

# Public Information and Participation Requirements

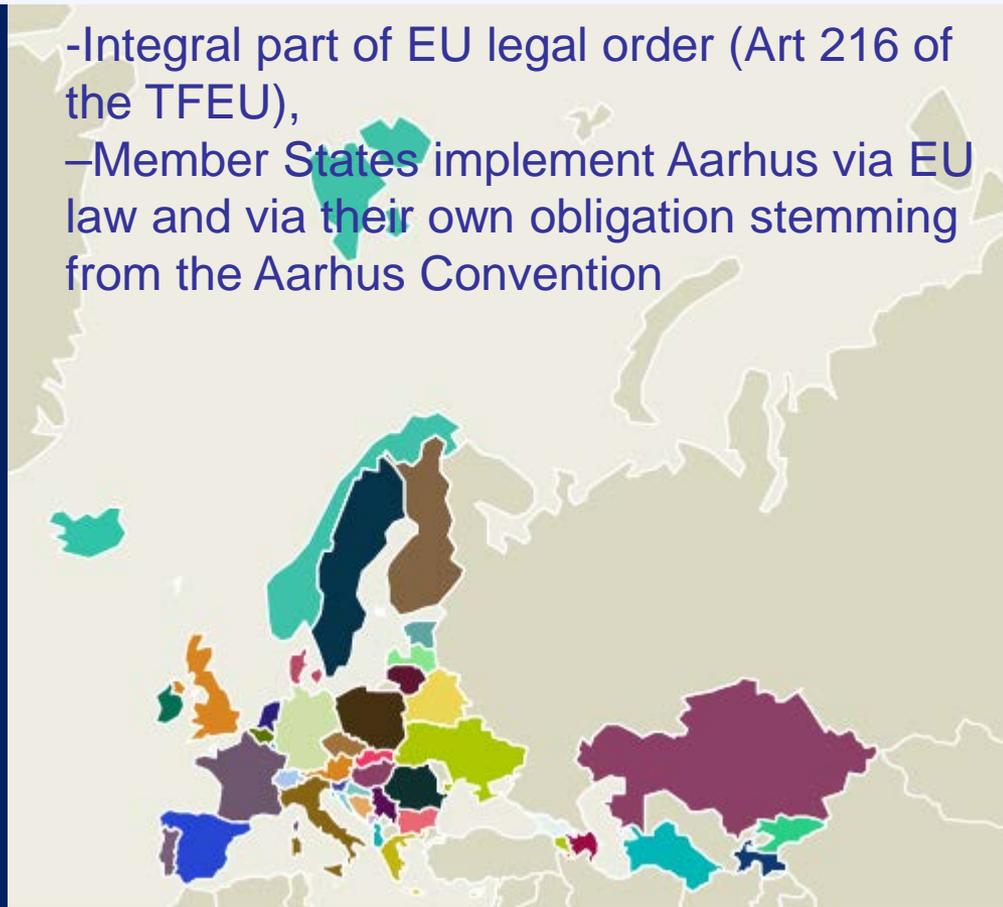
General Information about the  
Aarhus Convention and EU legislation

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## CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

The Aarhus Convention was adopted at the fourth Conference of Ministers 'Environment for Europe' in Aarhus, Denmark, 25th of June 1998;  
The Aarhus Convention entered into force on the 30th of October, 2001 after being ratified by 16 countries.  
Romania ratified the convention on 11 July 2000.  
The European Union is party to the convention.

-Integral part of EU legal order (Art 216 of the TFEU),  
–Member States implement Aarhus via EU law and via their own obligation stemming from the Aarhus Convention



# Goals and main components of the Aarhus Convention

## Goals of the Aarhus Convention:

- Contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well being
- Guarantee the rights of **access to information, public participation in decision making, and access to justice in environmental matters**

## Main components of the Aarhus convention (three pillars):

- Access to environmental information (Art. 4 - 5)
- Public participation in the decision making process (Art. 6 - 8)
- Access to justice (Art. 9)

# Main components of the Aarhus Convention and human rights

## Component of the Convention:

Access to environmental information

Participation in the Decision making process

Access to justice

## Right:

To know

To participate

To protect the right to a healthy environment

## The broadest definition of the term environmental information (Art. 2.3)

- ✗ Condition of the components of the environment: the condition of the atmosphere, underground waters, soil, biodiversity, etc.
- ✗ Factors that can influence the condition of the environment: emissions of matter or energy, noise, radiation, etc.
- ✗ Types of activities that can influence the condition of the environment: Specific types of activities, administrative measures, plans, laws, etc.
- ✗ Possible damages: the health and living conditions of the people, cultural facilities.

