



**United Nations
Environment
Programme**



Distr.
GENERAL

UNEP/INF2000/WP/5
11 September 2000

ORIGINAL: ENGLISH

INFOTERRA 2000 – Global Conference on Access to Environmental Information
Dublin, Ireland
11-15 September 2000
(Item 5 of the agenda)

**THE AARHUS CONVENTION: A NEW INTERNATIONAL FRAMEWORK REGULATING
PUBLIC ACCESS TO ENVIRONMENTAL INFORMATION**

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“The adoption of the UN/ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters - the Aarhus Convention - was a giant step forward in the development of international law in this field. ... Although regional in scope, the significance of the Aarhus Convention is global. It is by far the most impressive elaboration of principle 10 of the Rio Declaration, which stresses the need for citizens' participation in environmental issues and for access to information on the environment held by public authorities. As such it is the most ambitious venture in the area of "environmental democracy" so far undertaken under the auspices of the United Nations....”

Kofi Annan, Secretary-General, United Nations

Introduction

1. The UN Economic Commission for Europe (UN/ECE) welcomes the opportunity to participate in this INFOTERRA 2000 Global Conference on Access to Environmental Information convened by UNEP in association with the Irish Department of the Environment and Local Government. The topic of public access to environmental information is a particular priority of UN/ECE, especially since the adoption of the Aarhus Convention. Over the past year, UN/ECE has been very glad to intensify its co-operation with UNEP on this issue and we hope that this will continue in the future.

2. The Aarhus Convention – or to give it its full title, the UN/ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters - was adopted just over two years ago in the Danish city of Aarhus, at the 4th Ministerial Conference in the 'Environment for Europe' series. It has been signed by 39 countries and the European Community, making a total of 40 signatories.

3. The Convention has been described by the UN Secretary-General Kofi Annan as a 'giant step forward in the development of international law in this field', and indeed it is the first legally binding UN instrument

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to address the issues covered by what we might call environmental democracy in a detailed and systematic way.

4. This paper will describe how the Aarhus Convention establishes a minimum legal framework regulating public access to environmental information, and what the elements of that framework are. This will demonstrate that the Convention is both relevant and useful to the goals and activities of UNEP/INFOTERRA - as a legal framework in those countries which opt to become parties, as an important reference document in those which do not. Conversely, the INFOTERRA network can be of assistance to countries in the process of implementing the Aarhus Convention. Finally, reference will be made to emerging developments and the global relevance of the Convention.

The origin of the Convention

5. The roots of the Convention can be traced back to Principle 10 of the Rio Declaration on Environment and Development, which states that:

"Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decisionmaking processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."

6. To continue with the biological metaphors, this 'seed' from Rio was planted in the fertile soil of the Environment for Europe process, a loose political framework for pan-European co-operation on environmental issues, punctuated by a series of Ministerial conferences, which came into being following the collapse of communism in Eastern Europe at the end of the 1980s. Fertile, because the Environment for Europe process was and is a relatively open, participatory process in which NGOs had the possibility to influence the agenda. This led to the adoption of the UN/ECE Guidelines on Access to Environmental Information and Public Participation in Environmental Decisionmaking, known as the Sofia Guidelines because they were adopted at the Third Ministerial 'Environment for Europe' Conference, held in Sofia, Bulgaria, in October 1995.

7. However, even while Ministers were endorsing the Guidelines in Sofia, they were already paving the way for a larger, bolder initiative: the preparation of a legally binding instrument covering the same general area. During the drafting of the guidelines, NGOs had argued that only a legally binding instrument could protect citizens' rights in this area, and that guidelines should only be regarded as a first step. The negotiation of what is now known as the Aarhus Convention began in June 1996 and two years and ten intense negotiating sessions later, a draft text was ready for adoption and signing at the Aarhus Ministerial Conference.

The content of the Convention

8. What is the Aarhus Convention about? As its title suggests, the Convention has three main parts or 'pillars', dealing respectively with information, participation and justice. This paper will naturally be focussing on the information pillar, but before doing so it is important to point out a number of general features of the Convention.

9. First, the Convention adopts a rights-based approach, seeking not only to establish certain procedural requirements (important though these are) but also to guarantee *rights* - to information, to participation and to justice - which underlie those procedures. Those rights in turn are intended to contribute to protecting the right of every person of present and future generations to "an environment adequate to health and wellbeing".

10. Second, the Convention is a 'floor' but not a 'ceiling': in other words, it sets minimum standards but does not prevent any Party from going further in the direction of providing more extensive access to information, increased public participation or more far-reaching access to justice. Similarly, no country is required to weaken its pre-existing legislation to bring it into line with the Convention.

