

IMPLEMENTATION REPORT AARHUS CONVENTION
2021

CERTIFICATION SHEET

The following report is submitted on behalf of the Netherlands in accordance with decision I/8

Name of officer responsible
for submitting the national report : Ms. Judith Elsinghorst,
Director Environmental Safety and
Environmental Risks

Signature :



Date : September 2025

IMPLEMENTATION REPORT

Please provide the following details on the origin of this report

Party : The Netherlands

National Focal Point: Ms. Nicoletta Bouman, sr. Policy Advisor
Name and title of reporting officer: Ms. Nicolette Bouman, sr. Policy Advisor

Full name of the institution: Ministry of Infrastructure and Water
Management

Postal address: Ministry of Infrastructure and Water Management
Directorate-General for the Environment and International
Affairs
P.O. Box 20901
2500 EX The Hague
The Netherlands

Telephone : +31 70 456 8273

E-mail : nicolette.bouman@minienw.nl

1. Provide brief information on the process by which this report has been prepared, including information on which types of public authorities were consulted or contributed to its preparation, on how the public was consulted and how the outcome of the public consultation was considered and on the material, which was used as a basis for preparing the report.

The Aarhus Convention is implemented in Dutch legislation by the following acts:

- Act on the approval of The Aarhus Convention for the kingdom of The Netherlands (*Wet betreffende de goedkeuring van het Verdrag van Aarhus voor het Koninkrijk der Nederlanden*, Stb. 2004, 518);
- Act on the implementation of The Aarhus Convention (*Wet houdende tenuitvoerlegging van het Verdrag van Aarhus*, Stb. 2004, 519).

The first act, which is a prerequisite for the ratification of the Convention in Dutch law, entered into force on 29 December 2004 and was deposited at the same date. This implies that since 29 March 2005 the Netherlands has become a Party in accordance with article 20 of the Convention.

The second act, holding the material for adaptation of Dutch legislation to the Convention, entered into force on 14 February 2005.

The answers in the first national implementation report (2007) are derived from the transposition table mentioned in the explanatory memorandum of the Act on the Implementation of the Aarhus Convention. The Convention has mainly led to adaptation of Dutch legislation concerning the first pillar on access to environmental information. The second pillar has led to the introduction of public participation in developing various environmental plans and programmes. The third pillar, on access to justice has not led to adaptation of Dutch legislation.

The draft for the fifth update of the national implementation report covers the period from 1 September 2017 till 31 December 2020... A draft version of the report in Dutch has been deposited for public consultation through the website www.internetconsultatie.nl for a period of 4 weeks from 27 August till 24 September 2021. At the same time, a number of civil society organizations has been invited expressly to comment on the draft. Besides, other public authorities were given the opportunity to comment on the draft report through the public consultation. A total of 8 responses were received from environmental organizations (Greenpeace-WISE-Nuclear Transparency Watch, LAKA, Mobilization for the Environment), a professional organization (*Nederlandse Orde van Advocaten* [Netherlands Bar Association]), an association of water companies (Vewin) and private parties; all responses are available to the public.

The main points of the responses are that a number of important obstacles are not mentioned or misrepresented in the report and that there is room for improvement in the presentation. The report was revised in response to the comments, this pertains in part to developments that took place after the reporting period.

The Meeting of the Parties (MoP) of October 2021, adopted a decision on compliance by the Netherlands with the Convention regarding compliance cases C104 and C124 (Decision VII/8m). An action plan was prepared for the steps to be taken regarding the implementation of this decision, and this was sent to the Compliance Committee before 1 July 2022.

2. 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 a direct effect upon its entry into force, or whether financial constraints are a significant obstacle to implementation (optional).

The Aarhus Convention has been ratified for the European part of the Kingdom of the Netherlands. The Netherlands Antilles and Aruba with the approval of the Convention have specified not to opt for validity of the Convention. The Aarhus Convention neither applies to the countries within the Kingdom, Curaçao and Sint Maarten or to three islands of the former Netherlands Antilles in the Caribbean Sea with the status of special municipality (Bonaire, Sint Eustatius and Saba: the BES islands).

In recent years, work has been done on an overall system change for the legislation in the field of physical environment. To this end, the Environment and Planning Act has been adopted and underlying regulations have been established. Much of the existing regulations in the area of the physical living environment will be included in the new system. Because the new system entered into force after the reporting period (the effective date is 1 January 2024), it will not be covered in terms of content in this report, but it will be included in the reporting cycle for the period 2021-2025.

Furthermore, steps are being taken to initiate changes in the Nuclear Energy Act and underlying regulations in response to the recommendations of the Compliance Committee regarding ACCC/2014/104 (regarding input in the long-term operation of the Borssele nuclear power station). It concerns an amendment to article 17, section 4 of the Nuclear Energy Act and an amendment to the Nuclear Installations, Fissionable Materials and Ores Decree. The amendments to the Nuclear Energy Act took effect on 16 February 2022.

We are working on legislation in response to the judgment of the EU Court of 14 January 2021 in case C-826/18, *Varkens in Nood* [Pigs in Distress]. This judgment concerns input and access to justice, and it clearly forbids imposing a condition on the public that an opinion must be admitted before an appeal is admissible. The EU Court found that Dutch administrative procedural law regarding the opinion trap based on article 6:13 of the General Administrative Law Act is not in accordance with the Aarhus Convention. The rulings of several administrative judges anticipated the outcome of requests for a preliminary ruling in the *Varkens in Nood* case. In its decisions of 14 April 2021 (ABRvS 14 April 2021, ECLI:NL:RVS:2021:786) and 4 May 2021 (ABRvS 4 May 2021, ECLI:NL:RVS:2021:953) in response to the *Varkens in Nood* judgment, the Administrative Jurisdiction Division of the Council of State guaranteed access to justice. In the meantime, a legislative proposal for reparations was prepared and published for internet consultation on 2 April 2022. The proposal is expected to be taken into consideration soon (2025). The proposal provides for amendments to the General Administrative Law Act and a few specific environmental laws in order to bring these in line with articles 9(2) and 9(3) of the Aarhus Convention.

ARTICLE 3

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

(a) Measures to ensure that officials and authorities provide and assist the required guidance is explicitly incorporated in article 3(4) of the Government Information (Public Access) Act (Dutch: *Wet openbaarheid van bestuur (Wob)*) in conjunction with article 3, paragraph 45 and article 6, paragraph 23 of the General Administrative Law Act (GALA) (*de Algemene wet bestuursrecht*). If someone can not find an answer to a question, he can contact the National Government Information Office, www.rijksoverheid.nl/. This can be done by telephone, E-mail or by using Twitter, Facebook or WhatsApp.

Article 3 (4) of the *Wob* imposes an obligation to assist an applicant for (environmental) information in further specifying the request, for example if it is not clear what the applicant wants. A request therefore cannot be rejected because it is too broad or unclear. The judge assesses in the individual case whether the governmental body has made sufficient efforts to that end.

(b) Measures to promote environmental education have not explicitly been translated into legislation. In 2008 a policy document “Kiezen, leren en meedoen 2008-2011” was laid down concerning environmental education. This policy document was drafted under responsibility of the previous ministries of Housing, Spatial Planning and the Environment (VROM)¹, Agriculture (LNV) and Education (OCW). The implementation is being coordinated by an environmental education program-bureau.

In 2004 a cooperative venture by six ministries, the association of provincial authorities and the association of water boards started the Learning for Sustainable Development Programme (LfSD). The core of all activities carried out through this programme is 'social learning': a process in which different groups, with different interests are brought together to explore values and knowledge to learn in a cooperative process for new – more sustainable- solutions.

(c) Due to the broad definition of “public concerned”, as mentioned in the General Administrative Law Act (GALA), NGOs are included in this term and have broad access to participation in decision-making and to justice.

(d) Measures to promote citizens to realise their sustainable ideas and create social cohesion in the Dutch civil society.

(e) Concerning the promotion of Aarhus principles in international forums, the issues of transparency, access to information and public participation are covered by the co-ordination mechanism for the Netherlands instructions in international environmental agreements. Stakeholder meetings are also regularly organized (e.g. for UNEA and UNFCCC). The draft guidelines on the promotion of the Aarhus Convention in other international forums are considered with the aim of strengthening the input and instructions in this field.

