for full implementation of the Convention's provisions on public participation in decision-making by ensuring meaningful and early public participation, the availability of relevant documents to the public, effective means of notification and sufficient time frames during the decision-making to assist public in the exercise of their rights. Parties should consider making institutional or organizational arrangements in order to achieve improvements in consultation practices and the broader involvement of the public, as well as to ensure that greater account is taken of the comments from the public in the final decision and to communicate the decision and the reasoning on which it is based to the public, including on how the public's comments have been taken into account. A formalistic approach to public participation should be eliminated. For this purpose, Parties should review their legislation and

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<sup>9</sup> See the synthesis report on the status of implementation of the Convention available at: [http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Category\\_II\\_documents/ece.mp.pp.2014.6\\_aec.pdf](http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Category_II_documents/ece.mp.pp.2014.6_aec.pdf)



practice and consider improvements in their procedures for public participation and/or decision-making in environmental matters;

- c. Strive for full implementation of the Convention's access to justice provisions by ensuring the clarity of legislation on access to justice, the compliance of practice with such legislation and the requirements of the Aarhus Convention, and by speeding up the process of adoption of relevant amendments to national legislation to open and facilitate access to justice for environmental NGOs and ordinary individuals in cases alleging the violation of environmental legislation by decisions, acts and omissions of the public authorities;
- d. Ensure that necessary and sufficient assistance mechanisms are provided and are available in practice for citizens and NGOs wishing to exercise their rights under the Convention;

## **Selected good practices**

### **A. Access to information**

#### The German Environmental Information Portal: PortalU®

As environmental information comes from many sources and is held by different public authorities, it can vary widely in content and format. The German Environmental Information Portal, PortalU ([www.portalu.de](http://www.portalu.de)), launched in 2006, is an instrument that aims to coordinate the diverse range of environmental information that is available on the Internet. The main objective of PortalU is to improve access to environmental information held by or for public authorities in Germany. It aims to be the one-stop portal for public environmental information in Germany. To date, over 3 million web pages and over 500,000 database entries from public authorities are available from about 350 public institutions and organizations at the national, Länder (federated state) and municipal level. Both environmental experts and the general public can access the portal free of charge.

#### Using electronic information technology in Kazakhstan

Kazakhstan's 2007 Environmental Code provides a detailed list of environmental information that must be made available to the public through telecommunication networks as required by article 5, paragraph 3, of the Convention. Article 160 of the Environmental Code requires competent public authorities to make publicly available through the Internet and other public telecommunications networks the following types of environmental information:

- Reports on the state of the environment.
- Drafts and text of national legislation and international treaties on environmental issues.
- Drafts and texts of governmental policy documents, programmes and action plans relating to the environment.

- Reports on environmental enforcement.
- Information on electronic government services related to the environment.

The Code also requires that the competent public authorities establish and maintain publicly accessible electronic registers of environmental information.

## **B. Public participation in decision-making**

### Means of notification in Poland

Under the Polish Act on Access to the Information on the Environment, Public Participation and the Environmental Impact Assessment of 3 October 2008, the notification of the public is the responsibility of the competent authority (i.e., the authority responsible for making the decision or adopting a strategic document) and must be provided by the following means:

- Placing the information on the Internet homepage of the authority (via a so-called “Public Information Bulletin”).
- Publishing the information in the customary way at the seat of the authority (usually by placing the information on the notice board).
- Posting notices in the vicinity of the proposed project.
- In the case of proposed plans, programmes, policies, etc., by publication in a newspaper of applicable geographical circulation.
- Where the seat of the competent authority is located in a community other than the community relevant to the subject of the notification, by publication in the local press or in a manner commonly used in the locality or localities relevant to the subject of the notification.

In addition, the Administrative Procedure Code requires those having a legal interest in the decision-making (usually immediate neighbours) to be notified by individual notice (usually by registered letter).

### Regulation of public participation in decision-making on GMOs in the EU

In the EU one important legal instrument concerning GMOs is Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms. The Directive has been complemented by Commission decisions with guidance notes on risk assessment and monitoring. Additionally, there are relevant EU regulations that are directly applicable in EU member States, for instance, Regulation 1829/2003/EC on genetically modified food and feed. These pieces of legislation also contain provisions on public participation.

Council Directive 2001/18/EC of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive

90/220/EEC defines GMO as “an organism, with the exception of human beings, in which the genetic material has been altered in a way that does not occur naturally by mating and/or natural recombination”.

