



1st National Report to the Aarhus Convention
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Introduction

The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, handles transversal matters on environmental policy. Its Parties need to ensure that:

- Public authorities reply to the information requests related to the environment and make the information accessible, in accordance with the applicable national law;
- The public authorities possess and update the information on environmental matters;
- Mandatory mechanisms are developed for the notification of public authorities on activities with important impacts on the environment;
- In case of imminent threat to health or the environment, make available at once all the information held by the public authorities capable of allowing the adoption of preventive or damage-reducing measures by the population;
- The general public participates: in decisions on specific activities mentioned in Annex I, or on activities not listed in Annex I capable of having significant impacts on the environment; in the preparation of plans, programmes and policies on the environment; in the preparation of regulations and legal documents with a significant impact on the environment;
- The possibility of resorting to a court or independent authority is guaranteed, whenever the information requests are ignored, refused or inadequately handled.

The Parties must submit National Reports to the next Meeting of the Parties, which will take place in May 2005.

This report was prepared by the Environment Institute using all the available information on the implementation of the Convention in the country. The contributions of other entities, such as the Ministry for the Environment and Spatial Planning, the Presidency of the Council of Ministers and other ministries, were also incorporated.

Public Consultation

A preliminary version of this report was made available for public consultation between December 14th 2004 and January 15th 2005 at the Environment Institute's internet portal. Furthermore, this public consultation process was advertised in three newspapers with national coverage.

At the institutional level, copies of the document were sent for consultation to 54 public administration bodies and a call for contributions to the report was made to 144 Environmental Non-Governmental Organisations (ENGOS).

As a result of the public consultation, 13 contributions were received. The majority of these included either comments of a general nature with no impact on the contents of the report or replies confirming the reception of the document.

The inputs considered to be pertinent, given the content and structure defined for the National Report, were appropriately inserted. The final text was subject to some minor corrections and edited to comply with the 8500 words limit established by the UN. A separate Public Consultation Report was prepared, including all the comments and replies received during the period of consultation.

1. Aspects related to the general provisions of the Convention (Article 3)

1.1. Measures adopted to ensure that public servants and authorities provide support and guidance to the public

The bodies of the Ministry of Environment and Spatial Planning (MAOT) are hosts to Centres of Information and Documentation equipped with staff with the right training and experience to provide users with support and guidance in information research.

Municipalities, higher education institutions, and many other entities also host similar Documentation Centres or libraries aimed at a more local audience or people with specific interests.

All the MAOT bodies have websites which are used to disseminate information concerning their areas of expertise. They also have an answering protocol for replying to queries received by email. Such queries receive the same level of attention as those received on regular mail.

The "SOS Environment 24" hotline was created in 2002 and is on-call 24 hours a day, every day of the year. In the first two years of operation, this phone line received over 1500 complaints.

The MAOT has been supporting actions promoted by civil society, namely NGOs, aimed at building citizens' capacities on matters within the scope of the Aarhus Convention.

1.2. Measures adopted to promote the education and awareness of the public on environmental matters

In the context of formal education, environmental contents have been progressively integrated in school programmes since the end of the 1970s. Since the 1980s, schools could be formally involved in projects with predominance of environmental themes.

The production of pedagogic materials to support students and teachers is promoted to complement the process of formal education.

The dissemination of environmental information through publications, aimed at specific target groups and in various supports, is a relevant informative and educational resource provided by the bodies of MAOT.

Since 1996, the Ministries in charge of education and environmental affairs started the development of environmental education projects under the coordination of full-time teachers, in the context of partnerships involving local authorities and NGOs.

From 1997 onwards, various infrastructures which mission consists of promoting environmental information, awareness and education were created under the initiative of central, regional and local authorities and/or NGOs. These installations provide programmes of activities on various environmental themes, in conjunction with other local entities, thus contributing to the decentralization of the points of access to information.