¹ The former Ministry of Housing was the Dutch Ministry on Housing, Spatial Planning and the Environment. Since October 14, 2010, the parts of space and environment have merged with the former Ministry of Transport, Public Works and Water Management into the new Ministry of Infrastructure and the Environment, and subsequently the Ministry of Infrastructure and Water Management; issues like spatial planning have been assigned to the Ministry of the Interior and Kingdom Relations, and the climate issue has been assigned to the Ministry of Economic Affairs and Climate Policy-

According to one comment, the Council of State concluded in its decision of 15 April 2020 that the Netherlands had failed to meet its obligations under Art. 3(7) of the Convention in its interactions with the IAEA (ECLI:NL:RVS:2020:1071, Decision 201903851/1/A3).

Ministry of Infrastructure and Water Management response: The Council of State decision was not related to article 3(7). The Council of State assessed the grounds of refusal on the basis of the Information (Public Access) Act (Dutch Wob) and concluded that ANVS should have handled it differently.

(f) The exercise of the rights under the Convention is adequately guaranteed by laws such as the Environmental Management Act (Dutch: *Wet milieubeheer*), the Government Information (Public Access) Act and the General Administrative Law Act. This includes provisions on the active and passive disclosure of environmental information, public participation and access to (administrative) justice. Moreover, Article 1 of the Dutch Constitution contains an injunction on discrimination.

Since 2013 a program is in place, named “*Duurzaam Door*” (transl.: “Go on sustainably”). The focus of this program is social innovation for the green economy. Environmental Education is one of the instruments in place to implement and run the “*Duurzaam Door*” program.

The programme Learning for Sustainable Development (LfSD) is also extended into 2012, and from 2013 on the new programme “*Duurzaam Door*” builds on the results of LfSD. “*Duurzaam Door*” combines EE and ESD implementation in the Netherlands, both in formal as well as in informal education.

Since 1 July 2016, the Act House for Whistleblowers offers additional guarantees for the protection of whistleblowers, including in the field of the environment.

One response state that in order to comply with the Convention, the Netherlands must include changes and expansions of nuclear power stations in section C 22.3 and revise C 22.4 – C 23 of the Decree.

Ministry of Infrastructure and Water Management response: the Aarhus Convention does not require an environmental impact assessment. The respondent assumes that any construction, change or expansion of thermal power stations and other combustion installations and wind turbine farms are subject to part C of the annex to the Environmental Impact Assessment Decree. However, this is not correct: Section C (= direct environmental impact assessment requirement) covers cases in which the activity involves a facility with a capacity of 300 megawatts (thermal) or more, and/or cases where the activity involves 20 or more wind turbines.

The activities in section D (= environmental impact assessment requirement) fall *below* this threshold. The 300 megawatts threshold is based directly on the EIA Directive, while the EIA Directive does not have a direct EIA requirement at all for wind farms (although the Netherlands does have one for > 20 or more wind turbines).

With regard to nuclear power stations, it also follows from the Objective judgment that an assessment from the competent authority is always required; if the scope

of the risks associated with the environmental impact of the change is comparable to the risks associated with the original deployment of these power stations, there is an EIA requirement under the EIA Directive (Annex I, section 24); there is an EIA requirement in other cases as well (Annex II, section 13a; an EIA is required if significant negative effects may occur).

In the Netherlands, an EIA is always done in the event of any (physical) change to a nuclear power station (cat. D22.3), and an EIA must be done if significant effects cannot be ruled out.

In other words, if an EIA is done, this means there may be a significant impact, and input is required based on the Convention (Annex I, section 1 and/or 22), for which has been provided.

4. Describe any obstacles encountered in the implementation of any of the paragraphs of article 3 listed above.

The national EE-program 2008-2012 resulted in the startup of a platform, the Green Coalition, where stakeholders such as EE organizations and representatives of national and local governments work together to promote and strengthen Environmental Education. This platform is facilitated by the program “*Duurzaam Door*.” Due to budget cuts, both in the National as well as in the Local Governments, Environmental Centers need (and are in the process of) developing new business models and new strategies, and they are already working on it.

5. Provide further information on the practical application of the general provisions of the Convention.

Early 2012 the portal *Atlas Leefomgeving* (Eng. transl.: Environmental Atlas) has been launched (www.atlasleefomgeving.nl). Via this website a lot of environmental information is accessible through digital maps. In response to an input comment, research has been done on diverse ways to present more information about nuclear installations, including foreign ones, in the Atlas. A chart has been included which also shows the preparation zones of foreign nuclear power stations that affect the Netherlands.

The Environmental Atlas is an information system which has been developed as a portal site, a website which offers access to other websites, information sources and services on the internet. Use has been made of open source technology, open exchange standards and web services, to ensure an optimal exchange of maps and information with other organizations, information systems and registrations within the environmental domain. The maps offered and the related information remain under the management of the supplier (data at source). Furthermore, the Environmental Atlas offers possibilities to reuse the information offered in other websites. The Environmental Atlas is established under the responsibility of the Ministry of Infrastructure and Water Management (Dutch: *I & W*), the Association of Provincial Authorities (*Interprovinciaal overleg (IPO)*) and the Association of Dutch Municipalities (*Vereniging van Nederlandse Gemeenten (VNG)*) in collaboration with provinces and municipalities. The Ministry of Infrastructure and Water Management has a lot of data and pays a lot of attention to open data: data that are presented in an orderly manner for reuse. Meanwhile, hundreds of datasets have been

published as open data. An example is the website of the National Georegister (<http://www.nationaalgeoregister.nl>).

The Ministry of Infrastructure and Water Management has a Department on Participation. The Participation Department advises and assists the policy departments of the Ministry of Infrastructure and Water Management in involving citizens, businesses, civic organizations and other authorities. This may be done from policy agenda setting up to and including the implementation and implementation of policy and decisions. The department has the task of helping build bridges between people, organizations, and worlds of life and to promote learning in the field of participation. The department works to get participation in the heart of the ministry and society, to strengthen policy, decision-making and implementation. The Department is developing an interdepartmental network which meets several times a year (see <https://www.kennisknooppuntparticipatie.nl/netwerk/idwp/default.aspx>).

The Ministry can make use of the Physical Living Environment Consultative Body (*Overlegorgaan Fysieke Leefomgeving (OFL)*), a law-based, independent platform which promotes connection and cooperation between the central government and the public, businesses and other civic organizations by creating new cooperation and administration models and applying these to national challenges involving the physical living environment.

Parties meet in a confidential setting. The discussions are led by an impartial chair with extensive administrative experience and knowledge of societal relationships. There is a focus on making connections and truly listening to one another. This helps participants to understand other people's perspectives and to develop an approach that rises above individual and organizational interests. More information is available at www.overlegorgaanfysiekeleefomgeving.nl.

The Participation Department also manages the Platform Participation (www.platformparticipatie.nl). This platform aims to clarify in which projects citizens, companies and social organizations can participate in opinion procedures and internet consultations.

Guiding public participation procedures is therefore also one of the core tasks of the Participation department. The Participation Department supports policy makers and project managers of the Ministry of Infrastructure and Water Management in the careful implementation of the opinion procedures. In recent years it has invested in making the legal review procedure more public-friendly. To this end, a public survey was done and various communication channels and the website www.platformparticipatie.nl were improved in terms of language, explanation and layout.

The Participation Department also facilitates the internet consultation on behalf of the Ministry of Infrastructure and Water Management and presents drafts of new laws or regulations (among other things) for consultation. In addition, policy plans are increasingly submitted for consultation at an earlier stage. The public, businesses and civic organizations can visit the website to find out about legislative proposals/policy plans and communicate their thoughts. Anyone can submit a reaction by filling out the response form or uploading a file. The government collects responses and comments to make better use of the knowledge that is available in our society. The goal is to improve the transparency of the legislative process and to

contribute to the quality, feasibility, and enforceability of our laws. At the end of the internet consultation, a summary of the responses will be published as soon as possible (preferably within a month), and the legislative proposal will be revised as needed. The response of the Ministry will also be included in the internet consultation at a later point. More information is available at www.internetconsultatie.nl.

In 2019, the Participation Department also took the initiative to create a Participation Knowledge Hub (*Kennisknooppunt Participatie*). There is an increasing demand on the part of practical users and researchers for information and knowledge about the development, implementation, facilitation and evaluation of participation processes. Much of the current knowledge is fragmented, dated and not fully accessible. This often means that this knowledge is not (re)used and that there is no effective, efficient way to develop this knowledge. The purpose of the Knowledge Hub is to create close connections and communication between participation professionals and researchers through guidelines, quick studies, research, a document database and online activities such as webinars and talk shows to promote the (continued) development of the field of participation.

