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**PROGRESS REPORT ON STATUS OF RATIFICATION  
AND IMPLEMENTATION OF THE AARHUS  
CONVENTION**

submitted by

the secretariat of the Convention on Access to Information,  
Public Participation in Decision-making and Access to Justice  
in Environmental Matters

through the Ad Hoc Working Group of Senior Officials

BACKGROUND DOCUMENT



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Meeting of the Parties to the  
Convention on Access to Information,  
Public Participation in Decision-making and  
Access to Justice in Environmental Matters

(Extraordinary meeting, Kiev, 21 May 2003)

**PROGRESS REPORT ON THE STATUS OF RATIFICATION  
AND IMPLEMENTATION OF THE AARHUS CONVENTION**

**Introduction**

1. The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters - the Aarhus Convention - is a unique convention. It has evolved out of a close partnership between governments and civil society, and this is reflected in both its content and its processes. Through seeking to guarantee certain procedural environmental rights, it establishes a direct link between human rights and the environment, to an extent hitherto unprecedented in international law. Its implementation is therefore as much an exercise in strengthening democratic governance as it is a means of furthering environmental policy.
2. This report gives an overview of the current status of ratification and implementation of the Convention. It describes the significant progress that has been achieved at both national and international levels in the five years since the adoption of the Convention as well as the main activities undertaken under its auspices. It aims to identify certain emerging thematic and geographical trends in the national implementation of the Convention. Finally, it describes some of the main challenges to implementation, and the activities undertaken or planned by UNECE and other inter-governmental, governmental and non-governmental organizations to address them.
3. The report does not aim to provide a detailed and comprehensive account of the implementation status. There are several reasons for this, mainly relating to the short amount of time which has elapsed since the Convention's entry into force in October 2001. Given that more than half of the Signatories to the Convention have yet to ratify it, and that several others have

only done so within the past year, it would have been premature to expend resources at this stage on an extensive survey of the implementation status country by country. Furthermore, while the progress in implementation has been analysed in certain subject areas and for certain countries, notably in the context of capacity-building activities in countries with economies in transition, and while some information is available through reports and surveys prepared for the Convention's working groups and task forces, this is insufficient to produce a comprehensive report that would give a proper insight into the implementation of all provisions of the Convention throughout the UNECE region. It is nonetheless possible to identify some trends and draw some preliminary conclusions, which may be reviewed in the light of accumulating experience.

## **I. PROGRESS IN THE DEVELOPMENT AND IMPLEMENTATION OF THE CONVENTION (1998-2003)**

4. The Aarhus Convention was adopted and opened for signature at the fourth Ministerial Conference "Environment for Europe" in Aarhus, Denmark, on 25 June 1998. This represented the outcome of intense negotiations that had involved both governments and non-governmental organizations over the previous two years.

5. Following the adoption of the Convention, the UNECE Committee on Environmental Policy established the Meeting of the Signatories to the Convention, and charged it with the tasks of identifying activities to be undertaken pending the entry into force of the Convention, reporting to the Committee on progress made in respect of the ratification of the Convention and preparing for the first meeting of the Parties. The Meeting of the Signatories met twice, once in 1999 and once in 2000, and with the endorsement of the Committee, established various working groups and task forces to work on specific substantive issues. Working groups were established on compliance, rules of procedure, pollutant release and transfer registers, and genetically modified organisms; and task forces were established on access to justice and electronic tools. At the same time, many governments started to work on the formal ratification processes and drawing up the necessary implementing measures.

6. The secretariat, together with governments and inter-governmental, regional and non-governmental organizations and with the support of an advisory board, worked intensively both to support the various processes established under the auspices of the Committee and more generally to promote the entry into force and subsequent implementation of the Convention. A number of awareness-raising and capacity-building workshops for Central Asia and the Caucasus were organized under the auspices of the Convention. An implementation guide to the Convention was published in 2000 and various other information materials were prepared to raise awareness of the Convention. All of these materials, as well as all official documentation, were also made available through the Convention's web site, which was upgraded and developed into one of the main sources of up-to-date information on the Convention.

7. The progress of ratification since the Aarhus Conference in 1998 has been swift. The sixteenth instrument of ratification<sup>1</sup> was deposited (by Estonia) with the United Nations

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<sup>1</sup> The term 'ratification' is used here in the broad sense, which encompasses the concepts of approval, acceptance and accession. In the annex to this paper as well as in the Convention itself, the term is used in the narrower sense.