11. Third, the Convention addresses in quite a fundamental way the relationship between the public and their governments, between the individual and the state, and in doing so, construes both of these concepts quite broadly. Although the Convention is an environmental convention, 'public authority' is defined so as to include all *sectors* of government (therefore ministries of energy, tourism, agriculture and so on, along with ministries of the environment) as well as all *levels* of government (national, provincial, local). Semi-state bodies and private bodies performing functions related to the environment which are under the control of governmental bodies are also covered. Bodies acting in a legislative or judicial capacity are not covered.

12. Mirroring this breadth, 'the public' is defined to include any natural or legal person, without any distinction being made on the basis of citizenship, residency or (in the case of an NGO) place of registration. A narrower concept, 'the public concerned', is used in connection with certain parts of the public participation and access to justice pillars of the Convention.

13. Fourth, the European Community (EC) may become a Party to the Convention (and has indeed signed the Convention), meaning that in this event, the European Union (EU) directives harmonising the laws of EU members states in this field would need to be brought into compliance with the provisions of the convention. Indeed, the Commission has already begun the process of preparing to revise the relevant directives, including directive 90/313/EEC. However, in contrast to other ECE or international treaties to which the EC has become a Party, the Aarhus Convention will have a direct bearing on the functioning of the EU institutions themselves, requiring them to become more transparent and participatory. This is because the definition of 'public authority' in the convention also includes the institutions of regional economic integration organisations (subject to the aforementioned exclusion of bodies acting in a legislative or judicial capacity).

14. Fifth, the Convention requires Parties to promote the application of its principles in international environmental fora. The Convention cannot bind international organisations and these cannot become Parties (except, as mentioned, the European Community, if it is counted as such) but it can require its Parties to behave in a certain way in international environmental fora. This can be seen as a recognition that the issues of transparency and participation are relevant at the international level also.

The information provisions

15. Turning now to the information pillar of the Convention, there are two aspects of this which are dealt with in separate articles (articles 4 and 5). The first, sometimes referred to as the passive or reactive aspect, concerns the right of the public to obtain information held by public authorities on request (and therefore, the obligation of public authorities to provide it). The second concerns the active obligation on public authorities to gather, organise, make accessible and actively disseminate information. The two aspects are essential and complementary elements in an effective information regime.

Passive

16. As regards the passive or reactive part of the information pillar, the starting point is a presumption in favour of public access to any environmental information held by any public authority, with some exceptions. In other words, everything is open unless it is secret - instead of the opposite presumption that everything is secret unless it is open.

17. Through the broad definition of the public, any person has the right of access, without having to prove or even state an interest.

18. Some countries may choose to rely on a *general* freedom of information regime to implement the information provisions of the Convention, that is, one which covers all types of information. However, where measures are taken within the framework of *environmental* legislation, the scope of the environmental information to be covered is of key importance. The Aarhus Convention defines the environmental information which is to be made accessible in quite a broad manner. On the one hand, it covers information on the state of the environment through a non-exhaustive list of environmental elements such as air and atmosphere, water, soil, land and landscape, and biodiversity and its components (including GMOs), and the interaction among these elements. On the other hand, it covers factors, activities and measures affecting or likely to affect the elements of the environment, including policies, plans, programmes, legislation, environmental agreements and economic analyses used in environmental decisionmaking. Human health and safety matters are also covered to the extent that they may be environment-related.

19. Following a request to a public authority, the information is to be provided 'as soon as possible' and in any case within a time limit of one month from the date of the request, unless the volume or complexity of the information requested justifies an extension of this period by up to a further month. The same timeframe applies in the case of refusals, though in that case only the complexity of the information requested (not its volume) may justify an extension.

20. The Convention allows - but does not require - public authorities to refuse to provide information falling within a fairly standard list of exempt categories. These include information the disclosure of which could adversely affect confidential proceedings of public authorities, international relations, national defence, public security, the course of justice, commercial confidentiality, intellectual property and personal confidentiality. It also allows for voluntarily supplied information, information the disclosure of which could threaten environment, unfinished material and internal communications to be withheld. Manifestly unreasonable or poorly formulated requests need not be complied with.

21. Perhaps in recognition that some of these categories are extremely broad and somewhat vague, the Convention makes some effort to narrow the circumstances in which they may be invoked. Parties are required to interpret the exemptions in a restrictive manner, and to take into account the public interest in disclosure. Furthermore, the potential effects of disclosure must generally be adverse for information to be withheld. If exempt information is held with non-exempt material, the latter must be separated out and supplied. In the specific case of the commercial confidentiality exemption, this may not be invoked to withhold information on emissions which is relevant to protection of the environment.