6. Give relevant web site addresses, if available:

www.overheid.nl (site with information and services from all government departments, about legislation and regulations, policy, publication of permits, relevant addresses and websites of other administrative bodies; contains all national legislation)

www.infomil.nl (site of the knowledge center on environment and environmental regulations, contains explanation of environmental regulations)

www.rijksoverheid.nl (site contains information from the government including parliamentary documents)

www.wetten.nl (site contains the Dutch legislation)

Other publicly accessible websites with environmental information:

www.dcmr.nl (site DCMR Environmental Protection Agency)

www.VNG.nl (site of the Association of Dutch Municipalities)

www.platformparticipatie.nl

<https://www.kennisknooppuntparticipatie.nl/netwerk/idwp>

www.overlegienm.nl (site of the knowledge center on environment and environmental regulations)

www.iplo.nl (site of living environment information hub)

www.atlasleefomgeving.nl (site contains maps with environmental information and information about public health).

www.risicokaart.nl (site provides insight into the risks at a specific location, e.g. in the event of a plane crash or flooding, via postal code or location, also contains advice on how to deal with the risks).

www.rivm.nl (site of the National Institute for Public Health and the Environment, this institute promotes public health and a clean and safe environment)

www.knmi.nl (site of the Royal Netherlands Meteorology Institute [*Koninklijk Nederlands Meteorologisch Instituut*])

ARTICLE 4

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

(a) The procedural requirements regarding access to information are contained in the Government Information (Public Access) Act. Provisions stating that any person has access to information without having to state an interest, that copies of the requested information be supplied and that the information be supplied in the requested form, are found in articles 2, 3 and 7. Besides the aforementioned act, the Archive Act 1995 contains similar provisions for information in the National Archives.

b) Article 6 of the Government Information (Public Access) Act states that a decision on a request for disclosure of environmental information must be taken within two weeks, if the administrative body intends to provide the information, and it is expected that an interested party objects to this. If no objection is expected or the information is refused, the decision period is in principle four weeks. The decision may be postponed by four weeks if the extent or the complexity of the environmental information justifies a delay.

(c) Article 3 (5) of the Government Information (Public Access) Act provides that a request shall be granted with due observance of Articles 10 and 11 of this Act. These articles contain grounds for refusing to provide information due to a number of interests that carry more weight, such as the protection of international relations. According to established case law and in accordance with the Convention, these grounds must be applied restrictively. The general rule is therefore that environmental information is public.

The Archive Act 1995 contains similar provisions: article 14 states the principle that anyone is entitled to access documents which are held in archives; article 15a of the Archive Act 1995 specifies the exceptions that may apply when requests relate to environmental information.

(d) Where a public authority does not hold the information requested, article 2, paragraph 3 of the General Administrative Law Act and article 4 of the Government Information (Public Access) Act require the public authority to inform the applicant of the public authority to which it believes it is possible to apply for the information requested. Furthermore, article 4 of the Government Information (Public Access) Act requires the public authority to transfer a written request to that authority and inform the applicant accordingly.

(e) Article 3, paragraph 46 of the General Act on Administrative Law prescribes that all decisions taken by a public authority are adequately motivated; these are in written form (Article 1, paragraph 3, sub 1, General Administrative Law Act).

f) The requirements concerning charging fees for issuing copies, extracts and summaries are implemented by a decision based on article 12 of the Government Information (Public Access) Act (*Besluit tarieven openbaarheid van bestuur*). Besides this general framework, article 3, paragraph 11, sub (3), of the General Act on Administrative Law contains specific provisions on charges for the release of information in relation to public participation in specific decision-making. This option is seldom used in practice.

(g) Most national requests for (environmental) information including the actual released documents are also published on internet (www.rijksoverheid.nl).

(h) The Second Chamber of Parliament has submitted the Open Government Act (Act on rules on the accessibility of information of public interest); The Proposal took effect on 1 May 2022. This initiative act aims to make governments and semi-governments more transparent to better serve the interest of access of public information for the democratic rule of law, citizens, government and economic development. The Government Information (Public Access) Act was revoked on 1 May 2022.

To achieve these goals, the new law embeds access to public information as citizens' rights. In addition, active publicity is strengthened by making it obligatory to disclose certain categories of information on its own initiative. This pertains to issues such as the mandatory active disclosure of emission information. All procedural provisions pursuant to the Aarhus Convention with regard to the processing of information requests are also included in this law, as are the grounds for refusal.

8. Describe any obstacles encountered in the implementation of any of the paragraphs of article 4.

The main obstacle at the time was the implementation of the Aarhus requirements concerning *environmental* information in the existing Government Information (Public Access) Act on access to information *in general*. More specifically, the grounds for refusing access to environmental information had to be integrated in a general publication law, resulting in a specific regime. Procedural safeguards have been implemented in a general way and are thus applicable to all requests for information. The definition of environmental information is laid down in the Environmental Management Act, and the definition of document in article 1(a) of the Government Information (Public Access) Act has been declared to apply *mutatis mutandis* in the Environmental Management Act (article 19.1a, section 2 of this Act). This Act includes a separate chapter with specific provisions and technical details for the publication of specific environmental decisions, such as environmental permits (Chapter 19 of the Environmental Management Act).

The publication of environmental information is also laid down in special laws that govern requirements for specific information (such as information about air quality, water quality, noise, etc.) These requirements are all included in the Environment and Planning Act, which took effect at the start of 2024. The Act provides for a detailed information provision system about the physical environment to the public and other parties.

The evaluation in 2009 showed that the implementation of the Aarhus Convention brought an increase in the complexity of the Dutch legislation concerning freedom of information. This is partly caused by (subtle) differences in terminology and definitions for environmental information and other information. These differences are (partly) caused by differences in terminology and definitions in European legislation.

The velocity with which environmental information needs to be given in principle is 2 respectively 4 weeks. This term can be only extended with 4 weeks according to Dutch

legislation (Government Information (Public Access) Act (Dutch: *Wet openbaarheid van bestuur*))

if the requested environmental information is extensive or complex. This period is not always met in case of extensive requests.

The Open Government Act (Dutch *Woo*) establishes an Advisory Board on Publication and Information Management (article 7.1 of the *Woo*). There is also an Action Plan “Open op Orde [Open and Orderly]” to improve the government’s management of information (2022).

According to one comment, the term “public authority” from the Aarhus Convention has not been fully implemented in national regulations, as a result of which requests for environmental information submitted to certain public authorities – in particular state participations - based on article 4 do not fall under the Government Information (Public Access) Act (Dutch *Wob*) and the requested environmental information is not provided in certain cases, and plans, programs and policies of certain public authorities with regard to the environment are not opened up for input in conformity with article 7.

Ministry of Infrastructure and Water Management response: the *Wob* and the *Woo*, which took effect on 1 May 2022, are in accordance with the Convention. Article 3, section 1 of the *Wob* and article 4.1, section 1 of the *Woo* state that a request for information may be submitted to an administrative authority or a body, department or company acting under the responsibility of an administrative authority. See the decision of the Court of Amsterdam of 8 April 2021, in which the Court found that the *Wob* is in conformity with Aarhus (([ECLI:NL:RBAMS:2021:1979](https://ecli.nl:RBAMS:2021:1979), [Court of Amsterdam, AWB - 19 4138 \(rechtspraak.nl\)](https://rechtspraak.nl)). See the considerations, in particular in section 2.5.

One respondent asks about case C124. The Netherlands submitted a plan of action to the ACCC before 1 July 2022.

9. Provide further information on the practical application of the provisions on access to information, e.g. are there any statistics available on the number of requests made, the number of refusals and their reasons?

Guidelines on how to handle access to environmental information are available on www.infomil.nl. See also <https://iplo.nl>.

The regime of the Government Information (Public Access) Act was evaluated in January 2004 and the impact of this Act has been assessed several times. The legislative proposal Open Government Act (on regulations for the accessibility of information of public interest) will improve access to information and includes various tools to this effect.

In the Netherlands internet increasingly is used for communication. In 2020, 95.6% of the population of 12 years and older had access to internet (source CBS (statline): <https://opendata.cbs.nl/statline> 2020). Many authorities and organisations publish (environmental) information on internet. One of the current challenges is to secure that users can find requested information easily and quickly within the vast quantity of information available on internet. Another challenge is to develop software to process (environmental) data into useful information. At present much effort is put into geographically based retrieving software. These projects are generally developed

privately. In some cases projects are subsidised. An example of this is the app "my air quality" ("*mijn luchtkwaiteit*") of the Long Fund and the RIVM about air quality and a personal smog alert. The introduction of the Environment and Planning Act will improve the digital availability of environmental information, as it will no longer be scattered across various regulations but will be consolidated in one statutory framework for environmental information. This follows from Chapter 20 of the Environment and Planning Act.