1.3. Measures adopted to provide appropriate recognition and support to associations, organisations or groups that promote environmental protection

In Portugal, environmental NGOs (ENGOS) are legally defined in accordance with the provisions of the Law 35/98, of July 18th. The decrees 478/99, of June 29th, and 71/2003, of January 20th, regulate the National Registry of ENGOS and similar organisations (RNOE). The list of the registered ENGOS is published in the Diary of the Republic and on the internet. To this date, there are 146 such registered organisations.

Equally regulated are the process of recognition of ENGOS for the purpose of obtaining the public utility status, and the recognition of environmental relevance of the projects which they intend to develop in order to access funds from patrons.

The MAOT also makes available two financial support instruments targeted toward ENGOS and aimed at reinforcing their capacity to intervene and develop projects. These are:

- Programme of Support to Actions in the areas of Environment and Sustainable Development;
- Programme of Financial Support to Environmental NGOs.

In 2003, 145 projects involving 50 organisations were supported through these two budget lines.

1.4. Additional information of practical nature with regard to the application of the general provisions of the Convention

- In the years 1997 and 2000, two inquiries were conducted at national level about the trend in public opinion with regard to environmental issues. This work was carried out within the scope of the Project OBSERVA – Permanent Observatory on the Environment, Society and Public Opinion.

The objective of these inquiries was to determine the structure of attitudes, opinions and expectations of the different segments of the population, based on a broad range of environmental questions. The inquiries were conducted as to complement each other.

- The National Council on Environment and Sustainable Development (CNADS) organised, on September 29th 2002, an international conference on “Public Participation and Sustainable Development” with the support of the President of the Republic. This event was widely publicised.
- In May 2004, a workshop aimed at members of ENGOs on the “Development of Competencies of NGOs: Europe-USA models” was organised. This was a capacity-building initiative aimed at the development and structuring of competencies for turning ENGOs’ action more robust and influential with respect to society and government.

Relevant URL addresses:

www.iambiente.pt

www.portaldocidadao.pt

www.portugal.gov.pt

2. Aspects related to access to information on the environment (article 4)

The right of access to information on environmental matters is consecrated in several legal diplomas of the Portuguese legal system. These are:

In the **Constitution of the Portuguese Republic** (CPR) the right of access to information on environmental matters results from the joint implementation of article 66, entitling the right to an environment which is human, healthy and ecologically balanced, and the constitutional norms regarding access to information and the right to participation, namely the norm of article 48 on the right to participation in public life.

The **Framework Law on the Environment** (LBA), Law 11/87, of April 7th, defines the framework of environmental policy and consecrates the principle of participation, as well as the Framework Law on Spatial Planning and Urbanism, approved by the Law 48/98, of August 11th. Both laws adopt measures aimed at the promotion and participation of the public in the design and implementation of the environmental, spatial planning and urbanism policies.

The **Law 35/98**, of July 18th, a diploma that defines the statutes of ENGOs, entitles these organisations with the right of consultation and access to information by bodies of Public Administration (PA) to documents or administrative decisions on environmental affairs. The ENGOs have the legitimacy of requesting the judiciary to summon the public authorities to facilitate the consultation of documents or processes and issue certifications.

The **Code of Administrative Proceedings** (CPA) establishes the regime of operation of the PA in their relationship with private individuals. Articles 61 to 65 consecrate the right to information, meaning the right of private individuals to being informed by the Administration.

In the development of the constitutional principle of the right to information, the Law 65/93, of August 26th, changed by the Law 8/95, of 29th March, and the Law 94/99, of July 16th, regulates the access by citizens to Administration documents and transposes to Portuguese law the Council Directive 90/313/EEC, of July 7th, on freedom of access to information on environmental matters.

As defined by the terms of this law, the PA must guarantee the universal right to information through the access to administrative documents, in accordance with the principles of publicity, transparency, equality, justice and impartiality.

The exercise of this right is assured to all citizens, without them having to invoke personal and direct interest, except for the access to documents containing personal information. The right of access to administrative documents is limited every time the matters at stake are covered by confidentiality provisions of the judiciary or they can harm or place at risk the internal and external security of the State.

There are limits of access, as regulated by specific legislation, to notary and registry documents, to civil and criminal identification documents, to documents referring to personal data subject to automated processing and to documents kept in historical archives.