22. There is a qualified obligation to provide the information in the form requested by the requester (e.g. electronic, hard copy, etc). If the public authority does not hold the information requested, it is required to either forward the request to another public authority believed to hold the information and notify the requester of this, or to re-direct the requester.

23. A public authority may make a charge for supplying information provided this does not exceed 'a reasonable amount'. Although the Convention does not elaborate on what might be considered a reasonable amount, a 'good practice' approach to this issue would be to provide small amounts of information free of charge and otherwise to restrict charges to the actual costs of reproducing the material.

24. Where an information request is refused, the requester is to be notified of this, and of the grounds for the refusal, within the time limit mentioned earlier. The requester is entitled to receive the refusal in writing and should be informed of their right to appeal the decision.

25. Any person who considers that his or her request for information has not been dealt with in accordance with the procedures just described has a right to make an appeal. This may cover refusals, delays, overcharging and cases where the request is simply ignored. The Party must provide for the appeal to be considered either by a court of law or by another independent and impartial body established by law, but if the former, the person must also have access to a review procedure which is expeditious and free of charge or inexpensive, in case the court's procedures do not meet these criteria. Final decisions in the

appeals process must be binding, and reasons are to be given in writing in cases where information is refused.

Active

26. The 'active' part of the information pillar requires public authorities to collect and update information, to maintain it in a transparent and accessible manner, and to actively disseminate certain types of information. It also sets out certain requirements relating to specific categories of information.

27. There is a general requirement on Parties to establish mandatory systems for ensuring an adequate flow of information to public authorities about activities which may significantly affect the environment. This recognises that one of the problems in providing the public with access to environmental information is that often the public authorities simply do not possess the information. More specifically, the Convention requires Parties to take steps to progressively establish publicly accessible pollution inventories or registers, using structured, standardised reporting methods.

28. According to the 'active' information requirements of the Convention, environmental information is to be maintained in a way which is transparent and effectively accessible to the public. The Convention refers to various measures to achieve this, namely provision of meta-information (information on the type and scope of information held, the terms and conditions of access and the process by which it can be obtained) and practical arrangements such as public registers, identifiable contact points and requirements on officials to assist the public. The concepts of the portal website and the one-stop-shop, which INFOTERRA has been promoting, are not specifically mentioned but can be seen as a very effective way to implement some of the requirements of Article 5.

29. Parties to the Convention are required to progressively make information available in electronic form through publicly accessible telecommunications networks such as the Internet. Certain types of information which should be made available in this way are listed (e.g. state of the environment reports, environmental legislation). The logistics of providing information to the public are being transformed by the new electronic information tools and this provision in the Convention can be seen as a gesture in the direction of bringing legal obligation in the direction of emerging good practice.

30. The Convention requires Parties to publish and disseminate reports on the state of the environment, at regular intervals not exceeding four years. Certain types of information - international agreements, laws, policies, strategies, programmes and action plans relating to the environment - are to be actively disseminated to the public. Furthermore, where public dissemination of information could avert an imminent threat to health or the environment (such as following a nuclear or chemical accident), this must be done immediately. Parties are also required to develop mechanisms with a view to ensuring that sufficient product information is made available to the public in a manner which allows consumers to make informed environmental choices.

Implementation and further development of the Convention

31. The Convention is on a relatively fast track towards entry into force. By August 2000, eight countries had ratified, approved or acceded to the Convention - half way towards the number of sixteen required to trigger its entry into force. On the basis of information provided by governments at the second meeting of the Signatories, it is expected that the Convention will enter into force some time during 2001.

32. Since its adoption in June 1998, there have been two meetings of the Signatories. The first of these, which took place in Chisinau, Republic of Moldova, in April 1999, established three task forces dealing respectively with compliance, pollutant release and transfer registers (PRTRs) and genetically modified organisms. At the second meeting of the Signatories, which took place in Dubrovnik, Croatia, in July 2000, the activities of these task forces were reviewed and two further task forces were established, dealing with access to justice and electronic information tools. The meeting also agreed to hold a workshop on public

participation in the context of policies, programmes, plans and legislation, with a view to generating input to the anticipated negotiation of a new ECE protocol on strategic environmental assessment.

33. Two of these items are of particular relevance to the topic of this meeting and are therefore worth elaborating on in more detail. The task force on PRTRs was originally established in response to the fact that the Convention itself targets this as an area to be given further attention: the first meeting of the Parties is required to review the experience in the area of pollution inventories and consider what further steps might be taken, including the elaboration of an appropriate instrument on PRTRs to be developed under the Convention. At the second meeting of the Signatories, it was proposed to build on the work of the task force by establishing an intergovernmental working group for the purpose of drafting a legally binding instrument on PRTRs, with a view to such an instrument being ready for adoption at the Fifth Ministerial 'Environment for Europe' Conference (Kiev, 2002). The ECE's Committee on Environmental Policy is expected to decide on the proposal later this month.