Access to environmental information has been increased as a result of a new court ruling, in which the administrative judge, following decisions of the European Court of Justice, provided more specific guidance on key terms in the Convention, such as the broad scope of the term environmental information and emission information.

One response points to a ruling of the ABRRvS, from which it follows that Directive 2003/4/EC regarding public access to environmental information has not been implemented fully in Dutch laws. It concerns the required restrictive interpretation of the grounds in article 4, section 4 for not providing environmental information and the requirement to publish certain things, in a different format if necessary.⁴ The respondent comments that this is not included in the Open Government Act.

One comment states that the failure to meet the deadlines is the rule and not the exception, even in cases where the questions are very minor in scope, and that the grounds for refusal in the context of the Government Information (Public Access) Act are applied incorrectly by the public authority. Legal protection against the government does not prevent situations where publication can be stalled for years by the refusal to grant access to documents.

10. Give relevant web site addresses, if available:

www.overheid.nl

www.rijksoverheid.nl

www.infomil.nl

<https://www.rijksoverheid.nl/onderwerpen/wet-openbaarheid-van-bestuur-wob>.

www.atlasleefomgeving.nl/home

www.emissieregistratie.nl

ARTICLE 5

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

(a) First of all, the General Administrative Law Act contains general provisions on collection and active dissemination of information in the framework of the preparation of

decisions. Article 3, paragraph 2, requires that in the framework of careful preparation of decisions government bodies acquire all relevant information prior to decision-making. Article 3, paragraph 46 requires that all government decisions be motivated. Section 3:47 then prescribes that the reasons must be stated when the decision is published. This results in an obligation to collect and assess (environmental) information in cases where such information is relevant for the decision concerned.

Besides these general requirements, chapter 4 of the Environmental Management Act contains the following, specific provisions on collection and dissemination of environmental information.

Article 4, paragraph 2 stipulates that once every four years a scientific report be drawn up at national level describing developments in environmental quality over a period of no less than 10 years. The description shall in any event be based on the most likely trends in the relevant conditions. This report shall also contain projections, which could reasonably be assumed to take place in the period covered by the report. The same article also prescribes the drawing up of an annual scientific report, describing developments in environmental quality resulting from the implementation of policy measures in the previous year. The report shall in any event indicate the extent to which the policy measures helped to achieve the results envisaged for a given year by the current national policy plan. The report shall also indicate how developments in environmental quality described therein relate to those mentioned in earlier reports.

With effect from 2017, the 1998 Nature Conservation Act, the Flora and Fauna Act and the Forest Act were replaced by the Nature Conservation Act. Article 1.9 of the Nature Conservation Act provides that once every four years a scientific report is drawn up at national level about the situation and expected developments regarding nature, forest and landscape.

Article 4, paragraph 3, of the Environmental Management Act stipulates that at least once every four years a national environmental policy plan be drawn up to provide guidance to the government. This plan shall contain the main elements of the government environmental policy and shall take into account possible developments in society, the environmental quality in the long term and relevant international developments. At regional level, article 4, paragraph 9, stipulates that provinces must draw up at least once every four years, a regional environmental policy plan, containing the same elements as the aforementioned national plan. At local level, municipalities may draw up a municipal environmental policy plan, but this isn't compulsive.

Article 1.5 of the Nature Conservation Act provides that a national nature vision is established; for its preparation and amendment division 3.4 of the GALA applies. The Environmental Management Act and the Act General Provisions Environmental Law contain special provisions on the obligation to inform public authorities of activities that may significantly affect the environment. The main provisions are:

- The General Provisions Environmental Law Act (*Wet algemene bepalingen omgevingsrecht (Wabo)*), regulates the set up, operation or modification of establishments that may have a significant effect on the environment. Since 2008 most establishments are regulated by general rules, licensing is the exception. At this moment approximately 95% of the establishments are (inter alia) subject to general rules.

Establishments with activities that are mentioned in annex I to the Aarhus Convention require a permit

- When general rules apply to establishments not requiring a license the operator has to notify the competent administrative authority and provide specific information to the

authority; this concerns only establishments of types B and C in the framework of the Activities Environmental Management Decree (Ab) (*Activiteitenbesluit milieubeheer*) (Article 1.10 Ab).

According to one respondent, general regulations do not involve decisions and do not allow for participation. However, when general regulations are established, public participation is invited via an internet consultation.

In the context of the Environment and Planning act which took effect on 1 January 2023 July 2022, a National Environmental Policy Framework will be used; a draft was sent to Parliament in 2020. We are also working on a National Environmental Program.

Every two years, the Environmental Assessment Agency publishes the Assessment of the Human Environment about the state of the living environment and living environment policies (see www.pbl.nl).- Chapter 7 of the Environmental Management Act contains provisions on environmental impact assessments, applicable to decisions on designated activities with potentially significant negative effects on the environment and plans that form the framework in this regard;

- Chapter 17 of the Environmental Management Act contains specific provisions on measures to be taken in special circumstances. If an incident occurs or has occurred in an establishment causing adverse environmental effects, the operator is obliged to inform the competent authority thereof and provide the relevant information (causes, measures taken and other necessary information to reduce the consequences for the environment).

- Chapter 19, article 2 of the Environmental Management Act requires authorities to inform involved persons of health and environmental hazards, in as far as this information does not already have to be provided on the basis of the Dutch Safety Regions Act (*Wet veiligheidsregio's*) or any other legal provision.

(b) Concerning transparency and effective public accessibility, article 3 of the Archive Act 1995 obliges government bodies to keep all documents held by them in a good order and accessible to the public. Article 8 of the Access to Information Act contains a general obligation on active publication of information about the policy, preparation and implementation, as soon as this is in the interest of good and democratic governance. The government body also ensures that the information is provided in an understandable manner, in such a way that citizens are informed as much as possible. It is also important that the information is disseminated in time so that citizens can subsequently give their views to the government body in a timely manner.

(c) Essential environmental information is stored in electronic databases that are easily accessible to the public:

- The aforementioned national environmental reconnaissance report is available at www.pbl.nl.

- The texts of all acts, orders, decrees and international treaties are published in the State Bulletin, State Journal or Treaty Bulletin (*Tractatenblad*). Moreover, all the aforementioned legislation, in place since 1995, is made available free of charge at www.wetten.overheid.nl. Since March 2014 Infomil manages on its website the Handbook EU Environmental Policy and the Netherlands" with all current environmental legislation (see www.eu-milieubeleid.nl), commissioned by the ministry of Infrastructure and Water Management.

Most of the provincial regulations can be found on the provincial websites and/or via Provincial publications (www.officielebekendmakingen.nl). Municipalities are publishing their regulations and policy plans on their municipal websites and/or via municipal publications (www.officielebekendmakingen.nl). Projects to publish environmental information on internet are complex and costly. Required software is generally available.

(d) See response given in paragraph 11, subsection (a) above.

(e) All legislation and policy documents regarding the environment as well as progress reports, having regard to Chapter 4 of the Environmental Management Act, on implementation are published in accordance with the Publishing Act (Dutch: *Bekendmakingswet*) in the State Bulletin (Dutch: *Staatsblad*) or State Journal (Dutch: *Staatscourant*). Provincial and municipal regulations, plans and programmes are also published in accordance with the Act on Provinces (*Provinciewet*) and the Act on Municipalities (*Gemeentewet*). Since 2010 the State Bulletin and State Journal are fully digitalised and only published on the internet. Provincial and municipal regulations, plans and programmes are usually available on internet.

(www.officielebekendmakingen.nl/staatsblad en www.officielebekendmakingen.nl/staatscourant).

International treaties, conventions and other relevant international documents are published in the Treaty Bulletin (*Tractatenblad*), in conformity with the State Act Approval and Publication of Treaties (*Rijkswet goedkeuring en bekendmaking verdragen*). See also comments under 9.

g) Regarding access to environmental information, see the response given in paragraph 11 above. Information concerning the other two pillars of the Convention was already adequately embedded in Dutch legislation. Article 19.1c of the Environmental Management Act contains the obligation for an administrative body to provide information on its own about public responsibilities and functions and the public services it provides with regard to the environment.

(h) The Netherlands encourages the use of ecolabel and other (Dutch or international) product certification or hallmark systems ("*milieukeur*"). The government also subsidizes an independent organisation ("*Milieu centraal*") which provides consumers with product information.

