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**Format for the Aarhus Convention implementation  
report in accordance with Decision IV/4  
(ECE/MP.PP/2011/2/Add.1)**

**The following report is submitted on behalf of Switzerland in  
accordance with decisions I/8, II/10 and IV/4.**

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Name of officer responsible for submitting the national report:	Florian Wild
Signature:	
Date:	<del>14</del> 2 March <del>2017</del> 2021

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**Implementation report**

**Please provide the following details on the origin of this report**

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## I. Process by which the report has been prepared

*Provide a brief summary of the process by which this report has been prepared, including information on the type of public authorities that were consulted or contributed to its preparation, how the public was consulted and how the outcome of the public consultation was taken into account, as well as on the material that was used as a basis for preparing the report.*

*Answer:*

This report was prepared by the Federal Office for the Environment (FOEN). The draft report was coordinated among the different environmental divisions of [the](#) FOEN and various federal offices. For the purpose of the consultation a representative survey was carried out.

An English and French questionnaire on the implementation of the Aarhus Convention in Switzerland was sent to several federal agencies, to the cantons and [organisations focussing on environmental protection organisations and access to information](#) for a consultation period of approximately ~~four~~<sup>eight</sup> weeks. The answers of the stakeholders have been incorporated into [a draft of the report. Subsequently, the draft report was sent then again to the previously consulted stakeholders. The second consultation period lasted approximately four weeks. The replies have been incorporated into the final report.](#)

In summary, the consultation has shown that the consulted environmental protection organisations view that the implementation of the third pillar needs further improvement, particularly on [the](#) cantonal level. Some stakeholders also expressed their concerns about the practical challenges regarding the access to environmental information.

## II. Particular circumstances relevant for understanding the report

*Report any particular circumstances that are relevant for understanding the report, e.g., whether there is a federal and/or decentralized decision-making structure, whether the provisions of the Convention have direct effect upon its entry into force, or whether financial constraints are a significant obstacle to implementation (optional).*

*Answer:*

### I. Federal structure

Switzerland is a federalist state. It consists of 26 cantons. The state powers are divided between the Confederation, the cantons and the communes. The cantons and [partly the](#) communes have extensive powers and have their own sources of income.

The Confederation is responsible wherever it is empowered by the Federal Constitution – for example, for foreign and security policy, for customs and monetary matters, for legislation that applies nationally, for defence, etc. Tasks that are not expressly designated as federal matters are the responsibility of the cantons.

At the next lower political level are the cantons, the ~~‘states’~~<sup>‘states’</sup> that ~~make up~~<sup>make up</sup> form Switzerland. Under the Federal Constitution, all the cantons have equal status and rights, and when compared with similar political systems in other countries, they have an extensive range of powers. Health, education and culture are examples of policy areas in which they have a large degree of autonomy.

The smallest political entity in Switzerland is the commune. Currently there are around 2300 communes. In addition to the tasks assigned to the communes by the Confederation and their respective cantons (e.g. maintaining a register of residents or organising a civil defence unit),

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the communes have their own responsibilities, for example schools and welfare provision, energy supplies, roads, local planning, etc.

## **II. Implementation of international law**

With regard to the relationship between international and national law, international agreements in principle prevail over domestic law. As Switzerland follows the monist tradition system, no implementing acts are necessary insofar as the considered agreement qualifies as <sup>134</sup>self-executing<sup>135</sup>. Only provisions which are not considered <sup>134</sup>self-executing<sup>135</sup> have to be incorporated into domestic law. The authorities, however, have to respect them both equally.

### III. Legislative, regulatory and other measures implementing the general provisions in Article 3, paragraphs 2, 3, 4, 7 and 8

**List legislative, regulatory and other measures that implement the general provisions in Article 3, paragraphs 2, 3, 4, 7 and 8, of the Convention.**

Explain how these paragraphs have been implemented. In particular, describe:

- (a) With respect to **paragraph 2**, measures taken to ensure that officials and authorities assist and provide the required guidance;
- (b) With respect to **paragraph 3**, measures taken to promote education and environmental awareness;
- (c) With respect to **paragraph 4**, measures taken to ensure that there is appropriate recognition of and support to associations, organizations or groups promoting environmental protection;
- (d) With respect to **paragraph 7**, measures taken to promote the principles of the Convention internationally; including:
  - (i) Measures taken to coordinate within and between ministries to inform officials involved in other relevant international forums about Article 3, paragraph 7, of the Convention and the Almaty Guidelines, indicating whether the coordination measures are ongoing;
  - (ii) Measures taken to provide access to information at the national level regarding international forums, including the stages at which access to information was provided;
  - (iii) Measures taken to promote and enable public participation at the national level with respect to international forums (e.g. inviting non-governmental organization (NGO) members to participate in the Party's delegation in international environmental negotiations, or involving NGOs in forming the Party's official position for such negotiations), including the stages at which access to information was provided;
  - (iv) Measures taken to promote the principles of the Convention in the procedures of other international forums;
  - (v) Measures taken to promote the principles of the Convention in the work programmes, projects, decisions and other substantive outputs of other international forums;
- (e) With respect to **paragraph 8**, measures taken to ensure that persons exercising their rights under the Convention are not penalized, persecuted or harassed

*Answer:*

#### **(a) Article 3 paragraph 2**

According to Article 3 paragraph 1 of the Federal Act of 21 March 1997 on the Organisation of the Government and the Administration (GAOA<sup>21</sup> SR 172.010) all of the federal administrations actions have to be based on the constitution and the law. Authorities are therefore obliged to act in fulfilment of their statutory tasks. This includes the duty to provide assistance and guidance in the scope of their statutory function.

Specific provisions which ensure that officials and authorities assist and provide guidance to the public for the scope of Article 3 paragraph 2 of the Convention are also foreseen in several environmental acts, such as Article 10e paragraph 3 of the Federal Act of 7 October 1983 on the Protection of the Environment (EPA<sup>22</sup> SR 814.01) which demands that environmental

protection agencies give guidance to the authorities and private individuals. Similar regulations can be found [among others](#) in Article 41 paragraph 2 of the Federal Act of 23 December 2011 on the Reduction of CO<sub>2</sub> Emissions (CO<sub>2</sub> Act; SR 641.71), Article ~~1047~~ paragraph 1 of the Energy Act of ~~26 June 1998~~[30 September 2016](#) (EnA; SR 730.0), [Article 9e of the Federal Act of 23 March 2007 on Electricity Supply \(SR 734.7\)](#), and Article 3 paragraph 1 of the Ordinance of 24 May 2006 on Freedom of Information in the Administration (FoIO; SR 152.31), ~~etc.~~.

#### **(b) Article 3 paragraph 3**

The promotion of environmental education and environmental awareness among the public is an integral part of ~~Switzerland's~~[Switzerland's](#) environmental policy. It is the goal of the Swiss Federal Office for the Environment (FOEN) to integrate environmental education into all levels of the Swiss education system. Financial support for the promotion of professional training of personnel entrusted with the protection of the environment is granted in several federal acts, such as Article 49 EPA, Article 14a of the Federal Act of 1 July 1996 on the Protection of Nature and Cultural Heritage (NCHA; SR 451), Article 41 of the CO<sub>2</sub> Act, etc.

According to Article 10e EPA the FOEN is required to provide information on the current state of the environment, the protection and the use of natural resources in Switzerland. [The](#) FOEN uses communications measures (as well as formation) ~~systemically~~[systematically](#) as an instrument to support environmental policy and to enhance implementation. Appropriate channels are selected to reach different target groups including social media, and ~~dialogue~~[dialogue](#) is encouraged by [the](#) FOEN, e.g. by cooperating with citizen science projects. If appropriate, [the](#) FOEN runs campaigns on a range of topics to raise the environmental awareness among the public. In 2012 the FOEN initiated the information campaign [“The Swiss Parks – Closer than you think”](#) in order to raise awareness of Swiss parks and motivate the public to visit them more often. Several other campaigns in the field of noise abatement, chemicals, wildlife, etc. were launched in collaboration with other federal offices and partners.

#### **(c) Article 3 paragraph 4**

In accordance with Article 3 paragraph 4 of the Convention, the Swiss law provides for appropriate recognition and support to associations, organisations and groups promoting environmental protection. Environmental organisations are granted the right to appeal if they fulfil the legal requirements laid down in Article 55 paragraph 3 or 55f paragraph 2 EPA, Article 12 paragraph 3 NCHA or Article 28 paragraph 2 of the Federal Act of 21 March 2003 on Non-Human Gene Technology (GTA; SR 814.91).

Switzerland also provides financial support for environmental protection organisations. Pursuant to [Article](#) 14 NCHA the Confederation can provide subsidies to national organisations involved in nature protection, cultural heritage protection ~~and/or~~ monument preservation. According to Article 32 of the Federal Act of 4 October 1991 on Forest (ForA; SR 921.0) the Confederation can also entrust organisations with duties relating to forest conservation and provide financial assistance for this purpose. In addition, several federal acts such as Article 49 paragraph 2 EPA, Article 26 paragraph 1 GTA and Article 14 of the Federal Act of 21 June 1991 on Fishing (FishA; SR 923.0), etc. grant financial aid for research activities.

#### **(d) Article 3 paragraph 7**

i-v) As the environment is a horizontal issue, it has many cross-cutting dimensions that have to be streamlined coherently with other sectoral policies. This requires important efforts of coordination within and between federal Departments (Ministries) in Switzerland.

According to Articles 62a and 62b GAOA ~~if a federal act provides for the concentration of decision-making in a single authority, this an~~ authority has to hear the statements of ~~the~~ specialist authorities concerned before making a decision, ~~if a federal act provides for the concentration of decision-making in that single authority~~. In case of differences the competent authority has to conduct a discussion with the opposing authorities within 30 days

in order to eliminate any differences. ~~Inter-departmental~~In this it may call on further authorities or specialists. Therefore, interdepartmental bodies have been institutionalized to that aim may be formed, mainly involving experts of the federal Administration but also, sometimes, heads of federal offices administration. Financial issues related to the implementation of international environmental instruments (responsibility of the FOEN), for example, are constantly discussed with the federal entities responsible for development and economic cooperation (SDC and SECO) within such an inter-departmental platform.

Another example is the development of the Swiss positions for the climate change multilateral negotiations (UNFCCC) which also requires an inter-departmental body that is operational since many years. Spearheaded by the FOEN, it includes representatives from various other federal offices in almost all the federal Departments. Before and after important conferences, this body opens up to stakeholders outside of the federal administration, namely NGOs, academics and private sector. During such gatherings, the Swiss views and positions for the conferences or on the outcomes of the conferences are shared and discussed. It has to be mentioned also that one representative of each stakeholder group (NGOs, academics, private sector) is included in the official Swiss delegation to the environmental conferences. The public at large is informed about the mandate, role and endeavor of the Swiss delegation through press communiqués, press articles and reportages, before, during and after the conferences.

It is thus ensured that the principles of the Convention are also appropriately promoted internationally.