Secretary-General on 1 August 2001, bringing about the entry into force of the Convention 90 days later, i.e. on 30 October 2001, in accordance with article 20 of the Convention. By 2 May 2003, a further eight instruments had been deposited, bringing the total number of Parties to 24. The current status of ratification is set out in the annex.

8. The entry into force of the Convention was marked by numerous statements of support issued from many sources, including the United Nations Secretary-General, the United Nations High Commissioner for Human Rights, the Executive Director of the United Nations Environment Programme (UNEP), the European Union's Commissioner for the Environment and 26 Environment Ministers as well as a number of national and international NGOs. These statements provide a lasting testimony to the historic importance and global significance of the Convention.

9. The first meeting of the Parties was held almost exactly one year after the entry into force, on 21-23 October 2002, in Lucca, Italy. More than 250 delegates attended the meeting, with over 20 States represented by ministers or deputy ministers for the environment. The first meeting was another important milestone in the development of the Convention. Almost all UNECE member States were represented. Other States, international organizations, other regional commissions and environmental organizations also participated actively. The main outcomes of the meeting can be briefly summarized as follows:

- The adoption of the 'Lucca Declaration', which effectively encompassed the main issues addressed by the Meeting and indicated some areas for further work. The Declaration was adopted not only by the Parties but also by the Signatories and other States present as well as by parliamentarians and other representatives of civil society, thus reflecting agreement of bodies and organizations with often diverging interests;
- The establishment of an innovative compliance mechanism, based on the model of an independent committee mandated to deal *inter alia* with communications from the public concerning non-compliance;
- The adoption of Guidelines on Genetically Modified Organisms (GMOs), aimed at strengthening access to information, public participation and access to justice in the area of GMOs;
- Confirmation of the commitment to preparing a draft protocol on pollutant release and transfer registers for adoption at the Kiev Ministerial Conference and to continuing the drafting process which had started under the auspices of the Committee;
- The establishment of two new task forces dealing with access to justice and electronic information tools;
- Agreement upon the procedural and institutional 'architecture' of the Convention, including financial arrangements, a work programme, an inter-sessional body and a set of rules of procedure, which provide for representation of environmental NGOs in an observer capacity in the Bureau; and
- The setting of reporting requirements for the Parties, including a standard format for reports to be submitted to the secretariat not later than 120 days before each ordinary meeting of the Parties.

## II. CURRENT STATUS OF IMPLEMENTATION

10. On the basis of information available at the moment,<sup>2</sup> it is not feasible to draw firm conclusions on the current state of implementation of the Aarhus Convention. However, it is possible to discern certain trends that point to the thematic areas that will require further work and also geographical trends that can give us a better insight into how the process of implementation differs throughout the UNECE region.

11. Harmonizing national legislation with the provisions of the Aarhus Convention seems to be a task that most signatory States and acceding Parties have started upon and, in some cases, even completed. In the case of Central and South-Eastern Europe and the Baltic States, this trend coincides with efforts to harmonize national legislation with EU law (this applies in particular to the accession States that are required to do this in order to qualify for EU membership). In the countries of Eastern Europe, the Caucasus and Central Asia, the Aarhus Convention is primarily seen as a tool to foster further democratization, strengthen regional co-operation arrangements and adequately address their pressing environmental concerns.

12. The States of Western Europe have so far been rather slow to ratify, but this should not necessarily be taken to correspond to a lack of activity oriented towards its implementation. Some EU countries have indicated their intention to ratify the Convention only when the European Community is in a position to do so (see paras. 20-24 below).

13. In terms of thematic trends, the provisions of article 1 of the Convention are most widely recognized by UNECE member States. Virtually all of them have provisions for a right to adequate health and well-being in their national legislations.

14. The Convention's articles 4 and 5, dealing with access to information, are often singled out as a priority in national implementation. Many States perceive the first pillar as the area that they need to work on first, in order to build a solid basis for public participation in decision-making on environmental issues. This view is based on the assumption that only an educated and well-informed public can contribute effectively to the decision-making process. Therefore, both governments and NGOs have emphasized the need to educate both the public and officials:<sup>3</sup> the former, on the best ways to request and use information; the latter, on how to communicate with the public and effectively disseminate information. However, this approach potentially creates a problem when governments perceive providing access to information as an isolated task from the other two pillars and are reluctant to allow for public participation believing that the public cannot provide a constructive input because of the lack of information or underestimate the ability of the public to understand the complexity of the decision-making process.