(i) The Netherlands has had an emission registration system for more than 30 years. This system produces the data required for the national evaluation of environmental policy measures (e.g. the national environmental reconnaissance report) and for several environmental reports required to fulfil international obligations (e.g. the reporting obligations of the United Nations Framework Convention on Climate Change, Convention on Long-range Transboundary Air Pollution, etc.). In 2003 the emission registration system provided data for the submission of the first report in accordance with EC Decision on the implementation of a European Pollutant Emission Register (EPER) under the EU-directive Industrial Emissions (IED). From 2008 onwards, the system will be used for the implementation of the PRTR Protocol under the Aarhus Convention and the incorporation of the PRTR into the European PRTR. The information about emissions to air and water that is available in the emission registration system, is published on a website (www.emissieregistratie.nl). This site contains information about stationary sources based on the EPER-data, but also the most recent emission data for the emission years 1990, 1995, 2000, 2005, 2010, 2014 and 2015 (adopted January 2017) with accompanying explanations of the development of the emissions. The information on the website is accessible in different ways, with individual company, municipality, postal code, type of emission, industrial sector, and year as most important variables. The new version of the website has been presented to and discussed with stakeholders from the government, environmental organisations and industry.

12. Describe any obstacles encountered in the implementation of any of the paragraphs of article 5.

A limitation is that the environmental information required to be published on the PRTR-website (annual emissions of specific substances) is not suitable for most citizens. Given the rather technical nature of this information, it is mainly used by professional users and environmental NGOs. The dissemination of environmental information to the public is improved by internet sites such as Environmental Atlas (see question 5) and *Compendium voor de Leefomgeving* for which the PRTR is an important source.

One respondent states that based on the legal requirements pursuant to the Aarhus Convention, administrative bodies should make it standard practice to voluntarily take the initiative to provide information (worked out in detail in a Handbook or ministerial regulation) in permits and environmental plans and scientific publications, and upon request, on how sustainable public drinking water supplies are being protected, what measures are being taken and to what extent this contributes to the stated goals.

13. 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?

Guidance on PRTR can be found at <http://www.infomil.nl/onderwerpen/klimaat-lucht/meten-rapporteren/integraal-prtr/steunpunt-prtr/> and at <http://www.e-mjv.nl/documenten/leidraad/>.

Furthermore, PRTR is an important source for the Compendium van de leefomgeving (compendium of the environment) in which emissions of companies are extrapolated into aggregated statistics for the Netherlands.

The Human Environment and Transport Inspectorate (ILT) works towards ensuring that inspection data are in principle publicly accessible. The ILT already publishes reports on its website. The ambition is to expand this into, for example, the following years:

- data resulting from inspections or investigations,
- implementation tests on new regulations,
- (analysis) data on which inspections can be based
- operational information.

The information can be found on the ILT's website.

14. Give relevant web site addresses, if available:

www.pbl.nl
www.overheid.nl
www.emissieregistratie.nl
www.rijksoverheid.nl/onderwerpen/milieubeleid/milieujaarverslag
www.fo-industrie.nl
www.infomil.nl
www.rivm.nl
<http://statline.cbs.nl/statweb/>
<http://www.compendiumvoordeleefomgeving.nl/>
<http://www.atlasleefomgeving.nl/home>
www.crisis.nl

www.risicokaart.nl
www.ilent.nl
<http://www.infomil.nl/onderwerpen/integrale/handboek-eu/>
www.officielebekendmakingen.nl/staatsblad.nl
www.officielebekendmakingen.nl/staatscourant

ARTICLE 6

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

Since 2008 the number of establishments that have to comply with general rules instead of rules laid down in individual permits has increased considerably. At this moment about 95% of the establishments in the Netherlands have to comply with general environmental rules, where the general rules specify where the competent authority may deviate from the general rules with custom regulations for specific situations. The competent authority may also establish regulations if an environmental aspect falls within the general duty of care. With regard to business activities that are subject to general environmental regulations, in most cases (the so-called type B activities) must be reported to the competent authority via the provided (online) forms. The general environmental regulations offer an equivalent level of protection for local residents and they provide clarity from the start of a business activity about the requirements that the businesses must meet. It also provides a level playing field for businesses. In this context, one respondent notes that changes and expansions of thermal power stations and wind turbine farms must be subjected to an EIA while nuclear energy does not, but the Aarhus Convention does not cover EIAs.

As soon as the business activities start, stakeholders/local residents may contact the competent authority via enforcement requests and/or requests for a custom solution to ask for specific local measures, for example. Establishments with activities that are mentioned in annex I to the Aarhus Convention, remain subject to licensing. In 2010, the General Provisions on Environmental Law Act" (Dutch: *Wet algemene bepalingen omgevingsrecht*) entered into force that streamlines licensing. This Act combines procedures concerning spatial and environmental law and has replaced the section of the Environmental Management Act concerning procedures. This means that procedures to gain a licence or permit for initiatives concerning spatial planning, building and environmental activities are combined in one decision. The background here is that the competent authority or the various relevant competent authorities can assess the different relevant aspects of the activities in question in relation to one another. The application process is handled completely digitally. In short, the public participation is implemented in article 3.10 of the General Provisions on Environmental Law Act. In accordance with this article the uniform public participatory procedure mentioned in section 3.4 of the General Administrative Law Act applies to the granting of permits for activities with a negative impact on the environment. The activities included in article 6, annex I, of the Aarhus Convention and the activities that may have a significant negative environmental impact require a permit pursuant to the General Provisions on Environmental Law Act (articles 1.1, paragraph 3, and 2.1, paragraph 1, under e), and article 2.1 and annex I, parts B and C, of the Decree on Environmental Law Act. It should also be noted that the term "negative" is no longer used in the Environment and Planning Act, and EIA assessments already look at all effects, including positive effects.

Measures taken to ensure that the public concerned (in the Netherlands: “everyone”) is informed in order to participate effectively in the decision-making procedure, are implemented by article 3.10 of the General Provisions on Environmental Law Act and section 3.4 of the General Administrative Law Act (see article 3:12). This section contains general provisions on public participation in environmental decision-making, that apply when the application of this section is legally required, as in the case of granting environmental licences (see above). Article 3.12, paragraph 5, of the General Provisions on Environmental Law Act states that anybody can submit views on a draft-decision.

More specifically:

- Article 3:12 of the General Administrative Law Act contains requirements on the timely public announcement of the draft decision, requirements on the content of the announcement, and provisions on the relevant information that is available for the public. Article 13:2 of the Environmental Management Act contains special provisions concerning notifications of requests for decisions that require an environmental impact assessment that has to be drawn up prior to a decision on a license.

Chapter 7 of the Environmental Management Act includes specific rules regarding input on environmental impact assessments. For many activities, chapter 3 of the General Provisions on Environmental Law Act specifies the information that the applicant has to provide when applying for a license to set up or operate an establishment. This information is made available to the public pursuant to article 3:12 and 3:13 of the General Administration Law Act, mentioned above. For specific activities, special regulations determine what information must be provided by the applicant; for example, for nuclear activities this can be found in the Nuclear Installations, Fissionable Materials and Ores Decree.

- Procedures for public participation that allow the public to submit comments (in writing or orally) are implemented by article 3:15 of the General Administrative Law Act.
- Articles 3:46 and 3:47 of the General Administrative Law Act state that decisions have to be well motivated and that the reasons are to be mentioned with the publication of the decision, which means that the results of the public participation should be discussed adequately. In this context, one response argues for a broader information requirement for the Extensive Public Preparation Procedure (Dutch UOV) that is more in line with article 6, section 6. It will be determined whether this is necessary.
- Furthermore, article 3:41 of the General Administrative Law Act contains specific provisions on the publication of an (adopted) decision directed at a concrete interested party. Article 3:42 provides for publication if the decision is not addressed to one or more interested parties Article 3:46, requires that reasons be given for a decision and article 3:47 requires that these reasons be made public together with the decision.
- Binding spatial plans (zoning plans/integration plans; in other words, decisions that grant permission for activities) at the national, provincial and municipal levels should take the Spatial Planning Act (Dutch: *Wro*) into account, and for nuclear energy this is the Nuclear Energy Act. Other laws that govern activities with negative effects on the environment that are subject to section 3.4 of the General Administrative Law Act include the Transport Infrastructure (Planning Procedures) Act, the Mining Act and the Water Act.

- The Dutch Decree on Genetically Modified Organisms Environmental Management 2013 (Besluit ggo 2013) (based on EC Directives 90/219, 90/220, 98/81 and 2001/18)

mainly aims to secure the safety of man and the environment. The procedural terms and conditions for decision-making with respect to genetically modified organisms (including public information, participation and access to justice) are regulated partly by the provisions of the General Administrative Law Act and partly by specific regulations in the Decree on Genetically Modified Organisms Environmental Management 2013. This legal system applies to decisions on the contained use of genetically modified organisms and deliberate release into the environment for other purposes. The Dutch system already complies with the guidelines on access to information, public participation and access to justice concerning genetically modified organisms.