All EU member States and a number of other ECE member States have passed GMO legislation. Some of them have taken legal measures against the placing on the market of GMOs in recent years, including Austria, France, Greece, Hungary, Luxembourg and Norway.

According to Directive 2001/18/EC “deliberate release means any intentional introduction into the environment of a GMO ... for which no specific containment measures are used”, whereas “placing on the market means making available to third parties”.

Consequently, a GMO, by itself or contained in products, must be subject to field testing at the research and developmental stage before it can be considered for placing on the market.

Directive 2001/18/EC mandates human health and environmental impact assessments. Article 4 of the Directive states that “member States shall ensure that all appropriate measures are taken to avoid adverse effects to human health and the environment which might arise from the deliberate release and placing on the market of GMOs”. Article 9, though, holds that if member States consider it appropriate they may consult groups or the public on such aspects of the proposed deliberate release. Article 24 foresees a public information and participation procedure also in case of GMO product notifications.

The provisions of Directive 2001/18/EC on public information and public participation regarding GMOs differ depending on the scope of the notification. For a deliberate release of a GMO, an EU member State is required to “consult the public, and where appropriate groups”;<sup>364</sup> whereas, for the placing on the market of a GMO, “the public may make comments to the Commission” on the assessment report provided.<sup>365</sup> In practice, the provisions regarding the deliberate release of GMOs implemented by each member State also differ in detail concerning the public information and participation.

#### E-representation platform in Bulgaria

Bulgaria’s e-representation platform is an Internet-based instrument for electing civil society representatives to participate in various administrative bodies taking decisions in the area of environmental protection and sustainable development in Bulgaria. It was set up by Bulgarian environmental NGOs in 2005 in accordance with the election procedure developed by the environmental NGO community at a series of national conferences. It is now regularly used by several governmental bodies, including the Ministry of Environment and Waters, the Ministry of Regional Development, the Ministry of Agriculture, the Ministry of Health and the Sofia Municipality. The online platform is a useful tool for government and municipal bodies seeking the input of civil society representatives in their work, while at the same time enabling the environmental NGO community to nominate and elect their representatives and to receive feedback from them. The platform has to date been used to elect approximately 50 civil society representatives to about 40 administrative bodies.<sup>385</sup>

### The mechanics of publishing draft rules

Slovenia's "Act amending the Environmental Protection Act"<sup>390</sup> specifies the process for public participation in the adoption of regulations that could significantly influence the environment. Under that Act, ministries and the competent authorities must make draft regulations available to the widest public and enable the public to express their opinions and comments on each draft regulation. As set out in the "Instructions on public participation in adopting regulations which may significantly impact the environment",<sup>391</sup> draft regulations are to be published on the Ministry's website, together with a notice inviting the public to provide their comments. The deadline for comments is to be stated in the notice and must not be shorter than 30 days.

Comments may be submitted in electronic or written form. Following the publication of the adopted regulation in Slovenia's Official Gazette, a document summarizing the official position on the public's comments regarding the draft regulation is also published on the Ministry's website.<sup>392</sup>

### **C. Access to justice**

#### NGO's right to justice upheld

On the Canary Island of Tenerife, a private company wished to develop a port in a marine area in which a threatened species of sea-grass was found. The public authority issued an order to remove the species of sea-grass — *Cymodea Nodosa* — from the catalogue of threatened species on the islands.

At the application of an environmental NGO, Federación Ecologista Ben Magec, Ecologistas en Acción, the Court granted an interim measure to suspend the order from coming into force. The national and regional governments, together with the private company involved, contested the decision. They argued that the suspension of the port development would cause irreparable damage to the public interest because of the project's socioeconomic potential. In their view, the economic public interest outweighed any interest in protecting the sea-grass.

The court took both issues into account and reconfirmed the suspension of works on the Port.

Moreover, even though national legislation stated that a bond sufficient to compensate for harm to the other party may be required before the grant of injunctive relief, the Court decided that requiring such a bond would in this case effectively impede the NGO's right of access to justice under the Convention. While the Court was entirely aware of the economic consequences of the port project being halted, it was also aware that if the injunction were subject to a compensation bond, the NGO would not be able to continue with its application, meaning that the injunction would inevitably be lifted and resulting in irreversible damage to the sea-grass and the environment.

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