15. As regards articles 6 to 8, many States are introducing public participation provisions in their legislation and some are also developing mechanisms for regular public hearings on new legislation and State programmes affecting the environment. However, public consultation is

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<sup>2</sup> The main sources of information currently available are general statements by States submitted at the first meeting of the Parties, reports from workshops and meetings of task forces and working groups organized under the auspices of the Aarhus Convention or from similar events organized on its themes. These reports mainly contain information on specific issues and not comprehensive data covering all aspects of the Convention.

<sup>3</sup> For instance, in statements made at the first meeting of the Parties.

often sought only in the initial phase of a programme or activity, and some States report a lack of mechanisms or procedures for continuous public input.

16. The implementation of article 9 is often perceived as one of the most challenging areas of the Convention. In general, many States still lack adequate legislation to implement the Convention's provisions on access to justice. Even when proper legislation is in place, members of the public often encounter difficulties in exercising this right. Reasons cited for this include lack of commitment by one or more of the three branches of government, in particular the judiciary, to implement the access to justice provisions of the Convention; insufficient institutional capacity to enforce court decisions; lack of expertise in environmental law; and financial barriers.

17. As regards geographical trends in the implementation of the Convention, some general observations can be drawn from existing reports and survey results. The report from the second regional workshop for Central Asia, 4-7 June 2002, Dushanbe, Tajikistan, states that "most provisions of the legislation in Central Asian countries in the field of access to information and public participation are declarative and are not supported by implementation mechanisms." Among the workshop's recommendations are calls for an effective compliance mechanism and direct assistance to governments and NGOs to set up systems for the collection and dissemination of information.

18. Marked differences among regions were also found in terms of the use of electronic information tools for the dissemination of environmental information and facilitating public participation and access to justice due to wide disparities in connectivity costs and existing infrastructure.<sup>4</sup> Countries in transition are still struggling with the consequences of major political, economic and social changes, which force them to make difficult choices when it comes to the allocation of scarce resources and promote economic growth at the expense of environmental concerns. Economic difficulties are often accompanied by a high level of public apathy, which is not necessarily conducive to active and constructive public participation in environmental decision-making processes. Differences in economic, political and social conditions also influence the roles played by civil society organizations and the relations between them and the authorities.

19. In Western Europe, any problems with implementation seem to be associated not so much with the lack of institutional capacity or formal implementation mechanisms, but more with the absence of political will to use existing resources in promoting the Aarhus Convention's goals.

20. Progress made by the European Community to prepare for ratification clearly has far-reaching implications within the region and deserves special mention. During the past two years, the European Community has taken various steps to update existing legal provisions in order to meet the requirements of the Aarhus Convention. The first concerns the adoption on 28 January 2003 of Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information and repealing Council Directive 90/313/EEC.<sup>5</sup> Member States are

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<sup>4</sup> See "Electronic tools to implement the Aarhus Convention", Simpson, J., the Regional Environmental Center for Central and Eastern Europe (March 2001).

<sup>5</sup> Official Journal of the European Union Series L 41 on 14 February 2003.

required to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by February 2005.

21. The second step deals with public participation in environmental decision-making. On 4 March 2003, a new directive of the European Parliament and the Council in respect of the drawing up of certain plans and programmes relating to the environment and amending, with regard to public participation and related access to justice, previous EC directives, was approved. This directive amends two important pieces of EC environmental legislation: Council Directive 85/337/EEC concerning the environmental impact assessment of certain public and private projects, and Council Directive 96/61/EC concerning integrated pollution prevention and control (IPPC Directive). In line with the relevant provisions of the Aarhus Convention, the directive also includes new provisions for public participation in the drawing-up of certain plans and programmes relating to the environment. This directive will need to be implemented by member States within two years from its entry into force.<sup>6</sup> Other relevant pieces of recent EC legislation which should be mentioned as legislation providing for public participation in line with the Convention are Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment and the “Water Framework Directive” 2000/60/EC.

22. The European Commission is developing an instrument to improve access to justice in environmental matters. Consultation rounds with relevant stakeholders and experts from member States and applicant countries have already taken place on the basis of ad hoc working documents prepared by the European Commission's Directorate-General for the Environment.

23. In addition to the aforementioned legislation which specifically addresses member States, the Commission continues its reflections on the way European institutions and bodies will fulfil the obligations deriving from the Aarhus Convention. In this perspective, it is worth recalling the declaration made by the EC upon signature of the Convention to the effect that its institutions will also be bound by the provisions of the Aarhus Convention upon ratification. As a preparatory step, a consultation process associating experts from national administrations, local and regional authorities, representatives of economic operators, environmental NGOs and consumer associations from the member States and applicant countries also took place at the end of 2002. The European Commission is currently developing a proposal for a legally binding instrument covering all three pillars of the Convention at the EC level.