#### (e) Article 3 paragraph 8

In Switzerland the free exercise of the rights pursuant to Article 3 paragraph 8 of the Convention is guaranteed by the constitutional principle of law and justice enshrined in Article 5 of the Federal Constitution of the Swiss Confederation of 18 April 1999 (Cst.; SR 101) and the right of right to equal and fair treatment in judicial and administrative proceedings provided in Article 29 paragraph 1 Cst. According to Article 1 of the Swiss Criminal Code of 21 December 1937 (SCC.; SR 311.0) no one can be punished for an act that has not been expressly declared to be an offence by the law. Under Swiss law, the exercising of rights provided for in a Convention, which Switzerland has ratified, can never be considered a criminal offence. In contrast, any persecution or harassment of persons which exercise their rights in conformity with the provisions of this Convention is considered punishable and has to be persecuted by the criminal justice authorities.

## IV. Obstacles encountered in the implementation of Article 3

*Describe any **obstacles encountered** in the implementation of any of the paragraphs of Article 3 listed above.*

*Answer:*

No information was provided under this heading.

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**V. Further information on the practical application of the general provisions of Article 3**

*Provide further information on the **practical application of the general provisions of Article 3.***

*Answer:*

No information was provided under this heading.

**VI. Website addresses relevant to the implementation of Article 3**

*Give relevant website addresses, if available:*

**Information from the federal authorities**

Federal Office for the Environment :

<https://www.bafu.admin.ch/bafu/en/home/topics/education.html>

<https://www.bafu.admin.ch/bafu/en/home/topics/education/environmental-education.html>

<http://www.swiss-parks.ch/en/the-campaign/>

<https://www.bafu.admin.ch/bafu/fr/home/themes/droit/info-specialistes/droit-de-recours-des-organisations.html>

## VII. Legislative, regulatory and other measures implementing the provisions on access to environmental information in Article 4

### List legislative, regulatory and other measures that implement the provisions on access to environmental information in Article 4.

Explain how each paragraph of Article 4 has been implemented. Describe the transposition of the relevant definitions in Article 2 and the non-discrimination requirement in Article 3, paragraph 9. Also, and in particular, describe:

- (a) With respect to **paragraph 1**, measures taken to ensure that:
  - (i) Any person may have access to information without having to state an interest;
  - (ii) Copies of the actual documentation containing or comprising the requested information are supplied;
  - (iii) The information is supplied in the form requested;
- (b) Measures taken to ensure that the time limits provided for in **paragraph 2** are respected;
- (c) With respect to **paragraphs 3 and 4**, measures taken to:
  - (i) Provide for exemptions from requests;
  - (ii) Ensure that the public interest test at the end of paragraph 4 is applied;
- (d) With respect to **paragraph 5**, measures taken to ensure that a public authority that does not hold the environmental information requested takes the necessary action;
- (e) With respect to **paragraph 6**, measures taken to ensure that the requirement to separate out and make available information is implemented;
- (f) With respect to **paragraph 7**, measures taken to ensure that refusals meet the time limits and the other requirements with respect to refusals;
- (g) With respect to **paragraph 8**, measures taken to ensure that the requirements on charging are met.

#### Answer:

In compliance with Article 4 of the Convention Article 10g of the Federal Act of 7 October 1983 on the Protection of the Environment (EPA; SR 814.01) ensures the public right to access documents which contain environmental information. At federal level the Federal Act of 17 December 2004 on Freedom of Information in the Administration (FoIA; SR 152.3) regulates the procedure for requesting access to information, the grounds for restricting access and the conciliation procedure.

The cantons are required to regulate access to environmental information themselves, taking into account the provisions of the Aarhus Convention. Most cantons already have legislation on freedom of information. Those cantons which have not issued provisions on the access to information, have to apply federal law appropriately (Art. 10g para. 4 EPA).

#### (a) Article 4 paragraph 1

i) According to Article [6 paragraph 1 FoIA](#) and [Article 7](#) paragraph 1 of the Ordinance of 24 May 2006 on Freedom of Information in the Administration (FoIO; SR 152.31) any person can apply for access to an official document without having to state an interest.



ii) Pursuant to Article 6 paragraph 2 FoIA and Article 5 FoIO the authority does provide copies of official documents on request, provided that the production of such copies does not affect the physical integrity thereof.

iii) If a specific form of access to information is requested, such access may only be provided in a form other than specified if there are compelling reasons to do so. This is for example the case if the information requested is already available on the internet (Art. 3 para. 3 FoIO).

#### **(b) Article 4 paragraph 2**

In accordance with Article 4 paragraph 2 of the Convention Article 12 FoIA stipulates that the competent authorities have to decide on the access within 20 days after receipt of the application. In exceptionally complex cases, this deadline can be extended by 20 days. An extension of the deadline is also required if a request concerns official documents containing personal information, in which case the access has to be suspended until the legal situation has been clarified. (Art. 10 para. 4 let. c FoIA; Art. 10 FoIO). The competent authority has to inform the applicant of the extension and of the reasons justifying it.

#### **(c) Article 4 paragraph 3 and 4**

i) In accordance with Article 4 paragraph 3 and 4 of the Convention, the grounds to restrict the right of access are conclusively regulated by Article 7, 8 and 10 FoIA.

Article 10 paragraph 3 FoIA requires that an application for access to official documents has to be formulated in a sufficiently accurate manner. Pursuant to Article 7 FoIO it must be sufficiently detailed in order to allow the authority to identify the requested document. If possible, the applicant must provide specific information to help identify the document such as the date of issue, the title, a specific time frame or the authority which issued the document, etc. The authorities may request the applicant to provide further details, if they are not able to identify the requested document. In ~~which~~<sup>which</sup> this case, they have to inform the applicant that the application shall be deemed to be withdrawn, if the requested details are not provided within ten days.

The substantive grounds for refusing requests for access to environmental information are provided in Article 7 and 8 FoIA. Pursuant to Article 7 FoIA the right of access can be refused if the disclosure would adversely affect the free opinion-forming and decision-making processes of public authorities, national security interests, international relations, domestic relations or economic and monetary interests. Further exemptions from requests are foreseen for documents which contain professional, business or manufacturing secrets or hold information provided voluntarily by a third party to an authority which undertook to maintain secrecy with regard thereto. The right of access to an official document can also be restricted, if such access is likely to prejudice the privacy of a third party. Article 8 FoIA further stipulates that the right of access can also be denied if the requested information concerns confidential proceedings of public authorities, such as official documents of joint reporting proceedings, etc.

ii) In accordance with Article 4 paragraph 4 of the Convention, the Swiss authorities give a narrow interpretation to the aforementioned grounds for refusal, while taking into account the public interest in obtaining such access. According to some environmental organizations, it seems, however, that certain national authorities invoke these exceptions rather extensively.

#### **(d) Article 4 paragraph 5**

According to Article 10 paragraph 1 FoIA requests for access to official documents shall be addressed to the authorities which created the documents or received them as primary addressee from third parties. Authorities which do not hold the required information must forward the request without delay to the competent authorities (Federal Council Dispatch dated 12 February 2003, BBl 2003 1963, 2019), thus ensuring the compliance with the requirements of Article 4 paragraph 5 of the Convention.

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**(e) Article 4 paragraph 6**

In accordance with Article 4 paragraph 6 of the Convention all information, which pursuant to Article 7 and 8 FoIA is exempted from disclosure, has to be separated out without prejudice. This is usually achieved through the blackening of passages containing such information. The remainder of the requested environmental information has to be made available by the public authorities.

**(f) Article 4 paragraph 7**

The requirements of Article 4 paragraph 7 of the Convention are transposed into Swiss law by means of Article 12 FoIA. According to Article 12 paragraph 4 FoIA the authority shall inform the applicant, with summary grounds, of any refusal or limitation of access. In general, the authority draws attention to the possibility to request a mediation. The information concerning the denial or limitation of access, as well as the grounds therefore, shall be conveyed in writing. Pursuant to Article 12 paragraphs 2 and 3 FoIA the refusals have to be issued within 20 days after the receipt, unless the complexity of obtaining the information justifies an extension of this period up to 20 days.

**(g) Article 4 paragraph 8**

According to Article 17 FoIA the competent authorities can charge fees for supplying information. The schedule of fees is set out in Annex 1 to the Freedom of Information Ordinance (Art. 16 para. 1 FoIO).

Pursuant to Article 15 FoIO no fees are charged, if the costs for processing an application are low or if they result exclusively from meeting the special needs of disabled persons. Fees may also be waived or reduced when refusing or limiting an application for access. Article 15 paragraph 4 FoIO also obliges the authorities to reduce the fees for access requests made by the media by at least 50 per cent.

Until today the Federal Office for the Environment has never charged a fee for granting access to official documents containing environmental information. It is thus ensured that the provisions of Article 4 paragraph 8 of the Convention are met.

## **VIII. Obstacles encountered in the implementation of Article 4**

*Describe any **obstacles encountered** in the implementation of any of the paragraphs of Article 4.*

*Answer:*

Many requests for information submitted to the authorities are not always perceived as requests on access to information in the sense of Article 4 of the Convention-, which in some cases leads to a delay processing these requests. It is therefore important to continue to sensitize the authorities at federal and cantonal level in this regard.

The assessment of the grounds to restrict the right of access can lead to very difficult decisions. Especially the question whether data of companies are deemed to be industrial or commercial secrets, and the weighing may represent a challenge.

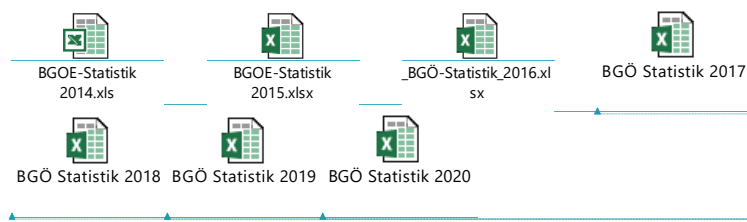
According to some environmental protection organisations it further seems that documents are not drawn up of contradictory interests in disclosure can lead to very difficult decisions. relation to sensitive subjects in which case the access to the requested information is made impossible.

## IX. Further information on the practical application of the provisions of Article 4

Provide further information on the **practical application of the provisions on access to information in Article 4**, e.g., are there any statistics available on the number of requests made, the number of refusals and the reasons for such refusals?