34. This is a highly significant proposal, in that such an instrument would address the issue of environmental information held not just by public authorities but by the private sector. The Convention as it stands is primarily focussed on the public and public authorities, and the relationship between them. For the most part, it only addresses the private sector indirectly. A PRTR instrument would have more direct implications for this third corner of the triangle. This distinction is illustrated by the evolution of right-to-know legislation in the US. The adoption of the US Freedom of Information Act in 1966 can be seen as a first step which targeted public authorities (government agencies). About 20 years later, the US Toxics Release Inventory was introduced under the Emergency Planning and Community Right to Know Act, requiring private corporations to report periodically on their polluting emissions. According to US President Bill Clinton, this PRTR system resulted in a 43% reduction in releases and transfers of the reportable chemicals during approximately a decade of being in operation - a stark illustration of the power of right-to-know legislation as a pollution prevention tool.

35. The second development at the Dubrovnik meeting which is of special relevance to this conference was the decision to establish an expert group on electronic information tools, comprising governmental, intergovernmental and non-governmental actors. The proposal to establish such a task force was contained in a paper submitted jointly to the second meeting of the Signatories by the European ECO Forum, the Regional Environmental Center for Central and Eastern Europe and UNEP/INFOTERRA (CEP/WG.5/2000/11). Austria undertook to serve as lead country for the task force, in close co-operation with the aforementioned groups and the European Environment Agency, and Norway offered to host a workshop on the topic in 2001. A preliminary meeting of the task force will take place here in Dublin at Trinity College later this week (Friday 15 September 2000) to lay the foundations for the further work of the task force and make initial preparations for the workshop next year.

Global relevance of the Convention

36. As many participants at this global conference do not come from the ECE region, it is perhaps worth giving some attention to the global relevance of the Aarhus Convention.

37. The Convention is of course a regional convention. The ECE region covers Europe, the US, Canada, Israel and the five Central Asian countries which were formerly part of the USSR. To date, the North American countries have opted not to participate in the Convention. However, although regional in scope, unlike other ECE Conventions, the Aarhus Convention is open to accession by non-ECE countries.

38. For non-ECE countries committed to building and applying a legal framework aimed at strengthening environmental democracy and interested in co-operating on an equal basis with ECE countries to this end, the option of acceding to the Aarhus Convention has the attraction that the Convention is already there, so several years of negotiation can be bypassed. On the other hand, this advantage may also be seen as a disadvantage, in that it takes away the opportunity for such countries to participate in the development of an instrument which fits their particular needs (both governmental and non-governmental). In some

circumstances, the government and the NGOs of a country might both feel that the Aarhus Convention represents a better prospect than the likely outcome of negotiating a new instrument.

39. Whether or not non-ECE countries do accede to the Convention, it is likely that the Convention will provide a useful model to other regions interested in exploring ways of promoting principle 10 of the Rio Declaration. The UN Secretary-General Kofi Annan has emphasised the global significance of the Aarhus Convention, referring to it as “the most impressive elaboration of principle 10”. He has indicated that the 2002 Special Session of the UN General Assembly marking the 10th anniversary of the Earth Summit would be a timely occasion to examine the relevance of the Convention as a possible model for strengthening the application of principle 10 in other regions of the world. Among the other options which might be considered in this regard are a global convention; a number of regional conventions (e.g. ECA, ECLAC, ESCAP); or, more modestly, the elaboration of global guidelines, which could later be developed into a global convention if there is sufficient political will to do so.

Conclusion

40. This paper has tried to present a brief overview of the information provisions of the Aarhus Convention and of its current status. More detailed analysis of those provisions can be found in the Implementation Guide on the Convention, which has recently been published by UN/ECE as the outcome of a joint project carried out together with the Regional Environmental Center for Central and Eastern Europe and the Danish Environmental Protection Agency.

41. It is clear that the information provisions of the Aarhus Convention, and the work being carried out to implement them, are extremely relevant to the INFOTERRA network, and vice versa. This relevance is not confined to the ECE region. For UN/ECE, a partnership approach to implementing the Convention is essential and therefore it is important to strengthen the co-operation which already exists between UNEP and UN/ECE in this work.

42. The challenges in establishing effective public access to environmental information are clearly enormous. They have as much to do with establishing the *right* of access as they have to do with identifying the proper *means* to deliver that right. This conference, and UNEP/INFOTERRA’s activities of which it is a part, will make a useful contribution to overcoming the many obstacles and finding meaningful and practical solutions.

Further information on the Aarhus Convention is available at www.UN/ECE.org/env/pp.