## Government Duties:

**To collect (Art 4)**

**To provide (Art. 5, 4.1)**

**To proactively disseminate (Art. 5)**

## Public rights:

**To request information without having to justify the request (Art. 4.1)**

**To use information (Art. 4)**

**To pay 'reasonable' fees (Art. 4.8)**

**To set a realistic time frame (Art. 4.2)**

**To receive a justified refusal (Art. 4.5)**

## INDICATIVE TYPES OF ENVIRONMENTALLY IMPORTANT DECISIONS

Decisions  
on specific  
types  
of activities

Development of  
plans, programmes  
and policies related  
to the environment

Development  
of legislation  
related to the  
environment

## Public authorities (Art. 2.2)

- ✘ Administration on the local, regional and other levels;
- ✘ Natural and legal persons implementing governmental administrative functions in line with national legislation, including the specific duties, activities and services, related to the environment;
- ✘ Any other natural or legal persons implementing governmental duties, functions or providing services to the population that are related to the environment.

The following belong to 'public authorities' in accordance with the administrative code of the country:

...all governmental or local authorities, as well as natural persons, who, on the basis of the law or an agreement, conduct statutory duties;

...legal or natural persons financed from the state budget.

# the Three Pillars of the Convention:

## 1<sup>st</sup> Pillar

### Access to information

Effective public participation in decision-making depends on full, accurate, up-to-date information. However, it is equally important in its own right, in the sense that the public may seek access to information for any number of purposes, not just to participate.

**Right of the public to seek information from public authorities and the obligation of public authorities to provide information in response to a request. This type of access to information is called "passive", and is covered by article 4.**

**Right of the public to receive information and the obligation of authorities to collect and disseminate information of public interest without the need for a specific request. This is called "active" access to information, and is covered by article 5.**

# the Three Pillars of the Convention:

## 2<sup>nd</sup> Pillar

### Public participation in decision-making

The second pillar of the Aarhus Convention is the public participation pillar. It relies upon the other two pillars for its effectiveness — the information pillar to ensure that the public can participate in an informed fashion, and the access to justice pillar to ensure that participation happens in reality and not just on paper.

**Participation of the public that may be affected by or is otherwise interested in decision-making on a specific activity, and is covered by article 6.**

**Participation of the public in the development of plans, programs and policies relating to the environment, and is covered by article 7.**

**Participation of the public in the preparation of laws, rules and legally binding norms is covered by article 8.**

# the Three Pillars of the Convention:

## 3<sup>rd</sup> Pillar

**Access to justice helps to enforce both:**

- ❑ the information pillar (specifically, article 4 concerning information requests) and
- ❑ the public participation pillar (namely, article 6 on public participation in decisions on specific activities)

**in domestic legal systems, as well as any other provisions of the Convention that Parties specify in their domestic law to be enforced in this manner.**

**The access to justice pillar also provides a mechanism for the public to enforce environmental law directly.**

# The Aarhus Convention and the EU Institutions

The EU signed the Aarhus Convention in June 1998 and submitted its instrument of approval on 17 February 2005, becoming a Party 90 days later. The Convention required the EU to adopt new legislation concerning the application of the Convention to EU institutions and bodies.

To this end, on 6 September 2006 the European Parliament and Council adopted Regulation No. 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (the so-called **“Aarhus Regulation”**).

# The Aarhus Convention and the EIA Directive (1)

Besides the latest revision in 2014, the EIA Directive of 1985 had been amended three times:

- in 1997,
- in 2003 and
- in 2009.

Directive 2003/35/EC was seeking to align the provisions on public participation with the Aarhus Convention

## Article 1

.... (d) *'public'* means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;

.... (e) *'public concerned'* means the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures referred to in Article 2(2). For the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest;

.... (f) *'competent authority or authorities'* means that authority or those authorities which the Member States designate as responsible for performing the duties arising from this Directive.

Provisions about public information, consultation and access to justice can be found in articles 4, 6, 7, 8, 9, 10 and 11 of the Directive.

# The influence of the Aarhus Convention on EU law on access to environmental information

A number of important changes were made to EU legislation through Directive **2003/4/EC** (references are to relevant provisions of the Aarhus Convention) including:

- Definitions
- Use of term “adversely”
- Response time limits
- No stated interest
- Form requested
- Information on emissions
- Course of completion
- Course of justice
- Public interest test
- Transfer of the request
- Information appeals