Answer:

**Annual statistics for requests on access to information made to the Federal Office for the Environment (2014-20162017-2020)**



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## X. Website addresses relevant to the implementation of Article 4

Give relevant website addresses, if available:

### Information from the federal authorities

Federal Data Protection and Information Commissioner:

<https://www.edoeb.admin.ch/oeffentlichkeitsprinzip/index.html?lang=en>

<https://www.edoeb.admin.ch/edoeb/de/home/oeffentlichkeitsprinzip/ueberblick/allgemeine-informationen.html>

Federal Office for the Environment:

<https://www.bafu.admin.ch/bafu/de/home/amt/zugang-zu-amtlichen-dokumenten.html>

Federal Roads Office:

<https://www.astra.admin.ch/astra/fr/home/documentation/acces-aux-documents-officiels.html>

Federal Office for Civil Aviation:

<https://www.bazl.admin.ch/bazl/fr/home/bonasavoir/principe-de-transparence.html>

Federal Office of Communications:

<https://www.bakom.admin.ch/bakom/en/homepage/ofcom/virtual-frontdesk/access-to-official-documents.html>

Swiss Federal Office of Energy:

<http://www.bfe.admin.ch/dokumentation/00459/00463/index.html?lang=en>

<https://www.bfe.admin.ch/bfe/de/home/news-und-medien/zugang-zu-amtlichen-dokumenten.html>

Federal Office of Transport:

<https://www.bav.admin.ch/bav/fr/home/l-oft/le-principe-de-la-transparence.html>

Federal Office of Public Health:

<https://www.bag.admin.ch/bag/en/home/service/zugang-zu-amtlichen-dokumenten.html>

<https://www.bag.admin.ch/bag/de/home/gesetze-und-bewilligungen/gesuche-bewilligungen/zugang-zu-amtlichen-dokumenten.html>

Federal Department of Defence, Civil Protection and Sport

<https://www.vbs.admin.ch/fr/documentation/acces-documents-officiels.html>

#### Information from the cantons

Aargau:

[https://www.ag.ch/de/dvi/ueber\\_uns\\_dvi/organisation\\_dvi/generalsekretariat/beauftragte\\_fuer\\_oeffentlichkeit\\_und\\_datenschutz/beauftragte\\_fuer\\_oeffentlichkeit\\_und\\_datenschutz.jsp](https://www.ag.ch/de/dvi/ueber_uns_dvi/organisation_dvi/generalsekretariat/beauftragte_fuer_oeffentlichkeit_und_datenschutz/beauftragte_fuer_oeffentlichkeit_und_datenschutz.jsp)

Basel-Stadt:

<http://www.staatskanzlei.bs.ch/oeffentlichkeitsprinzip.html>

Basel-Landschaft:

<https://www.baselland.ch/themen/o/oeffentlichkeitsprinzip>

Bern:

[http://www.rr.be.ch/rr/de/index/rrbonline/rrbonline/informationen\\_zurrb/oeffentlichkeitsprinzip.html](http://www.rr.be.ch/rr/de/index/rrbonline/rrbonline/informationen_zurrb/oeffentlichkeitsprinzip.html)

Fribourg:

<http://www.fr.ch/atprd/de/pub/oeffentlichkeitsprinzip/faq.htm>

<https://www.fr.ch/institutions-et-droits-politiques/transparence-et-protection-des-donnees/transparence>

Geneva:

<http://www.cdc-ge.ch/fr/Publications/Archives-CEPP/Liste-des-rapports-d-evaluation/Principe-de-transparence-dans-l-administration-LIPAD.html>

Graubünden:

<https://www.gr.ch/DE/publikationen/vernehmlassungen/staka/Seiten/20150122.aspx>

Jura:

<http://www.ne.ch/autorites/CHAN/Pages/transparence.aspx>

<https://www.ppd-june.ch/fr/Activites/Actes-de-procedure/Observations/Demandes-d-acces-a-des-documents-de-la-police-cantonale-CPDT-20171919.html>

Neuchâtel:

<http://www.ne.ch/autorites/CHAN/Pages/transparence.aspx>

<https://www.ppd-june.ch/fr/Activites/Actes-de-procedure/Observations/Demandes-d-acces-a-des-documents-de-la-police-cantonale-CPDT-20171919.html>

Nidwalden:

[http://www.kdsb.ch/xml\\_1/internet/de/application/d103/d124/f122.cfm](http://www.kdsb.ch/xml_1/internet/de/application/d103/d124/f122.cfm)

Obwalden:

[http://www.kdsb.ch/xml\\_1/internet/de/application/d103/d124/f122.cfm](http://www.kdsb.ch/xml_1/internet/de/application/d103/d124/f122.cfm)

Solothurn:

<https://www.so.ch/staatskanzlei/datenschutz-oeffentlichkeitsprinzip/oeffentlichkeitsprinzip/>

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Schwyz:

[http://www.kdsb.ch/xml\\_1/internet/de/application/d103/d124/f122.cfm](http://www.kdsb.ch/xml_1/internet/de/application/d103/d124/f122.cfm)

St. Gallen:

<https://www.gesetzessammlung.sg.ch/frontend/versions/1796?locale=de>

Ticino:

<http://www4.ti.ch/can/sgcds/trasparenza/trasparenza/>

Uri:

[http://www.ur.ch/de/aktuelles/abstimmungsresultate/polvorlagen/?action=showobject&object\\_id=2831](http://www.ur.ch/de/aktuelles/abstimmungsresultate/polvorlagen/?action=showobject&object_id=2831)

Valais:

<https://www.vs.ch/web/che/lipda>

Vaud:

<http://www.vd.ch/themes/etat-droit-finances/protection-des-donnees-et-transparence/>

<https://www.vd.ch/themes/etat-droit-finances/communes/administration-generale/information-et-transparence-de-ladministration/>

Zug:

<https://www.zg.ch/behoerden/staatskanzlei/oeffentlich>

Zürich:

[http://www.zh.ch/internet/de/rechtliche\\_grundlagen/oeffentlichkeitsprinzip.html](http://www.zh.ch/internet/de/rechtliche_grundlagen/oeffentlichkeitsprinzip.html)

[http://www.zh.ch/internet/de/rechtliche\\_grundlagen/oeffentlichkeitsprinzip/informationszugeng.html](http://www.zh.ch/internet/de/rechtliche_grundlagen/oeffentlichkeitsprinzip/informationszugeng.html)  
<https://www.zh.ch/de/politik-staat/kanton/kantonale-verwaltung/oeffentlichkeitsprinzip.html#-1612583256>

## XI. Legislative, regulatory and other measures implementing the provisions on the collection and dissemination of environmental information in Article 5

### List legislative, regulatory and other measures that implement the provisions on the collection and dissemination of environmental information in Article 5.

Explain how each paragraph of Article 5 has been implemented. Describe the transposition of the relevant definitions in Article 2 and the non-discrimination requirement in Article 3, paragraph 9. Also, and in particular, describe:

- (a) With respect to **paragraph 1**, measures taken to ensure that:
  - (i) Public authorities possess and update environmental information;
  - (ii) There is an adequate flow of information to public authorities;
  - (iii) In emergencies, appropriate information is disseminated immediately and without delay;
- (b) With respect to **paragraph 2**, measures taken to ensure that the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible;
- (c) With respect to **paragraph 3**, measures taken to ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks;
- (d) With respect to **paragraph 4**, measures taken to publish and disseminate national reports on the state of the environment;
- (e) Measures taken to disseminate the information referred to in **paragraph 5**;
- f) With respect to **paragraph 6**, measures taken to encourage operators whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products;
- (g) Measures taken to publish and provide information as required in **paragraph 7**;
- (h) With respect to **paragraph 8**, measures taken to develop mechanisms with a view to ensuring that sufficient product information is made available to the public;
- (i) With respect to **paragraph 9**, measures taken to establish a nationwide system of pollution inventories or registers.

#### Answer:

In Switzerland, the provisions of the Convention on collection and dissemination of environmental information are primarily transposed by means of environmental acts passed by the Confederation.

#### (a) Article 5 paragraph 1

i, ii) Article 44 paragraph 1 of the Federal Act of 7 October 1983 on the Protection of the Environment (EPA<sup>33</sup>, SR 814.01) obliges the Confederation and the cantons to conduct surveys on environmental pollution. According to Article 44 paragraph 3 EPA this also includes information on substances and organisms collected in terms of the legislation on gene technology, foodstuffs, therapeutic products, chemicals, agriculture, epidemics and epizootic diseases. According to Article 45 and 46 EPA environmental data is also collected through regular inspection of installations (e.g. oil-fired furnaces, waste disposal facilities, etc.) and the obligation to provide the authorities with environmental information.

The duty to continuously collect and update environmental information is enshrined in Article 10e paragraph 1 EPA which requires the authorities to adequately inform the public about the levels of environmental pollution. Since environmental information is also considered to be geodata in the sense of the Federal Act of 5 October 2007 on Geoinformation (GeoIA; SR 510.62), the responsible authorities have to guarantee the lasting availability of this data. Thus ensuring that the environmental information mentioned in Article 10e paragraph 1 EPA is continuously collected and updated by the competent authorities.

(iii) In emergencies, when there is an imminent threat to human health or the environment Article 10 EPA and Article 13 of the Ordinance of 27 February 1991 on Protection against Major Accidents (MAO; SR 814.012) ensure that the population affected is immediately alerted by the cantons and, if necessary, advised on how to act. Similar provisions can also be found in Ordinance of ~~18 August 2010 on Issuing Warnings and Raising the Alarm~~ (AlarmO; ~~11 November 2020~~ on Civil Protection (BevSV; SR 520.12). In case of a nuclear accident or radiological emergency the public has to be informed according to the Ordinance of ~~20 October 2010~~ ~~14 November 2018~~ on Emergency Protection Measures in the Vicinity of Nuclear Installations (EmPO; SR 732.33) and the Ordinance of ~~20 October 2010~~ ~~2 March 2018~~ on the Organisation of NBC and Natural Disaster Intervention (NBCN Intervention Ordinance; Federal Civil Protection Crisis Management Board (VSTB; SR 520.17).

#### **(b) Article 5 paragraph 2**

According to Article 180 paragraph 2 of the Federal Constitution of the Swiss Confederation of 18 April 1999 (Cst; SR 101) and Article 10 of the Federal Act of 21 March 1997 on the Organisation of the Government and the Administration (GAOA; SR 172.010) the Federal Council has to inform the general public fully and in good time about its activities. As part of the executive, the federal administration is also subject to the duty to actively provide information.

An explicit obligation to adequately and effectively inform the general public about the state of the environment is foreseen in Article 10e paragraph 1 EPA. This article requires the competent authorities to publish information about environmental protection and levels of environmental pollution (e.g. studies on environmental pollution, results of inspections of installations, etc.), unless overriding private and public interests prevent this. The duty to provide environmental information is also enshrined in several other federal acts, as for example in Article 10 GeoIA, Article 25a of the Federal Act of 1 July 1996 on the Protection of Nature and Cultural Heritage (NCHA; SR 451), Article 18 of the Federal Act of 21 March 2003 on Non-Human Gene Technology (GTA; SR 814.91) or Article ~~40~~ ~~47~~ paragraph 1 of the Energy Act of ~~26 June 1998~~ ~~30 September 2016~~ (EnA; SR 730.0).

Pursuant to Article 10e paragraph 4 EPA the collected environmental data is usually made available through electronic registers (e.g. the Swiss Pollutant Release and Transfer Register [PRTR], etc.) and data collections, which are accessible on the competent authorities websites. The access to those registers and data collections containing environmental information is generally provided free of charge.

As part of the advisory duty laid down in Article 10e paragraph 3 EPA, environmental protection agencies are also required to support the public in seeking access to environmental information.

#### **(c) Article 5 paragraph 3**

In compliance with Article 5 paragraph 3 of the Convention, Article 10e paragraph 4 EPA demands that environmental information shall be made available as open digital data records if possible. All documents listed in Article 5 paragraph 3 of the Convention such as reports on the state of the environment, legislation texts, policies and plans relating to the environment, etc. are available on the internet.