16. Describe any obstacles encountered in the implementation of any of the paragraphs of article 6.

The Netherlands has started to implement MOP Decision VII/8m; this decision was adopted after the reporting period, by the way (in part with regard to the implementation of article 6).

Respondents mention the following:

Most activities are subject to general regulations with reporting requirements and do not require a permit. If it concerns general regulations, there are no decisions and participation is not an option. Ministry of Infrastructure and Water Management response: if it concerns general regulations, participation via internet consultation will be provided for.

One opinion, referring to compliance case C104, states that public participation in an extensive public preparation procedure (Dutch: *UOV*) is not an adequate implementation of article 6.

In October 2021, the Meeting of the Parties adopted a decision on case C104 with recommendations; the Netherlands is now in the process of implementation. In the meantime, the Nuclear Energy Act has been amended (article 17 section 4 of this Act). As a result, changes in a permit for the planned operation of nuclear installations shall follow the uniform public preparation procedure from section 3.4 of the General Administrative Law Act, even if there are no physical changes in the nuclear installation. Doing so ensures participation through an opinion procedure in these cases as well. Furthermore, on 22 April 2022, in response to compliance case C104, the Netherlands submitted questions in writing to the Compliance Committee about the exact interpretation of article 6(10) for nuclear installations, in view of an amendment to the Nuclear Installations, Fissionable Materials and Ores Decree.

With regard to effective provision of information, there is room for improvement in the implementation of article 6(2) according to the respondent, for example by making it a requirement to provide a non-technical summary in conformity with art. 6, section 6d of the Convention. This respondent also notes that when information is made available for inspection, not all the relevant studies and documents are always provided.

In practice, there is room for improvement in the implementation of the duty to give reasons set out in article 3.46 of the General Administrative Law Act with regard to the soundness of the reasoning and this should be taken into account in the result (article 6(8)).

In its decision of 14 July 2021 (ECLI:NL: RVS:2021:1507), the Administrative Law Division of the Council of State concludes that the Dutch government did not implement the participation requirement pursuant to the Habitats Directive and the Aarhus Convention correctly by failing to include a provision in the Nature Conservation Act that the *UOV* must be following when granting a nature permit. This failure has been remedied in this ruling (and the Environment and Planning Act will adopt this requirement as well). The comment mentions that this has been an obstacle for a long time to the implementation of art. 6 of the Convention, because the ruling which remedies the incorrect implementation was issued after the reporting period (2017-2020).

For that matter, the Netherlands will investigate how the implementation of the Aarhus Convention can be strengthened further, taking into account the issues that have been brought up. See also the Explanatory Memorandum for the draft legislative proposal that was prepared in response to the *Varkens in Nood* decision (consultation version 1 April 2022). See also the letter to the Parliament with the study (25 April 2024, *Kamerstukken II*, 2023-2024, 28663, no. 82) and the letter with the first policy response (20 December 2024, *Kamerstukken II*, 2024-2025, 28663, no. 83).

17. 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.

Since 1 July 2010, the Dutch EIA legislation has changed. Mid-2013 a study on the effects of participation in the EIA regulations has been completed (see the link in paragraph 18. The main conclusion of this study is that participation is adequately secured with the current EIA legislation.

According to Article 3:46 GALA decisions are to be motivated and this is an ongoing concern in practice. See e.g. article 3.1.6 of the Decree on spatial planning (Dutch: *Besluit ruimtelijke ordening*) based on the Spatial Planning Act (Dutch: *Wet ruimtelijke ordening*). In recently revised legislation - such as the Spatial Planning Act and the Infrastructure Act (Dutch: *Tracéwet*), more attention is paid to the motivation of decisions. These laws in fact require that account is given of the way in which citizens and civil society organizations are involved in decision-making, including a description of the results of the participation.

18. Give relevant web site addresses, if available:

www.rijksoverheid.nl

<http://www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2013/06/26/participatie-in-de-uitgebreide-m-e-r-procedure.html>

ARTICLE 7

19. 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.

Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9.

The public participation regime in drawing up plans and programmes is laid down in the uniform public preparatory procedure mentioned in section 3.4 of the General Administrative Law Act (see the answer to article 6 above). The following plans and programmes relating to the environment are in any case subject to public participation:

- National, provincial and municipal environmental policy plans (Environmental Management Act, chapter 4 (plans and programmes));
- Water plans and water management plans at national and regional level (the Water Act);
- National nature conservation plans (Nature Conservation Act); among other things, the national nature vision (Article 1.5 Nature Conservation Act). Furthermore, there are various other nature plans, such as management plans and the (national) program approach to nitrogen.

In addition, Chapter 7 of the Environmental Management Act contains rules on the environmental assessment of plans and programs. When it comes to plans or programs that have or could have significant negative consequences for the environment and that provide a framework for specified activities, an environmental assessment with public participation is required. This applies, for example, to structural visions (Spatial Planning Act).

In more general terms, Dutch environmental policy aims at sustainable development and is based upon five 'pillars', one of which is to increase participation of citizens and companies in problem solving. These pillars have been incorporated in an environmental strategy, the National environmental policy plan.

The Dutch approach is based on the premise that environmental improvement requires a multi-stakeholder approach and places great emphasis on the responsibility of the government. The ministry with prime responsibility for the environment is the Ministry of Infrastructure and Water Management, although other ministries are also involved.

Other ministries and decentralized authorities are also looking for similar ways of involving citizens in policy development. The then Dutch Cabinet pledged to allow for a greater public dialogue. Thereby, further reinforcing interest in interactive policy development.

Since 2013 all Dutch ministries are obliged to submit all regulations for internet consultation.

20. Explain what opportunities there are for public participation in the preparation of policies relating to the environment.

Generally, in the development of environmental policy civil society organizations and businesses are involved by giving them the possibility to discuss draft documents. In this way, already at an early stage support is sought for new policies.

Specifically, concerning the National Environmental Policy Plan Article 4.4 of the Environmental Management Act stipulates that interested institutions and organizations are involved in the preparation and furthermore that Section 3.4 of the General Administrative Law Act applies, so that everyone has the opportunity to submit views.

21. Describe any obstacles encountered in the implementation of article 7.

In its 2018 annual report, the Council of State mentions a development where preparations for the decision-making process are made increasingly through agreements with stakeholders that do not involve everyone.

In 2009 the National Ombudsman published a study on the quality of public participation in municipalities. The study identifies a familiar list of issues, such as: everything has already been decided by politicians; the public is involved in the process too late; input is ignored; the municipality does not provide information; the expectations of the public are not realistic due to lack of information; the municipality does not act with due care; the municipality does not want to enter into discussions with the public and the municipality provides unclear or incomplete information. At the same time, the study concludes that there are many initiatives that aim to resolve these issues, with varying success.

As far as we know, there are no major obstacles in the Netherlands to the implementation of the sections in article 7. Provincial and municipal authorities are required on the basis of the Provinces Act and the Municipalities Act to adopt a participation procedure bylaw for input in municipal or provincial policies. This bylaw shall take into account the specific regional or local context of the participation. The participation procedure bylaws can be found on the websites of the authorities in question and they are meant to provide a handhold for the public in the decision-making process. In addition, the basic participation level in the Netherlands is laid down in the General Administrative Law Act.

With regard to environmental impact assessments, the Environmental Management Act specifically states that anyone, not just stakeholders, has the right to submit an opinion.

See also question 8 for the definition of the term public authority.

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

See this report.

23. Give relevant web site addresses, if available:

www.rijksoverheid.nl

www.internetconsultatie.nl. (For the preparation of specific legislation, the public is consulted through the internet).

ARTICLE 8

24. 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. To the extent appropriate, describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9.

Apart from the parliamentary procedure applicable to the preparation of *acts* (advice of the Council of State, an independent advisory body, followed by a parliamentary procedure in the Second and First Chamber), article 21, paragraph 6 (4) of the Environmental Management Act provides for extensive public participation in the preparation of decrees relevant to the environment. This implies that draft orders are presented to both houses of the States General and published in the Government Gazette. Everyone is given the opportunity to submit written comments on the drafts to the Minister of Infrastructure and Water Management within a period stated therein of at least four weeks. These comments have to be taken into account in the further procedure. The response to the comments will be published as well. Local authorities like councils and provinces have similar procedures for legislation within their competence.