24. As the ratification of the Aarhus Convention by the European Community can take place only after all the relevant legislation has been adopted, it is unlikely that this process will be finished before 2004.

### **III. CHALLENGES TO IMPLEMENTATION**

25. As with all other international legal instruments, the successful implementation of the Aarhus Convention is the direct responsibility of each of its Parties, and each Party has an equal responsibility in this regard. Nonetheless, in addressing problems of implementation, it is important to take into account different factors which inevitably pose challenges to

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<sup>6</sup> Pending official publication.



implementation and which may vary from one country to another. It is noteworthy that, at its first meeting, the Compliance Committee agreed that whereas the measures to be taken with respect to a given case of non-compliance might need to be adjusted according to the particular situation of the Party in question, the actual determination of what constitutes compliance or non-compliance with any given provision of the Convention should be consistent with respect to all Parties, irrespective of their differing circumstances.

26. The following are some of the main factors that may pose obstacles to implementation:

- Legal/institutional: inadequate legislative framework, lack of independence of the judiciary, lack of mechanisms for the protection of human rights, weak institutional capacity, widespread corruption;
- Economic: general lack of resources, high costs of specialized training, high court expenses;
- Political: lack of political will, negative pressure from interest groups, fledgling NGO community, democracy deficit;
- Social/cultural: poor perception of environmental issues among the public, low level of awareness of environmental rights, public apathy.

27. Some of the ideas which emerge from existing reports and surveys<sup>7</sup> can be summarized as follows:

- Access to information: actively promote awareness of the Convention, build capacity for the use of electronic tools to actively disseminate information, educate civil servants to respond adequately to the needs of the public, make information available in a user-friendly format, raise awareness of environmental issues;
- Public participation: develop institutional mechanisms for adequate public input in decision-making, give active support to NGOs to help them to engage in a constructive and productive public debate, work with local authorities to develop their responsiveness to public demand for participation, publicize best practice examples on public participation;
- Access to justice: implement a programme of education on environmental rights, organize training for legal professionals involved in environmental legal cases, make decisions of courts and other review bodies easily accessible, consider introducing alternative modes of dispute settlement.

28. Some of the activities undertaken in this direction include efforts of the secretariat and other intergovernmental, regional and civil society organizations. UNECE, together with UNEP and GRID-Arendal, have been engaged in the process of establishing the capacity-building service, aimed mainly at countries in transition. This represents the continuation of efforts already undertaken in organizing regional capacity-building workshops in Central Asia and the Caucasus in cooperation with the Organization for Security and Co-operation in Europe (OSCE). At the same time, UNECE is collaborating with the United Nations Institute for Training and Research (UNITAR) on a project to develop national profiles to assess policies, programmes and

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<sup>7</sup> Sources: reports from the regional workshops for Central Asia, Task Force on Genetically Modified Organisms, Access to Justice Handbook, report from the Workshop on Access to Justice in Environmental Matters under the Aarhus Convention (3 October 2001).

capacities to implement the Aarhus Convention. The Regional Environmental Center for Central and Eastern Europe has carried out various projects supporting the implementation process, such as the preparation of a compendium of case studies on the use of electronic information tools and a handbook on access to justice, and the promotion of implementation strategies, capacity-building events and a multi-stakeholder dialogue in Central and Eastern Europe on the Convention and the drafting process for the Protocol on Pollutant Release and Transfer Registers. These and other organizations, notably the European ECO Forum, have been actively involved in activities undertaken under the auspices of the Convention's working groups and task forces and the promotion of the implementation of the Convention at national level. Continuation of such initiatives and the involvement of a broad range of partners will be crucial to the successful implementation of the Convention.

#### **IV. FUTURE TRACKING OF PROGRESS IN IMPLEMENTATION**

29. Of the 14 decisions adopted by the Parties at their first meeting, decisions I/7 on the review of compliance and I/8 on reporting requirements are the ones which deal most directly with the issue of implementation. Decision I/8 recalls article 10, paragraph 2, of the Convention, which states that the Parties shall keep its implementation under continuous review on the basis of regular reporting by the Parties. It also includes a standard format for reporting, which should ensure some degree of comparability of data and make it easier to organize information received into comprehensive reports on the status of implementation of the Convention. The secretariat is expected to prepare a 'synthesis' report for each meeting. In addition to this, international, regional and non-governmental organizations engaged in the programmes and activities supporting the implementation of the Convention are invited to provide the secretariat with reports on their programmes and activities and lessons learned. Parties are not formally required to submit their national implementation reports until the second ordinary meeting of the Parties, which is expected to take place in late 2004 or early 2005.