#### **(d) Article 5 paragraph 4**

Formatiert: Englisch (Vereinigtes Königreich)

According to Article 10f EPA the Federal Council has to assess the state of the environment in Switzerland at least every four years and submit a report on the results to the Federal Assembly. The report is published on the website of the federal office for the environment. Paper versions are also available on request.

On the cantonal level several cantons publish and disseminate reports on the state of the environment at least every five years.

#### **(e) Article 5 paragraph 5**

Pursuant to Article 8 paragraph 1 of the Federal Act of 18 June 2004 on the Compilations of Federal Legislation and the Federal Gazette (PublA; SR 170.512) federal acts and ordinances only become legally binding, if the texts have been published in the Official Compilations of Federal Legislation (AS). The same holds for international treaties and decrees under international law that enact law or confer legislative powers (Art. 3 para. 1 PublA). The publication takes place via a publicly accessible online platform (Art. 1a PublA), but can also be obtained in printed form (Art. 16 para. 1 PublA).

During the legislative process in Switzerland it is also required that dispatches and drafts of the Federal Council on enactments of the Federal Assembly as well as texts that must be included according to federal legislation have to be published in the Federal Gazette (Art. 13 PublA).

According to Article 10 paragraph 2 GAOA the Federal Council — and thus also the federal administration — has to ensure that the general public is informed by suitable ~~informed means~~ about its assessments, plans, decisions and provisions. The list of documented activities in Article 10 paragraph 2 GAOA is not exhaustive, but also includes documents on strategies, policies, action plans, etc. It is thus ensured that the requirements of Article 5 paragraph 5 of the Convention are met.

#### **(f, h) Article 5 paragraph 6 and 8**

Swiss law contains several regulations relating to market transparency in the environmental sector. According to Article 27 EPA any person who puts environmentally hazardous substances into circulation must inform recipients about their environment-related properties and provide them with instructions ~~so that~~ So their use does not endanger human health or the environment. Similar provision can also be found in Article 29e EPA for putting organisms into circulation, Article 7 of the Federal Act of 15 December 2000 on Protection against Dangerous Substances and Preparations (ChemA; SR 813.1) for placing dangerous substances or preparations on the market, Article 15 GTA for putting genetically modified organisms into circulation, etc. Detailed rules on the content and extent of the information given to recipients, including the labelling of products, are set out by the Federal Council at the ordinance level.

Consumer goods and services are subject to the declaration requirements of the Federal Act of 5 October 1990 on Consumer Information (ConsumIA; ~~SR~~; SR 944.0).

In compliance with the requirements of Article 5 paragraph 6 of the Convention, Article 43a EPA provides that the Federal Council may issue regulations on the introduction of voluntary systems for environmental labels (~~“eco-label”~~) or voluntary systems for the evaluation and improvement of environmental protection in establishments (environmental management and auditing).

#### **(g) Article 5 paragraph 7**

In compliance with Article 5 paragraph 7 of the Convention the Federal Office for the Environment as well as the cantonal environmental authorities provide appropriate information on the performance of public functions or the provision of public services relating to the environment on their websites. This also includes facts and analyses of facts which they consider to be relevant in framing major environmental policy proposals.



(i) Article 5 paragraph 9

Switzerland has ratified the Kiev Protocol on 27 April 2007. On 15 December 2006 the Swiss Government has adopted the Ordinance of 15 December 2006 on the Register relating to Pollutant Release and the Transfer of Waste and of Pollutants in Waste Water (PRTRO; SR 814.017) which entered into force on 1 March 2007 and is still in force today in its original version. The first reporting was required for data of the year 2007. The PRTR was implemented in the scope given by the Protocol. In addition, voluntarily reporting is possible for facilities below the capacity threshold and for pollutants below their individual threshold. Reporting is managed electronically throughout the process, i.e. from submission to publication. The data are easily accessible via the webpage [www.prtr.admin.ch](http://www.prtr.admin.ch)

Several user-friendly features were implemented to improve public accessibility such as time series, data export possibilities, glossary functions and explanations. In addition, data can be searched directly on the map on <http://map.bafu.admin.ch> which is also compatible with mobile devices. More recently In 2015, university students finalized a new PRTR-data visualization pilot project that is ~~now~~ publicly accessible on the web: <https://www.bafu.admin.ch/bafu/en/home/topics/chemicals/state/swissprtr-pollutant-register.html><https://www.bafu.admin.ch/bafu/en/home/topics/chemicals/state/swissprtr-pollutant-register/pilotprojekt-visualisierung-swissprtr.html>. This pilot project ~~is~~ has been a direct outcome of a lecture series dealing with “open data” and represents an example of public participation.

More recently, a project has been launched to completely renew the software-framework of SwissPRTR. Within this project it is also planned to completely reorganize public access to SwissPRTR data and to opt for even greater accessibility. Therefore, the data will be structured in the standardized linked open data format (RDF) and centrally sorted. Further, visualizations shall be generated based on the linked open data database and presented dynamically on the FOEN website (<https://www.bafu.admin.ch/bafu/en/home/topics/chemicals/state/swissprtr-pollutant-register.html>).

Our national PRTR is harmonized with different reporting obligations. Diffuse releases to air are based on the international reporting on air and climate. Data are compiled on a yearly basis by the Air Pollution Control and Chemicals Division. In order to reduce parallel reporting the PRTR has been connected to the national database of transport of hazardous waste. The values on transfer of hazardous waste can be imported directly into the PRTR database by the facility. In this case, duplicative reporting could be avoided. Other areas have been checked and found to be inconsistent due to other definitions and thresholds (e.g. VOC). The potential for further harmonization with related reporting obligations is currently reevaluated as part of software procurement procedures. In this context the data collection platform will also be renewed.

## XII. Obstacles encountered in the implementation of Article 5

*Describe any **obstacles encountered** in the implementation of any of the paragraphs of Article 5.*

*Answer:*

It was brought to our attention that there are still some legal acts, which request fees for granting access to environmental data, e.g. Article 7 of the Ordinance of 721 November 20072018 on Meteorology and Climatology (MetClimO; SR 429.11). This is especially the case for data that is only gathered on demand as for example historical hydrological data.

Several environmental protection organisations have criticized that several cantons deny them the access to documents in electronic form (which means that they have to travel to a

sometimes remote village and make photocopies of the documents, which often contain hundreds of pages).

### XIII. Further information on the practical application of the provisions of Article 5

*Provide further information on the practical application of the provisions on the collection and dissemination of environmental information in Article 5, e.g., are there any statistics available on the information published?*

*Answer:*

The FOEN has initiated a project (“Umweltdatenkiosk”; “environmental data kiosk”) to actively publish datasets of more than 30 important environmental monitoring programs. The aim of this project is to make all data accessible for machine reading as well as through tables and graphs. The data will be published as linked data in the RDF-Format (Resource Description Framework), so the data can be linked up with other data and therefore gain more importance. Several units of the federal administration are involved in this project. ~~The WTO tender will be issued in this year. The official version is scheduled to be released this year.~~ A first visualization tool has been launched in 2020 (<https://www.visualize.admin.ch/en>).

### XIV. Website addresses relevant to the implementation of Article 5

*Give relevant website addresses, if available:*

#### Information from the federal authorities

<https://opendata.swiss>

Federal Office for the Environment:

<https://www.bafu.admin.ch/bafu/en/home/state.html>

<https://www.bafu.admin.ch/bafu/en/home/state/publications-on-the-state-of-the-environment.html>

<https://www.bafu.admin.ch/bafu/en/home/state/environmental-state--topics.html>

<https://www.bafu.admin.ch/bafu/en/home/state/data.html>

<https://www.bafu.admin.ch/bafu/en/home/state/data/environmental-data.html>

<https://www.bafu.admin.ch/bafu/en/home/state/data/geodata.html>

<https://www.bafu.admin.ch/bafu/en/home/state/data/geodata-models.html>

<https://www.bafu.admin.ch/bafu/en/home/state/indicators.html>

<https://map.geo.admin.ch/?lang=en&topic=bafu&X=190000.00&Y=660000.00&zoom=1&bgLayer=ch.swisstopo.pixelkarte-farbe>

<https://www.bafu.admin.ch/bafu/en/home/state/storymaps.html>

<https://www.bafu.admin.ch/bafu/en/home/topics/chemicals/state/swissprtr-pollutant-register.html><https://www.geo.admin.ch/de/thematic-geoportals-federal-offices/storymaps-geo-datengeschichten.html>

<https://www.bafu.admin.ch/bafu/en/home/topics/chemicals/state/swissprtr-pollutant-register.html>

Federal Office for Spatial Development:

[https://www.are.admin.ch/are/fr/home/developpement-et-amenagement-du-territoire/bases-et-donnees/observation-du-territoire/reseau-d\\_observation-du-territoire-suisse.html](https://www.are.admin.ch/are/fr/home/developpement-et-amenagement-du-territoire/bases-et-donnees/observation-du-territoire/reseau-d_observation-du-territoire-suisse.html)

<https://www.are.admin.ch/are/de/home/raumentwicklung-und-raumplanung/grundlagen-und-daten/web-gis-are.html>

Federal Office for Agriculture:

<https://www.blw.admin.ch/blw/fr/home/nachhaltige-produktion/umwelt/agrarumweltmonitoring.html>

Federal Office of Civil Aviation:

<https://www.bazl.admin.ch/bazl/fr/home/politique/environnement.html>

[https://www.zurich-airport.com/the-company/noise-policy-and-the-environment/#\\_ga=1.71794448.2098577110.1489411233](https://www.zurich-airport.com/the-company/noise-policy-and-the-environment/#_ga=1.71794448.2098577110.1489411233)

<http://www.euroairport.com/en/environment/>

[https://www.zurich-airport.com/the-company/noise-policy-and-the-environment/#\\_ga=2.68771673.999644735.1593524550-1187252041.1583239770](https://www.zurich-airport.com/the-company/noise-policy-and-the-environment/#_ga=2.68771673.999644735.1593524550-1187252041.1583239770)

<https://www.euroairport.com/fr/euroairport/environnement/aviation-et-environnement/enjeux-et-actions.html>

<https://www.gva.ch/en/Site/Geneve-Aeroport/Questions-Reponses-FAQ/environnement#9ca64da2-d7b1-4f7b-af69-5a202173f3fc>

Swiss Federal Office of Energy:

<http://www.bfe.admin.ch/geoinformation/index.html?lang=fr>

[https://www.ensi.ch/en/?noredirect=en\\_US](https://www.ensi.ch/en/?noredirect=en_US)

<http://www.nagra.ch/en>

<http://www.swissnuclear.ch>

<https://www.endk.ch>

Federal Office of Transport:

<https://www.bav.admin.ch/bav/fr/home/themes/liste-alphabetique-des-sujets/geoinformation.html>

<https://www.bav.admin.ch/bav/fr/home/themes-a-z/geoinformation.html>

Federal Roads Office:

<https://www.astra.admin.ch/astra/fr/home/services/vehicules/marchandises-dangereuses.html>

Federal Office of Topography:

<https://www.swisstopo.admin.ch/en/knowledge-facts/geoinformation/spatial-data-infrastructure.html>

<https://www.swisstopo.admin.ch/en/knowledge-facts/geoinformation/federal-geoportal.html>

Federal Office of Meteorology and Climatology:

<http://www.meteoswiss.admin.ch/home/measurement-and-forecasting-systems/datenmanagement.html>

Federal Department of Defence, Civil Protection and Sport

<https://www.vbs.admin.ch/de/themen/umweltschutz.html>

[www.kbs-vbs.ch](http://www.kbs-vbs.ch)

[www.geoweb-armasuisse.ch](http://www.geoweb-armasuisse.ch)

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#### Information from the cantons

Aargau:

[https://www.ag.ch/de/bvu/umwelt\\_natur\\_landschaft/umweltinformationen/umweltinformationen.jsp](https://www.ag.ch/de/bvu/umwelt_natur_landschaft/umweltinformationen/umweltinformationen.jsp)  
[https://www.ag.ch/de/bvu/umwelt\\_natur\\_landschaft/umweltinformationen/umwelt\\_aargau/umwelt\\_aargau\\_1.jsp](https://www.ag.ch/de/bvu/umwelt_natur_landschaft/umweltinformationen/umwelt_aargau/umwelt_aargau_1.jsp)

Basel-Stadt:

<http://www.dsb.bs.ch/oeffentlichkeitsprinzip/Oeffentlichkeitsprinzip-und-Open-Government-Data.html>

Bern:

[http://www.rr.be.ch/rr/de/index/rronline/rronline/informationen\\_zurrb/oeffentlichkeitsprinzip.html](http://www.rr.be.ch/rr/de/index/rronline/rronline/informationen_zurrb/oeffentlichkeitsprinzip.html)

Fribourg:

<http://www.fr.ch/sen/fr/pub/index.cfm>

<https://www.fr.ch/institutions-et-droits-politiques/transparence-et-protection-des-donnees/transparence>

St. Gallen:

[www.vhm-umwelt.sg.ch](http://www.vhm-umwelt.sg.ch)

Ticino:

<http://www4.ti.ch/can/sgcds/trasparenza/trasparenza/>

Zürich:

[http://www.zh.ch/internet/de/rechtliche\\_grundlagen/oeffentlichkeitsprinzip.html](http://www.zh.ch/internet/de/rechtliche_grundlagen/oeffentlichkeitsprinzip.html)

[http://www.zh.ch/internet/de/rechtliche\\_grundlagen/oeffentlichkeitsprinzip/aktives\\_informieren.html](http://www.zh.ch/internet/de/rechtliche_grundlagen/oeffentlichkeitsprinzip/aktives_informieren.html)

<https://www.zh.ch/de/politik-staat/kanton/kantonale-verwaltung/oeffentlichkeitsprinzip.html>

<https://www.zh.ch/de/umwelt-tiere/umweltschutz/umweltbericht.html>

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## **XV. Legislative, regulatory and other measures implementing the provisions on public participation in decisions on specific activities in Article 6**

### **List legislative, regulatory and other measures that implement the provisions on public participation in decisions on specific activities in Article 6.**

Explain how each paragraph of Article 6 has been implemented. Describe the transposition of the relevant definitions in Article 2 and the non-discrimination requirement in Article 3, paragraph 9. Also, and in particular, describe:

- (a) With respect to **paragraph 1**, measures taken to ensure that:
  - (i) The provisions of Article 6 are applied with respect to decisions on whether to permit proposed activities listed in annex I to the Convention;
  - (ii) The provisions of Article 6 are applied to decisions on proposed activities not listed in annex I which may have a significant effect on the environment;
- (b) Measures taken to ensure that the public concerned is informed early in any environmental decision-making procedure, and in an adequate, timely and effective manner, of the matters referred to in **paragraph 2**;
- (c) Measures taken to ensure that the time frames of the public participation procedures respect the requirements of **paragraph 3**;
- (d) With respect to **paragraph 4**, measures taken to ensure that there is early public participation;
- (e) With respect to **paragraph 5**, measures taken to encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit;
- (f) With respect to **paragraph 6**, measures taken to ensure that:
  - (i) The competent public authorities give the public concerned all information relevant to the decision-making referred to in Article 6 that is available at the time of the public participation procedure;
  - (ii) In particular, the competent authorities give to the public concerned the information listed in this paragraph;
- (g) With respect to **paragraph 7**, measures taken to ensure that procedures for public participation allow the public to submit comments, information, analyses or opinions that it considers relevant to the proposed activity;
- (h) With respect to **paragraph 8**, measures taken to ensure that in a decision due account is taken of the outcome of the public participation;
- (i) With respect to **paragraph 9**, measures taken to ensure that the public is promptly informed of a decision in accordance with the appropriate procedures;
- (j) With respect to **paragraph 10**, measures taken to ensure that when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 are applied, making the necessary changes, and where appropriate;

(k) With respect to **paragraph 11**, measures taken to apply the provisions of Article 6 to decisions on whether to permit the deliberate release of genetically modified organisms into the environment.

*Answer:*

**(a) Article 6 paragraph 1**

i, ii) Under Swiss law, all decisions on whether to permit proposed activities as listed in annex I of the Convention have to be based on an environmental impact assessment that is compliant with the requirements set forth in Article 6 of the Convention. Article 10a paragraph 1 of the Federal Act of 7 October 1983 on the Protection of the Environment (EPA; SR 814.01) requires that before taking any decision on the planning, construction or modification of installations the approving authorities must assess their impact on the environment at the earliest possible stage. The installation types that are subject to an environmental impact assessment are listed in the annex to the Ordinance of 19 October 1988 on the Environmental Impact Assessment (EIAO; SR 814.011). When Switzerland joined the Aarhus Convention in 2014 the annex to the EIAO was revised, in order to comprise all activities listed in annex I to the Convention. The annex to the EIAO also includes other activities which may have a significant effect on the environment according to Article 10 paragraph 2 EPA.

The annex to the EIAO also shows which law is applicable to the environmental impact assessment procedure of a particular installation type. The applicable procedures can either be regulated by canton law or by federal infrastructure acts such as the Federal Railways Act of 20 December 1957 (RailA; SR 742.101) or the Federal Act of 21 December 1948 on Civil Aviation (CAA; SR 748.0), ~~Article~~Articles 42 ss. and 49 ss. of the Nuclear Energy Act of 21 March 2003 (NEA; SR 732.1), etc. The transparency terms set for the environmental impact assessments procedures ensure, however, that the participation of the public is guaranteed during all procedural stages relevant to the decision-making.

**(b) Article 6 paragraph 2**

In Switzerland, the requirements for informing the public during environmental decision-making procedures, can be found in various federal and cantonal acts.

Certain infrastructure projects, such as the construction of railway lines, airports, motorways, cableways, etc. are regulated by special federal infrastructure acts and are subject to a planning approval procedure. The first part of this procedure consists in the public display of the application. According to Article 18d paragraph 2 RailA any application for the construction or modification of an installation has to be published in the official gazette of each canton and municipality concerned, and made available for public inspection for a period of 30 days. The same provision can also be found in the other federal infrastructure acts such as Article 37d paragraph 2 CAA or Article 12 paragraph 2 of the Federal Act of 23 June 2006 on Cableways for Passenger Transport (CabA; SR 743.01), etc. This also applies accordingly to other types of installations being subjected to the environmental impact assessment. According to Swiss law everyone is entitled to access all available documents.

Article 10d EPA further provides that the public display of environmental impact reports is mandatory for all installations subject to the EIAO. The environmental impact report, which according to Article 10b paragraph 2 EPA has to contain all the information required to assess the project in accordance with the environmental protection regulations, represents an essential basis for the environmental impact assessment. It is therefore considered important, that the report is made available to the general public. The specific provisions on the public display of environmental impact reports are regulated in Article 15 EIAO. According to this article the competent federal authority must announce in the Federal Gazette or in another suitable publication medium, where the environmental impact report can be viewed. The environmental implementation report, is to be made available to the public for a period of 30 days. The cantons concerned shall disclose the environmental impact report in accordance with their own law.

Swiss law thus ensures that the public concerned is informed early in any environmental decision-making procedure as requested by Article 3 paragraph 2 of the Convention.

**(c) Article 6 paragraph 3**

According to Swiss law the applications and environmental impact reports for installations are usually being displayed for a time period of 30 days after their official publication (e.g. Art. 18d para. 2 RailA, Art. 37d para. 2 CAA, Art. 15 para. 4 EIAO, etc.). During the display period, any person or organisation is entitled to submit objections to the competent authorities (e.g. Art. 18d para. 2 RailA, Art. 37d para. 2 CAA, Art. 17 EIAO, etc.). This corresponds with the usual period for appeal in Switzerland (e.g. Art. 50 of the Federal Act of 20 December 1968 on Administrative Procedure [APA<sup>34</sup> SR 172.021]).

In accordance with Article 6 paragraph 3 of the Convention it is thus ensured, that the time frame provided for the public display allows sufficient time for informing the public in order for it to prepare and participate effectively during the environmental decision-making process.

**(d) Article 6 paragraph 4**

Federal Act of 22 June 1979 on Spatial Planning (SPA<sup>35</sup> SR 700) ensures that the public is involved at an early stage of the planning, when all options are still open. Thus complying with the prerequisites for an effective public participation as requested by Article 6 paragraph 4 of the Convention.

**(e) Article 6 paragraph 5**

In a recommendation of 2004 the Federal Department for the Environment, Transport, Energy and Communications (DETEC) encourages prospective applicants to enter into discussions with the public concerned before applying for a permit.

**(f) Article 6 paragraph 6**

i, ii) Under Swiss law, the requirements concerning the documents which must be made accessible for public inspection pursuant to Article 6 Paragraph 6 of the Convention have been incorporated into Article 10b EPA, Article 20 EIAO, Article 18d RailA in conjunction with Article 3 of the Ordinance of 2 February 2000 on the Planning Approval Procedure for Railway Installations (PAPRO<sup>36</sup> SR 742.142.1) and other federal infrastructure acts. The access to those documents is generally provided free of charge.

**(g, h) Article 6 paragraph 7 and 8**

The right of the public to submit observations during an approval procedure is guaranteed by Article 17 and 19 EIAO which ensure that such observations have to be taken into account in the decision-making process.

The right to appeal is granted to anyone who is a party pursuant to the provisions of the Federal Act on Administrative Procedure. This also includes environmental protection organisations which have the right to appeal according to Article 55 and 55f EPA, Article 12 of the Federal Act of 1 July 1996 on the Protection of Nature and Cultural Heritage (NCHA<sup>37</sup> SR 451) and Article 28 of the Federal Act of 21 March 2003 on Non-Human Gene Technology (GTA<sup>38</sup> SR 814.91).

Unlawful refuses or delays in the issuing a contestable ruling by the competent authority can be appealed according to Article 46a APA.

It is thus not only ensured that the public is actively involved in the decision-making process but it is also taken that due account of the outcome of the public participation in the decision itself.