25. Describe any obstacles encountered in the implementation of article 8.

To our knowledge, there are no major obstacles in the Netherlands in the implementation of the paragraphs of Article 8.

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

In the Netherlands, the public is consulted on draft laws and regulations prepared by the government or parliament. The public is consulted about the draft in accordance with the procedure mentioned in section 24 (preliminary procedure), and if this procedure is not prescribed, through a system of internet consultation via the website www.internetconsultatie.nl.

27. Give relevant web site addresses, if available:

All local authorities have websites that supply local information. As mentioned under 9 the content of web sites can differ considerably.

http://www.nationaleombudsman.nl/sites/default/files/rapport2009-180_2.pdf
<http://www.rijksoverheid.nl/nieuws/2013/07/09/kabinet-overheidsparticipatie-bij-doe-democratie.html>

ARTICLE 9

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

(a) When a request for information is ignored, wrongfully refused, inadequately answered or otherwise not dealt with in accordance with article 4 of the Convention, articles 7:1 up to 7:10, of the General Administrative Law Act provide for a review procedure with the public authority that took the initial decision. The review procedure is free of charge (art. 7:15).

Pursuant to article 8:1 of the same law, interested parties may file an appeal with the administrative court against a negative decision on a request for review. Finally, there is a possibility of higher appeal against the decision by the court. The Administrative Law Division of the Council of State is the competent judge for higher appeal (Annex 2 to the General Administrative Law Act).

(b) Since March 18, 2010, the Crisis- and Recovery Act (Dutch: *Crisis- en herstelwet, CHW*) entered into force. Since January 1, 2013, the Adjustment of Administrative Procedural Law Act (Dutch: *Wet aanpassing bestuursprocesrecht*) has come into force. The Act seeks to establish a more streamlined and effective administrative procedure (final dispute settlement). This fits well with art. 9 (4) Aarhus Convention: rapid procedures.

The main changes that have been introduced by the Adjustment of Administrative Procedural Law Act are as follows.

First, an important point is that the relativity requirement has been extended to the entire administrative procedure. Before, this was only required in procedures covered by the Crisis- and Recovery Act. The relativity requirement (Article 8:69 a GALA), taken from the *CHW*) implies that the administrative judge does not annul a decision in case of a conflict with a (written or unwritten) rule, when this rule apparently does not aim to protect the interests of the person invoking that rule. A general principle is that judges, when applying the relativity requirement, should take into account and respect the special position of NGOs in the Convention and EU regulations.

A second change is the merging of Articles 6:18 and 6:19 GALA. The new Article 6:19 GALA is a codification of case law. It means that an objection or appeal against a decision also relates to a decision to withdraw, amend or replace the contested decision, unless the parties do not have a sufficient interest. In this way it remains possible for interested parties to challenge the decision replacing the contested decision which contains the previously started objection or appeal proceedings,

Furthermore, the possibilities to pass flaws in a decision have been extended (Article 6:22 GALA). Before, a decision could be maintained, despite violation of procedural requirements. Under the new Article 6:22 GALA written or unwritten rules and general principles of law are included. Also violation of substantive rules can thus be passed. Moreover this is only possible when it is probable that no disadvantage will be caused to interested parties.

Finally, now the administrative procedural law is concentrated as much as possible in the GALA. To answer the question of which procedure (e.g. direct appeal or first objection) in which administrative court (whether or not specifically designated court) applies, there is no need anymore to look in separate special laws and procedural laws. Whether there is a deviation from the general rule of the GALA of objection, appeal to the court and appeal against decisions, is now to be found in Chapters 7 and 8 and the new Annexes 1 - 3 of the GALA itself.

This leads to the following system of legal protection in environmental issues:

The (annex to the) General Administrative Law Act offers the possibility to challenge the substantive or procedural legality of decisions, acts or omissions according to article 9 of the Convention.

In many cases appeals may be lodged with the Administrative Law Division of the Council of State (Annex to the General Administrative Law Act). This includes appeals against decisions which are subject to the uniform public participatory procedure described in section 3.44 of the General Administrative Law Act. This hence applies to decisions on the activities mentioned in annex I to the Aarhus Convention and to decisions with a potentially significant environmental impact, which are - as explained above in the section on implementation of article 6 – subject to the aforementioned procedure. An appeal may be lodged by parties concerned, i.e. persons who are affected by the decision (art. 8:1 and 1:2 of the General Administrative Law Act). It is also required that they have participated in the uniform public participatory procedure regarding the draft decision in question, unless this cannot be reasonably held against them (art. 6:13 of the General Administrative Law Act; section 2 about judgment C-826/18).

(c) Members of the public may challenge acts or omissions by private persons or public authorities that contravene provisions of national environmental laws. Anyone may request an administrative authority to apply executive coercion, impose an order for a monetary penalty or withdraw a license or an exemption to make a decision to this effect. If a request by an interested party is not addressed (in time), an appeal can be lodged in accordance with the provisions in the General Administrative Law Act).

(d) For effective access to justice (procedures that provide for effective remedies, including injunctive relief, and are fair, timely and not prohibitively expensive) the provisions of the General Administrative Law Act are relevant (art. 8:41 8:51, 8:72, 8:66, 8:67 and 8:81)

(e) Article 3:45 and article 6:23 of the General Administrative Law Act contain an obligation to provide adequate information about access to the courts in the publication and notification of a decision if the decision is subject to a request for review, or if the decision on the request for review or appeal is subject to appeal. Removal or reduction of financial barriers is legally guaranteed by a special act on legal aid (Dutch: *Wet op de rechtsbijstand*).

(f) During the reporting period (2017 - 2020) the legislation concerning access to justice did not change very much. It is worth mentioning that several rules came into force earlier and which enhance the effectiveness of the decision making process. Firstly, authorities that fail to take a decision on time are confronted with the fact that this failure is seen as a positive decision for the applicant (*Lex silencio positivo*). Secondly

authorities that fail to take a decision on time can be subject to a penalty paid to the applicant. This legislation does not apply to all Dutch decision making but applies to legislation concerning environmental permits and decisions. However, permits that are based on European legislation concerning the Industrial Emissions Directive or the Directive on the assessment of the effects of certain public and private projects on the environment are excluded from the *Lex silencio positivo* because these directives do not allow the use of it.

Cases may be brought before an administrative court or a civil court.

29. Describe any obstacles encountered in the implementation of any of the paragraphs of article 9.

In the Netherlands there is a tendency to make more use of general rules than of permits. Consequently, *de facto* less appealable decisions are taken. However, general rules generally concern less environmentally harmful activities for which a level playing field can be promoted and, compared with the situation of a license, less burden for companies and public authorities are caused and enforcement and monitoring of compliance with environmental regulations are simplified. For that matter, the Environment and Planning Act, which took effect on 1 January 2023, offers more options for location-specific considerations and custom approaches; local parties will be called on and there will be several options for public participation.

An environmental organization indicates that an accumulation of measures makes access to justice more difficult, and that a trend in the Netherlands shows that requirements for appeal are still further increased. Furthermore, it is noticed that the involvement of experts and lawyers is complicated because of the height of the costs. Comment: These measures are to a large extent related to legislation that has been drawn up with a view to a more effective administrative procedural law. Court decisions following the Court ruling in *Varkens in Nood* have brought Dutch case law more in line with the Aarhus Convention. Regulations to ensure that this access to justice complies with the Aarhus Convention are in the works. In all other respects, the Netherlands continues to fulfill the obligations arising from the Aarhus Convention.

Another remark is that the introduction of the relativity requirement constitutes a legal restriction for access to justice .

Comment: The relativity requirement implies that the administrative judge cannot annul a decision if the rule on which the plaintiff relies, apparently does not aim to protect the plaintiff's interests. This rule has been in the GALA with the Adjustment of Administrative Procedure Law Act (Dutch: *Wet aanpassing bestuursprocesrecht*). This change can indeed be regarded as a restriction in relation to the previously existing situation, but there is no threshold for citizens to appeal. However, it may be that the court does not annul the contested decision (part), because it believes that the standard invoked by the plaintiff apparently does not aim to protect the interest which he claims to have been affected.

Moreover, the introduction of the relativity requirement contributes to the streamlining of decision-making processes and is consistent with the Convention.

A civil society organization indicates that the Crisis and Recovery Act has limited the possibilities of appeal to the courts, in some cases significantly.