30. The compliance mechanism established under decision I/7 will generate additional information relevant to questions of implementation, whether in the form of reports on compliance or implementation prepared by the Compliance Committee or in the form of submissions, referrals or communications. These mechanisms have only recently been put in place, but by the time of the second meeting of the Parties it will be possible to get a better insight into the status of implementation.

Annex

**RATIFICATION STATUS OF THE UNECE CONVENTION ON ACCESS TO  
 INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO  
 JUSTICE IN ENVIRONMENTAL MATTERS AS OF 2 MAY 2003**

<b>COUNTRY</b>	<b>SIGNATURE</b>	<b>RATIFICATION, ACCEPTANCE (A), APPROVAL (AA), ACCESSION (a)</b>
<b>ALBANIA</b>	25 June 1998	<b>27 June 2001</b>
Andorra		
<b>ARMENIA</b>	25 June 1998	<b>1 August 2001</b>
Austria	25 June 1998	
<b>AZERBAIJAN</b>		<b>23 March 2000 (a)</b>
<b>BELARUS</b>	16 December 1998	<b>9 March 2000 (AA)</b>
<b>BELGIUM</b>	25 June 1998	<b>21 January 2003</b>
Bosnia and Herzegovina		
Bulgaria	25 June 1998	
Canada		
Croatia	25 June 1998	
Cyprus	25 June 1998	
Czech Republic	25 June 1998	
<b>DENMARK 1/</b>	25 June 1998	<b>29 September 2000 (AA)</b>
<b>ESTONIA</b>	25 June 1998	<b>2 August 2001</b>
Finland	25 June 1998	
<b>FRANCE 2/</b>	25 June 1998	<b>8 July 2002 (AA)</b>
<b>GEORGIA</b>	25 June 1998	<b>11 April 2000</b>
Germany	21 December 1998	
Greece	25 June 1998	
<b>HUNGARY</b>	18 December 1998	<b>3 July 2001</b>
Iceland	25 June 1998	
Ireland	25 June 1998	
Israel		
<b>ITALY</b>	25 June 1998	<b>13 June 2001</b>
<b>KAZAKHSTAN</b>	25 June 1998	<b>11 January 2001</b>
<b>KYRGYZSTAN</b>		<b>1 May 2001 (a)</b>
<b>LATVIA</b>	25 June 1998	<b>14 June 2002</b>
Liechtenstein	25 June 1998	
<b>LITHUANIA</b>	25 June 1998	<b>28 January 2002</b>
Luxembourg	25 June 1998	
<b>MALTA</b>	18 December 1998	<b>23 April 2002</b>
Monaco	25 June 1998	
Netherlands	25 June 1998	

<b>COUNTRY</b>	<b>SIGNATURE</b>	<b>RATIFICATION, ACCEPTANCE (A), APPROVAL (AA), ACCESSION (a)</b>
<b>NORWAY</b>	25 June 1998	<b>2 May 2003</b>
<b>POLAND</b>	25 June 1998	<b>15 February 2002</b>
Portugal	25 June 1998	
<b>REPUBLIC OF MOLDOVA</b>	25 June 1998	<b>9 August 1999</b>
<b>ROMANIA</b>	25 June 1998	<b>11 July 2000</b>
Russian Federation		
San Marino		
Serbia and Montenegro		
Slovakia		
Slovenia	25 June 1998	
Spain	25 June 1998	
Sweden	25 June 1998	
Switzerland	25 June 1998	
<b>TAJKISTAN</b>		<b>17 July 2001 (a)</b>
<b>THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA</b>		<b>22 July 1999 (a)</b>
Turkey		
<b>TURKMENISTAN</b>		<b>25 June 1999 (a)</b>
<b>UKRAINE</b>	25 June 1998	<b>18 November 1999</b>
United Kingdom	25 June 1998	
United States		
Uzbekistan		
European Community	25 June 1998	
<b>TOTAL</b>	<b>40</b>	<b>24</b>

### Notes

1/ Excluding the Faroe Islands and Greenland.

2/ Excluding New Caledonia, French Polynesia and Wallis and Futuna.

Some Signatories and Parties made declarations upon signature or ratification, see <http://www.unece.org/env/pp/ctreaty.htm>.