**(i) Article 6 paragraph 9**

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In accordance with Article 6 paragraph 9 of the Convention Article 10d EPA also requires that the results of the environmental impact assessment must be made accessible for public inspection. Once a decision has been issued, Article 20 EIAO requests that the competent authority publicly announces, where the decision and the relevant documents leading up to it (e.g. the environmental report, assessments of cantonal authorities or [the](#) FOEN, etc.) can be viewed. The documents have to be made available to the public for a period of at least 30 days

**(j) Article 6 paragraph 10**

According to Article 10a paragraph 1 EPA the modification of an installation can also require an environmental impact assessment. The requirements for this are laid down in Article 2 EIAO. The environmental impact assessment procedures, however, are the same as for the construction of installations (Art. 10a para. 1 EPA). Thus guaranteeing that the provisions of Article 6 of the Convention are being respected.

**(k) Article 6 paragraph 11**

See reply to question XXXIII.

## **XVI. Obstacles encountered in the implementation of Article 6**

*Describe any **obstacles encountered** in the implementation of any of the paragraphs of Article 6.*

*Answer:*

~~No information was provided under this heading.~~ According to some environmental protection organisations the implementation of Article 6 paragraph 3 of the Convention seems to work on the national level. They have, however, criticized that there is still room for improvement on the cantonal level.

The organisations find fault especially with excessively short timeframes in some cantons to submit an opinion that can, however, be compensated by granting an additional period of time for a further submission.

## **XVII. Further information on the practical application of the provisions of Article 6**

*Provide further information on the **practical application of the provisions on public participation in decisions on specific activities in Article 6**, e.g., are there any statistics or other information available on public participation in decisions on specific activities or on decisions not to apply the provisions of this Article to proposed activities serving national defence purposes.*

*Answer:*

No information was provided under this heading.



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## XVIII. Website addresses relevant to the implementation of Article 6

*Give relevant website addresses, if available:*

### Information from the federal authorities

Federal Office for the Environment:

<https://www.bafu.admin.ch/bafu/en/home/topics/cia.html>

Federal Roads Office:

<https://www.bav.admin.ch/bav/fr/home/themes/liste-alphabetique-des-sujets/procedures-d-approbation-des-plans.html>

<https://www.bav.admin.ch/bav/fr/home/themes-a-z/procedure-dapprobation-des-plans.html>

Federal Office of Transport:

<https://www.astra.admin.ch/astra/fr/home/themes/routes-nationales/refection-gothard/zeitplan.html>

<https://www.astra.admin.ch/astra/de/home/Medien/themen/nationalstrassenbau/projektierung/auflage.html>

Federal Office of Civil Aviation:

<https://www.bazl.admin.ch/bazl/en/home/safety/infrastructure/aerodromes.html>

Swiss Federal Office of Energy:

[http://www.bfe.admin.ch/themen/00612/04481/index.html?lang=en&dossier\\_id=05775](http://www.bfe.admin.ch/themen/00612/04481/index.html?lang=en&dossier_id=05775)

<http://www.bfe.admin.ch/themen/00544/00624/03626/index.html?lang=en>

<https://www.bfe.admin.ch/bfe/de/home/foerderung/erneuerbare-energien/guichet-unique-windenergie/plangenehmigungen.html>

[www.ensi.ch](http://www.ensi.ch)

## **XIX. Practical and/or other provisions made for the public to participate during the preparation of plans and programmes relating to the environment pursuant to Article 7**

*List the appropriate practical and/or other provisions made for the public to participate during the preparation of plans and programmes relating to the environment, pursuant to Article 7. Describe the transposition of the relevant definitions in Article 2 and the non-discrimination requirement in Article 3, paragraph 9.*

*Answer:*

In Switzerland, many environmental protection measures are implemented through plans or ~~programmes~~[programs](#), which are based upon the Federal Act of 22 June 1979 on Spatial Planning (SPA; SR 700). The provision on information and public participation laid down in Article 4 SPA is thus highly significant for the implementation of the Convention. It applies both to federal and to cantonal authorities.

According to Article 4 paragraph 1 and 2 SPA the competent authorities must not only inform the public about the objectives and processes of ongoing plans but have also to ensure that appropriate public participation is provided. Article 4 paragraph 3 SPA further states that all plans, which fall under this act, have to be made public. Pursuant to Article 19 of the Ordinance of 28 June 2000 on Spatial Planning (SPO; SR 700.1) the drafts concepts and plans, including the opportunities for public participation, have to be announced in the official publication journals by the competent cantonal authorities. The plans and all relevant documents pertaining thereto have to be made available to the public for a period of at least 20 days. The consultation period usually lasts three months. During this period each citizen has the right to submit opinions and proposals to the competent authority. The authorities are obliged to take account of those proposals and have to reply thereto in a summary manner.

Similar provisions for environmental planning are also to be found in various environmental acts, such as in Article 5 of the Ordinance of 26 August 1998 on the Remediation of Contaminated Sites (CRO; SR 814.680) or Article 18 paragraph 3 of the Ordinance of 30 November 1992 on Forest (ForO; SR 921.01), etc.

It can thus be concluded that the Swiss law is compliant with the provisions of Article 7 of the Convention.

## **XX. Opportunities for public participation in the preparation of policies relating to the environment provided pursuant to Article 7**

*Explain what opportunities are provided for public participation in the preparation of policies relating to the environment, pursuant to Article 7.*

*Answer:*

Swiss citizens have a variety of ways ~~of influencing~~[to influence](#) the political process. According to Article 138 et seq. of the Federal Constitution of the Swiss Confederation of 18 April 1999 (Cst; SR 101) any person holding a Swiss citizenship can intervene directly in politics – by launching an initiative or requesting a referendum. Another way to influence the preparation of policies relating to the environment can be achieved through petitioning the authorities (Art. 33 Cst).

## XXI. Obstacles encountered in the implementation of Article 7

*Describe any **obstacles encountered** in the implementation of Article 7.*

*Answer:*

No information was provided under this heading.

## XXII. Further information on the practical application of the provisions of Article 7

*Provide further information on the **practical application of the provisions on public participation in decisions on specific activities in Article 7.***

*Answer:*

No information was provided under this heading. Article 5 of the Nuclear Energy Ordinance of 10 December 2004 (NEO; SR 732.11) obligates the Swiss Federal Office of Energy to regulate the search for suitable repository sites in the Sectoral Plan for Deep Geological Repositories (<https://www.bfe.admin.ch/bfe/en/home/supply/nuclear-energy/radioactive-waste/sectoral-plan-for-deep-geological-repositories.html>). The Sectoral Plan for Deep Geological Repositories establishes a so called regional participation that enables the participation of the cantons, communes and neighbouring states as well as of the citizens at an early stage in and throughout the process.

A similar process is laid down in Articles 11 et seq. of the Ordinance of 13 December 1999 on the planning approval procedure for military constructions and installations (MPV; SR 510.51). The cantons, communes and public concerned are to be included in the decision making process. Certain projects, however, allow only limited public participation due to security concerns.

## XXIII. Website addresses relevant to the implementation of Article 7

*Give relevant website addresses, if available:*

### Information from the federal authorities

Federal Office for Spatial Development:

<https://www.are.admin.ch/are/fr/home/developpement-et-amenagement-du-territoire/droit-de-l-amenagement-du-territoire.html>

Federal Office of Civil Aviation:

<https://www.bazl.admin.ch/bazl/en/home/policies/aviation-policies/sectoral-aviation-infrastructure-plan--saip-.html>

Swiss Federal Office of Energy:

<http://www.bfe.admin.ch/radioactiveabfaelle/01277/index.html?lang=en>

<https://www.bfe.admin.ch/bfe/de/home/versorgung/kernenergie/radioactive-abfaelle.html>

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<https://www.bfe.admin.ch/bfe/en/home/supply/nuclear-energy/radioactive-waste/sectoral-plan-for-deep-geological-repositories.html>

Federal Department of Defence, Civil Protection and Sport

[https://www.vbs.admin.ch/de/themen/raumplanung-immobilien/plangenehmigungsverfahren.html#\\_bersicht](https://www.vbs.admin.ch/de/themen/raumplanung-immobilien/plangenehmigungsverfahren.html#_bersicht)

<https://www.vbs.admin.ch/de/themen/raumplanung-immobilien/plangenehmigungsverfahren.html#verfahren>

## XXIV. Efforts made to promote public participation during the preparation of regulations and rules that may have a significant effect on the environment pursuant to Article 8

*Describe what efforts are made to promote effective public participation during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment, pursuant to Article 8. To the extent appropriate, describe the transposition of the relevant definitions in Article 2 and the non-discrimination requirement in Article 3, paragraph 9.*

*Answer:*

Under Swiss law, the public participation during the legislative process is safeguarded by constitutional law. According to Article 147 of the Federal Constitution of the Swiss Confederation of 18 April 1999 (Cst.; SR 101) the cantons, the political parties and interested groups shall be invited to express their views when preparing important legislation or other projects of substantial impact.

At federal level the obligation to ensure the [public's/public's](#) participation during the legislative process is transposed through the Federal Act of 18 March 2005 on the Consultation Procedure (CPA; SR 172.061). According to this act the main aim of the consultation procedure [is](#) to allow all interested groups to participate in the shaping of opinion and the decision-making process of the Confederation (Art. 2 CPA). Pursuant to Article 3 paragraph 1 CPA a consultation is always mandatory when drafting amendments to the Constitution; draft legislation, international law agreements, ordinances and other projects of major political significance, etc.

The Federal Chancellery coordinates the consultation procedures. It gives public notice of any consultation procedure that has been initiated, providing details of the consultation period and the office where the consultation documents may be obtained (Art. 5 para. 3 CPA). A constantly updated list of the planned consultations is also made available on the internet (Art. 5 of the Ordinance of 17 August 2005 on the Consultation Procedure [CPO; SR 172.061.1]).

According to Article 7 CPA the duration of the consultation period is at least three months, which is long enough to allow interested parties to analyze the consultation documents (e.g. consultation draft, explanatory report, etc.) made available to the public. A reduction of the consultation period is only possible in case of exceptional circumstances, e.g. if a legislative project cannot tolerate any delay. In which case the competent authorities have to provide a well-founded justification for the urgency.

Pursuant to Article 4 paragraph 1 CPA everyone is entitled to submit an opinion during the consultation period (Art. 4 para. 1 CPA). According to Article 8 CPA the competent authorities are obliged to acknowledge, consider and evaluate the submitted opinions. They also have to draw up a summarized report thereof. Subsequently, the opinions and the summary of the results of the consultation procedure will be made available to the public (Art. 9 CPA). [Some environmental organizations, however, claim that these reports may not always allow to comprehend the consideration of the submitted opinions.](#)

Similar provisions for the consultation process have also been established at cantonal level.

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**XXV. Obstacles encountered in the implementation of Article 8**

*Describe any **obstacles encountered** in the implementation of Article 8.*

*Answer:*

No information was provided under this heading.

**XXVI. Further information on the practical application of the provisions of Article 8**

*Provide further information on the **practical application of the provisions on public participation in the field covered by Article 8.***

*Answer:*

No information was provided under this heading.