Comment: The Crisis and Recovery Act has introduced a number of changes; however, the system that is in place in the Netherlands provides indeed for adequate access to justice in accordance with the Aarhus Convention. For example, the Administrative Jurisdiction Division of the Council of State confirms in its statements (e.g. ABRvS 17 November 2010, no. 201004771/1 / M2) that it can not be held that Article 1.6, second paragraph and Article 1.6a of the Crisis and Recovery Act should not apply because of conflict with Article 9, paragraphs 2 and 3 of the Aarhus Convention.

30. 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?

For statistics we refer to the Council of State's annual report 2019 (Dutch: *Jaarverslag 2019, Bedrijfsvoering in cijfers*), also available on www.raadvanstate.nl.

Financial assistance mechanisms:

- Firstly, the submission of views on draft decisions and the objecting against decisions are free of charge;
 - For appeals (administrative law) there is no obligation to be represented by a solicitor or a barrister;
 - In the Netherlands one does have to pay court charges. In case of environmental disputes this amounts to €181 for natural persons and €360 for legal entities. In case of appeals €270 or € 541 must be paid (tariffs administrative law, 2021);
- Furthermore, there is an opportunity to receive legal aid for those who do wish to be represented by a solicitor or a barrister (Dutch: *Wet op de Rechtsbijstand*). This only applies to private persons who cannot afford legal aid. A personal contribution then needs to be paid for the legal assistance (depending on income and capital), unless otherwise provided by the decree (Article 35, Act on legal assistance; Decision on private contribution for legal aid). There are specific conditions for this provision. The same holds for legal entities. For NGOs with legal personality the condition is that their total means may not exceed €10,000.

According to one respondent, the Legal Aid Board does not offer legal aid to small NGOs with means below €10,000 for procedures involving (complex) requests for environmental information, on the basis that those cases do not concern an environmental legal interest. Further research will be done to determine if the work instructions for the Board regarding legal aid in this context need to be revised.

One respondent asks about a policy to ensure the survival of independent legal aid centers. The central government's website www.juridischloket.nl offers free legal advice in many areas of law to private parties. Subsidized legal aid is also available for individuals of limited means.

31. Give relevant web site addresses, if available:

www.rechtspraak.nl (comprehensive site about jurisdiction in the Netherlands)
www.raadvanstate.nl (site of the Council of State, with *inter alia* judgments)
www.milieurechtsbijstand.nl (site of the Foundation for Environmental Legal Aid in the Netherlands)

<https://e-justice.europa.eu> (site of European E-justice portal)

32. 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.

The Netherlands has a long tradition of participation and environmental protection. Participation is enshrined in law for the first time in the 60s. The first legislation aimed at conservation dates back to 1928. From the early 70s introduced legislation to protect more and more sectors of the living environment. This legislation is integrated as much as possible in 1986 the first version of the Environmental Management Act. The implementation of the Aarhus Convention has led to a number of improvements to existing legislation in the Netherlands. For example, information is more accessible to the public, including through the PRTR Protocol and the Government Information (Public Access) Act (as of 1 May 2022: Open Government Act).

Article 21 of the Constitution states that it shall be the concern of the authorities to keep the country habitable and to protect and improve the living environment. Contrary to a comment by one respondent, this includes concern for future generations. Moreover, article 4.3 of the Environmental Management Act specifically states that the national environmental policy plan shall take into account the interests of future generations.

33. 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;

The Dutch regulations on decision-making about genetically modified organisms (GMOs) are based on the relevant EU regulations. Most relevant for this are Directives 2001/18 / EC and 2009/41 / EC, and Regulations (EC) 1829/2003, 1830/2003 and 1946/2003. The Regulations are directly applicable in the Netherlands. The Regulations have been implemented in the Netherlands in the GMO Decree 2013. General provisions of the General Administrative Law Act apply to the Dutch procedure for decisions based on the Decree. This Decree provides for public information provision and citizen participation. Citizens are alerted to draft decisions via the Internet and national and regional newspapers and can submit their views on the draft decision. All views are taken into account in the final decision. The text of this contains reactions to the views. Interested parties can challenge the final decision in court. Regular use is made of the aforementioned possibilities.

(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;

Exceptions apply for:

1. The granting of permits subject to strict regulations for deliberate release into the environment (other objectives) for designated GMOs categories (other than plants). A designation can only be determined if data or results of permit applications are available in addition to an environmental impact assessment in accordance with Directive 2001/18, Annex II showing a negligible risk for humans and the environment. These exceptions are covered in articles 3.24 and 3.25 of the GMO Decree, and they took effect on 1 March 2015.

2. The granting of permits for deliberate release into the environment by bringing the product to market. The European procedure (articles 13, 14 and 24 of Directive 2001/18) provides for information being made available for inspection and for participation to ensure continued legal protection. The European procedure takes longer than the uniform public preparation procedure and offers legal protection; this procedure also applies in the Netherlands and is covered in section 4.2 of the GMO decree (in particular article 4.11).

GMOs that have been authorized for the EU market may be sold in the Netherlands on the basis of this authorization. European Regulation 2020/1043 on the conduct of clinical trials with and supply of medicinal products for human use containing or consisting of genetically modified organisms intended to treat or prevent coronavirus disease (COVID-19) took effect on 18 July 2020.

This regulation abrogates some of the laws and regulations on genetically modified organisms; as a result, clinical trials with GMOs intended to treat COVID-19 no longer require a GMO permit. This means that the participation procedure under the GMO regulations predating these trials no longer applies.

(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.

See the answer under (i).

(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.

This has been implemented in both EU and Dutch regulations (see Directive 2001/18 / EC, Article 25). If information is kept confidential, there must at least be a summary of the information that contains sufficient information to be able to follow the environmental risk assessment done.

(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;

Websites of the National Institute for Public Health and the Environment (see answer to question 36) contain both general information about the procedures and specific information about individual applications and permits.

(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;

See the answers under (i) and (v).

(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;

See the answers under (i) and (v)

(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;

See the answers under (i) and (v).

(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.

The Cartagena Protocol on Biosafety has been implemented in the Netherlands (via EU legislation) by the Decree on GMO 2013. This also implements the requirements set out in Annex Ia of the Aarhus Convention, so that the relevant rules together form a whole.

34. 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.

The existing EU and Dutch legislation already provided for the necessary rules and procedures prior to the entry into force of Article 6a. As a result, the implementation of Article 6a and Annex Ia did not lead to any obstacles. The Netherlands implemented the amendment in the GMO Decree.

The GMO amendment itself has not taken effect yet because it has not been adopted yet by a sufficient number of parties. The Netherlands adopted the GMO amendment for the central government in Europe on 23 February 2009. The EU had already approved the amendment in 2008.

35. 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?

All steps in the procedure for decisions issued by the Netherlands and the texts thereof are to be found for everyone on the websites mentioned in the answer to question 36.

36. Website addresses relevant for the implementation of article 6a

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

Relevant websites are:

http://ggo-vergunningverlening.nl/Introductie_in_het_milieu/Procedures (site with information about permit procedures for field trials and / or clinical trials);

<http://www.ggo-vergunningverlening.nl/Marktaanvragen/Procedures> (site with information about authorization procedures for market authorization according to Directive 2001/18 / EC Part C or Regulation EC / 1829/2003);

<http://www.ggo-vergunningverlening.nl/Vergunningendatabase> (site with permit database where specific information and documents can be found about individual decisions (both field trials / clinical trials and market authorizations);

<https://www.rijksoverheid.nl/onderwerpen/biotechnologie> (site provides general information from the national government on the biotechnology policy);

<http://www.cogem.net/> (site of the Committee on Genetic Modification, the government's independent advisory body for the safety of GMOs).

37. Follow-up on cases 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.

This question will not be answered for the reporting period with regard to communications C133, C181 and C187 because no findings from the Aarhus Compliance Committee regarding these communications about the Netherlands are yet available and discussed in the Meeting of Parties.

The process of revising the regulations has been started in response to the findings and recommendations of the Compliance Committee regarding case C-104 (concerning input in the long-term operation of the Borsele nuclear plant) and in consultation with the Compliance Committee.

The Meeting of the Parties made a decision on this case in October 2021. An amendment to the regulations (Nuclear Energy Act article 17 section 4) took effect on 16 February 2022 in response to the recommendations of the Compliance Committee in paragraph 89 on communication ACCC/C/2014/104, and an amendment to the Nuclear Installations, Fissionable Materials and Ores Decree is in the works.

On 26 July 2021 the Compliance Committee adopted findings on case C124 regarding access to environmental information in the context of the granting of permits for two power stations. The Meeting of the Parties made a decision on this case in October 2021.

With regard to follow-up on these two cases, a plan of action for steps to be taken was prepared and submitted for public input, and the plan of action was subsequently sent to the Compliance Committee.