**XXVII. Website addresses relevant to the implementation of Article 8**

*Give relevant website addresses, if available:*

**Information from the federal authorities**

<https://www.admin.ch/gov/fr/accueil/droit-federal/procedures-consultation.html>

## XXVIII. Legislative, regulatory and other measures implementing the provisions on access to justice in Article 9

### List legislative, regulatory and other measures that implement the provisions on access to justice in Article 9.

Explain how each paragraph of Article 9 has been implemented. Describe the transposition of the relevant definitions in Article 2 and the non-discrimination requirement in Article 3, paragraph 9. Also, and in particular, describe:

- (a) With respect to **paragraph 1**, measures taken to ensure that:
  - (i) Any person who considers that his or her request for information under Article 4 has not been dealt with in accordance with the provisions of that Article has access to a review procedure before a court of law or another independent and impartial body established by law;
  - (ii) Where there is provision for such a review by a court of law, such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law;
  - (iii) Final decisions under this paragraph are binding on the public authority holding the information, and that reasons are stated in writing, at least where access to information is refused;
- (b) Measures taken to ensure that, within the framework of national legislation, members of the public concerned meeting the criteria set out in **paragraph 2** have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of Article 6;
- (c) With respect to **paragraph 3**, measures taken to ensure that where they meet the criteria, if any, laid down in national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of national law relating to the environment;
- (d) With respect to **paragraph 4**, measures taken to ensure that:
  - (i) The procedures referred to in paragraphs 1, 2 and 3 provide adequate and effective remedies;
  - (ii) Such procedures otherwise meet the requirements of this paragraph;
- (e) With respect to **paragraph 5**, measures taken to ensure that information is provided to the public on access to administrative and judicial review.

Answer:

#### (c) Article 9 paragraph 1

i) ~~On~~<sup>At</sup> federal level any person whose access to official documents has been limited, deferred or refused or whose application was not decided by the authority within the deadline according to Article 13 paragraph 1 of the Federal Act of 17 December 2004 on Freedom of Information in the Administration (FoIA-; SR 152.3) can file a request for mediation. If the authority should intend granting access contrary to the wishes of a person, who was consulted pursuant to Article 11 FoIA, this person is also entitled to file a request for mediation.

The request for mediation must be filed in writing with the Federal Data Protection and Information Commissioner within 20 days of receipt of the decision from the authority or the

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date of the authority's failure to comply with the deadline (Art. 13 para. 2 FoIA). [There is no obligation to state reasons for the mediation though, as it is considered a mainly informal procedure.](#) Should the mediation succeed, the matter is deemed to have been settled (Art. 13 para. 3 FoIA). If the mediation fails the Federal Data Protection and Information Commissioner has to provide the participants to the mediation proceedings with a written recommendation within 30 days of receipt of the request for mediation (Art. 14 FoIA). According to Article 15 FoIA the applicant or the person consulted pursuant to Article 11 FoIA can within ten days of receipt of the recommendation request a decision pursuant to Article 5 of the Administrative Procedure Act of 20 December 1968 (APA; SR 172.021). The authority has to hand down a decision if it intends to act in contrary of the recommendation. The decision has to be issued within 20 days of receipt of the recommendation or of the request for a decision. Both the mediation proceedings (Art. 13 FoIA) and the proceedings before the first instance (Art. 15 FoIA) are free of charge.

Decisions from a cantonal authority concerning a request for information can also be subject to an appeal. The contested decision will then be reviewed by a cantonal administrative authority. If the party concerned disagrees with the decision of the administrative authority it can appeal to a cantonal court of law. Rulings of cantonal courts of law can be contested before the Federal Supreme Court.

ii) As described in the answer above the Swiss legislation provides a review procedure [beforein front of](#) an independent and impartial body established by law.

iii) Article 15 FoIA provides that, if mediation fails, the applicant or a third party concerned can request a decision pursuant to Article 5 APA. Decisions based on Article 5 APA are binding for the authority as well as for the applicant. According to Article 34 paragraph 1 APA the authority has to notify the parties in writing of its rulings. Similar provisions are provided by cantonal law.

#### **(b) Article 9 paragraph 2**

Article 9 paragraph 2 of the Aarhus Convention grants members of the public concerned in particular circumstances access to a review procedure before a court of law or another impartial body established by the law. The Swiss legislation defines members of the public concerned as that part of the public which is more affected than everyone else (e.g. Art. 48 APA). In addition, Article 55 of the Federal Act of 7 October 1983 on the Protection of the Environment (EPA; SR 814.01) grants environmental protection organisations the right [of to](#) appeal against rulings of the cantonal or federal authorities on the planning, construction or modification of installations for which an environmental impact assessment is required. Based on Article 55f EPA environmental protection organisations are also granted the right to appeal against any authorisation for putting pathogenic organisms into circulation. ~~It~~ is thus ensured that the provisions of Article 9 paragraph 2 of the Convention are met.

#### **(c) Article 9 paragraph 3**

~~On At~~ federal level exists an additional option for environmental protection organisations to challenge acts which contravene provisions of national law relating to the environment. In the field of nature and cultural heritage protection environmental protection organisations are entitled to appeal against rulings of federal or cantonal authorities based on Article 12 Federal Act on the Federal Act of 1 July 1996 on the Protection of Nature and Cultural Heritage (NCHA; SR 451). This right can also be invoked in cantonal procedures.

Furthermore, according to Article 25a APA any person who has an interest that is worthy of protection can request the competent authorities to refrain from or revoke unlawful acts, to rectify the consequences of unlawful acts or to confirm the illegality of such acts. Pursuant



to this article the authorities have to decide by way of a ruling. Similar provisions also exist at cantonal level.

**(d) Article 9 paragraph 4**

i) Article 29a of the Federal Constitution of the Swiss Confederation of 18 April 1999 (Cst., SR 101) gives every person in a legal dispute the right to have their case determined by a judicial authority. All decisions adopted under the procedures referred to in Article 9 paragraphs 1, 2 and 3 of the Convention, such as Article 15 FoIA, etc., can be subject to an appeal. On the federal level the appellate authority is the Federal Administrative Court. This court handles complaints against decisions made by authorities of the federal administration. Its main role is to examine the legality of decisions in matters falling under the authority of the federal administration. The proceedings are subject to the provisions of the APA unless specified otherwise in the Federal Act of 17 June 2005 on the Federal Administrative Court (FACA, SR 173.32). According to Article 49 APA, an appeal may be filed if there has been a violation of federal law including the exceeding or abuse of discretionary powers, if there has been an incorrect or incomplete determination of the legally relevant facts of the case, or if the decision rendered is inadequate. Rulings from cantonal courts can be subject to an appeal before the Federal Supreme Court.

An appeal before the Federal Administrative Court has a suspensive effect (Art. 55 para. 1 APA). This means that the decision from the administrative authority is not legally binding until the court has passed his judgement. This provision corresponds with the requirement for injunctive relief in Article 9 paragraph 4 of the Aarhus Convention.

The ruling of the Federal Administrative Court can be subject to an appeal. The appellate authority is the Federal Supreme Court. This Court is the highest judicial authority in Switzerland. It rules as the final national instance. The Federal Supreme Court ensures that Swiss law is correctly applied in individual cases and that the rights of citizens enshrined in the constitution are protected.

ii) Essential aspects of due process are guaranteed by the Articles 29–32 Cst. According to Article 29 paragraph 1 Cst every person has the right to equal and fair treatment in judicial and administrative proceedings. The general procedural principles which guarantee the implementation of the constitutional rights are laid down in section 2 of APA. Article 10 paragraph 1 APA ensures that persons who are responsible for preparing or issuing a ruling shall recuse themselves from the case, if they have a personal interest in the matter or if they are related to a party either by marriage or registered partnership or by being the cohabitee of that party. They also have to recuse themselves from the case if they are related to a party or if they are their representative, etc. This obligation of recusal grants for guarantees a fair procedure. Furthermore, it is ensured at any stage in the procedure, that a party may, be represented or assisted by legal counsel, unless there is a requirement to act personally (Art. 11 para. 1 APA). According to Article 26 paragraph 1 APA the party or his representative has the right to inspect submissions from parties and the comments made thereon by the authorities as well as any documents serving as evidence and copies of rulings already issued relating to his case.

Article 29 paragraph 1 Cst also prohibits the exercise of excessive formalism. Excessive formalism usually manifests itself in rigorous formal requirements which are not objectively justified. It also occurs when the authorities apply provisions with an excessive strictness or when very strict requirements for the written submissions are demanded.

Article 9 paragraph 4 of the Convention further demands that the remedies are timely. Article 29 paragraph 1 Cst also provides that every person has the right that its case is decided within a reasonable time. This requires that a court of law or a public authority takes action in an adjusted time. Pursuant to Article 46a APA appeals can be filed against a denial of justice or

an unjustified delay. The Federal Supreme Court Act grants the same right in Article 94 of the Federal Act of 17 June 2005 on the Federal Supreme Court (FSCA<sup>71</sup>; SR 173.110).

Article 29 paragraph 2 Cst also enshrines the right to be heard. This procedural right has been implemented in Article 29 APA. According to this article all parties have the right to be heard. This right gives a party the right to state its case, both legally and factually, submit evidence and attend hearings. It also includes the right of representation and legal assistance as well as the right for inspection of the files. In accordance with Article 29 paragraph 2 Cst and Article 29 APA the authority shall hear the parties before issuing a ruling (Art. 30 APA). All rulings must state the grounds on which they are based and contain instructions on legal remedies.

In Article 9 paragraph 4 of the Convention it is further required that remedies are not prohibitively expensive. The proceedings before the Federal Administrative Court are subject to a charge. However according to Article 29 paragraph 3 Cst any person who does not have sufficient means has the right to free legal advice and assistance, unless their case appears to have no prospect of success. The right to free legal representation in court is granted, if it is deemed necessary to safeguard a ~~party's~~<sup>party's</sup> rights. The legal requirements for a party to be entitled to appointment of a legal representative are laid down in Article 65 paragraph 2 APA. In keeping with this constitutional principle, Article 65 paragraph 1 APA also foresees that procedural costs and advanced payments can be waived on a case-per-case basis. The decision on whether to waive procedural costs is generally made at the ~~start~~<sup>beginning</sup> of the proceedings in the form of an interim ruling. Procedural costs may be waived if the following conditions are met: a request for a waiver of procedural costs is submitted, indigence is proven and the case has some prospect of success. A person is considered to be indigent if payment of procedural costs and legal fees prevent a party from being able to cover its basic needs and those of its family. The Federal Administrative Court assesses a ~~person's~~<sup>person's</sup> financial situation and reaches its decision on the basis of information provided in a special form.

According to Article 29 paragraph 1 FACA the Federal Administrative Court informs the public about ~~his~~<sup>its</sup> jurisdiction. It publishes anonymous decisions (Art. 29 para. 2 FACA). The Court regulates principles of the information in a specific regulation (Art. 29 para. 3 FACA). Based on Article 27 FSFA the same applies to the Federal Supreme Court.

On cantonal level ~~exist~~<sup>exist</sup> similar provisions ~~exist~~<sup>exist</sup> which grant effective remedies.

#### **(e) Article 9 paragraph 5**

According to Article 6 of the Information Regulations of 21 February 2008 of the Federal Administrative Court (SR 173.320.4), substantive judgments are published on the Internet. Procedural decisions are only published if they are of general public interest. The Federal Supreme Court also publishes its judgments on the Internet. As describe above there is a constitutional principle according to which any person who does not have sufficient means has the right to free legal advice and assistance unless their case appears to have no prospect of success.

## XXIX. Obstacles encountered in the implementation of Article 9

*Describe any **obstacles encountered** in the implementation of any of the paragraphs of Article 9.*

*Answer:*

According to several environmental protection organisations the implementation of Art. 9 of the Convention seems to work on the national level. They have, however, criticized that there is still room for improvement on the cantonal level.

One of the problems mentioned by the ~~organsations~~organisations are ~~the~~ high fees that the cantonal courts would put on them for certain procedures. In one particular case within the canton of Graubünden, the cantonal court imposed very high procedural costs on the applicant organisation (CHF 26'663 court fees and CHF 27'707.70 legal expenses of the opposing party). The Federal Supreme Court later stated in the same case that costs in this amount were of prohibitive character and could prevent the access to justice (Decision 1C\_526/2015 of 12th October 2016). The cantonal court had thus to lower the costs in its follow-up decision.

Another problem that was put forward ~~was~~is the fact, that some cantonal decisions or even cantonal rules declare that a legal complaint has no suspensive effect. This means that the disputed project can be realized before a legal examination has taken place. For example, there were some cases, where wolves were shot, before it had even be examined, whether the instruction to kill was legally allowed.

Other problems that were stressed also include [short time limits for participating in a procedure](#), incomplete weighting of the respective interests, denied access to cantonal ~~court~~courts, and incomplete publication of [projects or](#) cantonal decisions, which do not always ~~really~~[explicitly](#) mention all the regulations likely be hurt.

[Furthermore, some cantons seem to charge fees for the access to their official journals that publish upcoming projects, cantonal decisions and legislative projects.](#)

## XXX. Further information on the practical application of the provisions of Article 9

*Provide further information on the **practical application of the provisions on access to justice pursuant to Article 9**, e.g., are there any statistics available on environmental justice and are there any assistance mechanisms to remove or reduce financial and other barriers to access to justice?*

*Answer:*

On 17 April 2015 the Federal Supreme Court of Switzerland has ruled, in an appeal against a cantonal decision of shooting protected birds in order to regulate their population, that a decision by public authorities which has an impact on nature protection concerns ~~can~~ ~~not~~cannot be taken in the form of simple internal instructions, but has to be issued as a formal ruling. Additionally, the qualification of such a decision as a formal ruling ~~can~~ ~~not~~cannot depend on a quantity criterion (i.e. when the intended measure affects less than 10% of the local animal population). (BGE ~~2C\_1176/2013~~; <http://www.bger.ch/index/jurisdiction/jurisdiction-inherit-template/jurisdiction-recht/jurisdiction-recht-urteile2000.htm>; BGE 141 II 233, [http://relevancy.bger.ch/php/clir/http/index.php?highlight\\_docid=atf%3A%2F%2F141-II-233%3Ade&lang=de&type=show\\_document](http://relevancy.bger.ch/php/clir/http/index.php?highlight_docid=atf%3A%2F%2F141-II-233%3Ade&lang=de&type=show_document)).

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On 12 February 2018 the Federal Supreme Court of Switzerland confirmed its jurisdiction in an appeal against a federal decision of restricting access to information and admittance to a procedure. In 2015, an organisation demanded access to information as well as admittance as a party in the ongoing revision procedures of authorizations for certain pesticides from the Federal Office for Agriculture (FOAG). The FOAG denied both. The Federal Supreme Court stated that certain organisations must be generally admitted to such procedures and therefore also be given all relevant information (BGer IC 312/2017, [http://relevancy.bger.ch/php/clir/http/index.php?highlight\\_docid=atf%3A%2F%2F144-II-218%3Ade&lang=de&type=show\\_document](http://relevancy.bger.ch/php/clir/http/index.php?highlight_docid=atf%3A%2F%2F144-II-218%3Ade&lang=de&type=show_document)).

**Annual statistics of legal actions instituted by environmental protection organisations (2005-20152019)**

<https://www.bafu.admin.ch/bafu/fr/home/themes/droit/info-specialistes/droit-de-recours-des-organisations/statistiques-et-evaluation-du-droit-de-recours-des-organisations.html>

## XXXI. Website addresses relevant to the implementation of Article 9

*Give relevant website addresses, if available:*

**Information from the federal authorities**

Federal Data Protection and Information Commissioner:

<https://www.edoeb.admin.ch/oeffentlichkeitsprinzip/00899/index.html?lang=fr>

<https://www.edoeb.admin.ch/edoeb/de/home/oeffentlichkeitsprinzip/aarhus.html>

Federal Office for the Environment:

<https://www.bafu.admin.ch/bafu/fr/home/themes/droit/info-specialistes/droit-de-recours-des-organisations.html>

<https://www.bafu.admin.ch/bafu/fr/home/themes/droit/info-specialistes/droit-de-recours-des-organisations/bases-legales-et-liste-des-organisations.html>

<https://www.bafu.admin.ch/bafu/fr/home/themes/droit/info-specialistes/droit-de-recours-des-organisations/statistiques-et-evaluation-du-droit-de-recours-des-organisations.html>

Swiss Federal Administrative Court:

<http://www.bvger.ch/index.html?lang=en>

Swiss Federal Court:

<http://www.bger.ch/fr/index.htm>

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Articles 10-22 are not for national implementation.

## XXXII. General comments on the Convention's objective

*If appropriate, indicate how the implementation of the Convention contributes 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.*

*Answer:*

Since Switzerland ~~became~~<sup>has become</sup> a party to the Aarhus Convention, the Convention has ~~shown~~<sup>been showing</sup> a positive influence in raising environmental awareness among all members of society. The right on access to information and the participation of the public in environmental decision-making are viewed as key for successful environmental protection in a modern society. Only a well informed public can actively participate in environmental policies and make sure that the environmental standards will be upheld by the authorities. The involvement of all relevant stakeholders in the process of environmental decision-making, also leads to better solutions for environmental problems, because they are more likely to be respected.

Furthermore, it has to be noted that the Convention also had a very positive effect in strengthening governmental accountability, transparency and responsiveness.

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### XXXIII. Legislative, regulatory and other measures implementing the provisions on genetically modified organisms pursuant to Article 6 bis and Annex I bis

Concerning legislative, regulatory and other measures that implement the provisions on public participation in decisions on the deliberate release into the environment and placing on the market of genetically modified organisms in Article 6 bis, describe:

- (a) With respect to **paragraph 1 of Article 6 bis** and:
  - (i) **Paragraph 1** of annex I bis, arrangements in the Party's regulatory framework to ensure effective information and public participation for decisions subject to the provisions of Article 6 bis;
  - (ii) **Paragraph 2** of annex I bis, any exceptions provided for in the Party's regulatory framework to the public participation procedure laid down in annex I bis and the criteria for any such exception;
  - (iii) **Paragraph 3** of annex I bis, measures taken to make available to the public in an adequate, timely and effective manner a summary of the notification introduced to obtain an authorization for the deliberate release or placing on the market of such genetically modified organisms, as well as the assessment report where available;
  - (iv) **Paragraph 4** of annex I bis, measures taken to ensure that in no case the information listed in that paragraph is considered as confidential;
  - (v) **Paragraph 5** of annex I bis, measures taken to ensure the transparency of decision-making procedures and to provide access to the relevant procedural information to the public including, for example:
    - a. The nature of possible decisions;
    - b. The public authority responsible for making the decision;
    - c. Public participation arrangements laid down pursuant to paragraph 1 of annex I bis;
    - d. An indication of the public authority from which relevant information can be obtained;
    - e. An indication of the public authority to which comments can be submitted and of the time schedule for the transmittal of comments;
- (vi) **Paragraph 6** of annex I bis, measures taken to ensure that the arrangements introduced to implement paragraph 1 of annex I bis allow the public to submit, in any appropriate manner, any comments, information, analyses or opinions that it considers relevant to the proposed deliberate release or placing on the market;
- (vii) **Paragraph 7** of annex I bis, measures taken to ensure that due account is taken of the outcome of public participation procedures organized pursuant to paragraph 1 of annex I bis;
- (viii) **Paragraph 8** of annex I bis, measures taken to ensure that the texts of decisions subject to the provisions on annex I bis taken by a public authority are made publicly available along with the reasons and the considerations upon which they are based;

- (b) With respect to **paragraph 2 of Article 6 bis**, how the requirements made in accordance with the provisions of annex I bis are complementary to and mutually supportive of the Party's national biosafety framework and consistent with the objectives of the Cartagena Protocol on Biosafety to the Convention on Biodiversity.

*Answer:*

In Switzerland, the agricultural cultivation of genetically modified organisms (GMOs) remains prohibited due to a parliamentary decision in 2012.

Experimental releases of GMOs are possible but require a federal licence. The Federal Office for the Environment (FOEN) is responsible for issuing licences to release GMOs for experimental purposes. The legal requirements for this procedure are regulated in the Ordinance of 10 September 2008 on the Handling of Organisms in the Environment (RO-; SR 814.911). This [Ordinance](#) ensures that the general public is appropriately informed about applications for experimental releases and that it can participate accordingly in the decision-making process.

It should be noted, however, that the provisions on genetically modified organisms pursuant to Article 6 bis and [Annex I bis](#) of the Convention have not yet entered into force.

#### **XXXIV. Obstacles encountered in the implementation of Article 6 bis and annex I bis**

*Describe any **obstacles encountered** in the implementation of any of the paragraphs of Article 6 bis and annex I bis.*

*Answer:*

No information was provided under this heading.

#### **XXXV. Further information on the practical application of the provisions of Article 6 bis and annex I bis**

*Provide further information on the **practical application of the provisions on public participation in decisions on the deliberate release into the environment and placing on the market of genetically modified organisms in Article 6 bis**, e.g., are there any statistics or other information available on public participation in such decisions or on decisions considered under paragraph 2 of annex I bis to be exceptions to the public participation procedures in that annex?*

*Answer:*

No information was provided under this heading.

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## XXXVI. Website addresses relevant to the implementation of Article 6 bis

*Give relevant website addresses, if available, including website addresses for registers of decisions and releases related to genetically modified organisms:*

*Answer:*

### **Information from the federal authorities**

Federal Office for the Environment:

<https://www.bafu.admin.ch/bafu/en/home/topics/biotechnology/info-specialists/experimental-releases/experimental-releases-of-genetically-modified-organisms-gmos-.html>

## XXXVII. Follow-up on issues of compliance

*If, upon consideration of a report and any recommendations of the Compliance Committee, the Meeting of the Parties at its last session has decided upon measures concerning compliance by your country, please indicate (a) what were the measures; and (b) what specific actions your country has undertaken to implement the measures in order to achieve compliance with the Convention.*

*Please include cross-references to the respective sections, as appropriate.*

*Answer:*

No information was provided under this heading.