The access to documents which dissemination can put at risk confidential information of a commercial and industrial nature, or about the internal life of companies, can be refused. This also holds whenever information is used in disregard to the rights of the author and the rights of industrial property.

The access to documents of unfinished legal proceedings or preparatory documents related to a pending decision is deferred until the decision is taken, the proceeding archived or until a year after its preparation.

Administrative documents on classified matters are subject to a partial communication every time it is possible to extract the information related to the classified matter.

The right of access to administrative documents covers the right of obtaining their reproduction and the right of being informed about their existence and content. As such, citizens can exercise their right of access through:

- Free consultation at the services holding the administrative documents;
- Reproduction by photocopy or by any other technical means (visual or sound);
- Issue of a warrant/certification by the Administration services;

The cost to be supported by the citizens for the reproduction of the documents, in the context of the right of access to administrative documents, strictly corresponds to the costs of the materials used and the service provided.

The citizens benefiting from judiciary support are free from paying these costs.

The Access to documents must be requested in writing. The entity receiving the request must, within 10 days, adopt one of the following procedures:

- Communicate the date, place and procedure for consultation, reproduction or obtainment of a document certification;
- Indicate the reasons of refusal, total or partial, of access to the document requested;
- Forward the request to the entity holding the document and duly notify the interested party;
- Send to the requesting party a copy of the request sent to the Commission on Access to Administrative Documents (CADA) for an opinion, in case there are doubts concerning the right of access to the information at stake, or in the instance of access to a document naming a third party without its written authorisation.

CADA, an independent public entity chaired by a counselling judge of the Supreme Administrative Court, was created to oversee the compliance with the law of access to administrative documents.

This Commission is responsible for: evaluating complaints submitted by the interested parties; producing opinions on access to documents naming third parties; producing opinions on the classification of documents and on the general implementation of the law on access to information.

The Law on Access to Administrative Documents also obliges the PA to publish the documents related to the context of administrative activity, interpretation of positive right or the description of an administrative procedure. The Council of Ministers Resolution 95/99, of August 25th, obliges public institutions to publish on the internet all the information that is published on paper.

Despite the strict discipline imposed by these legal provisions, the Aarhus Convention goes further with regard to active information.

Following the transposition of the Directive 2003/4/EC, on public Access to Environmental Information, (proceedings under way) the obligations on active information will be applicable within the internal legal order in accordance with the provisions of the Aarhus Convention.

The Administration receives, on a daily basis, hundreds of information requests of a very diverse nature. The main obstacles in providing the information are related to functional and logistical problems and/or limitations at the human resource level. The end result is, almost always, a delay in the replies to the requests.

Relevant URL addresses:

www.cada.pt

3. Aspects related to the collection and dissemination of environmental information (article 5)

3.1. Information on threats to human health and the environment – radiological emergencies

The obligation of notification in case of a radiological emergency is foreseen in the following instruments:

- The Luso-Spanish Treaty on “Cooperation on Safety Matters of Frontier Nuclear Installations” obliges, in the case of an accident in frontier nuclear installations (until 30 km), the Spanish authorities to communicate the incident to the Portuguese authorities in time to allow the adoption of the necessary mitigation measures.
- At the Community level, the Council Decision 87/600/EURATOM, of December 14th, on “Community Rules of Rapid Exchange of Information in Case of Radiological Emergency”, obliges a Member-state to promptly notify the Commission and those Member States which are, or are likely to be, affected and provide any available information on the measures it decides to adopt in case of a radiological emergency;

At the United Nations level, both Portugal and Spain ratified the “International Convention on Rapid Notification in case of Nuclear Accident or Radiological Emergency”.

The communication mechanisms in case of accidents include several channels, with surveillance staff on duty 24h per day, 365 days per year.

The communication to the public in case of radiological emergency is defined by the provisions of the Decree-Law 36/95, of February 14th, which determines that the affected population will receive in a fast and consistent manner:

- a) Information on the emergency incident and its characteristics;
- b) Protection instructions which may cover the following elements: restrictions on the consumption of certain foodstuffs that may be contaminated; hygiene and decontamination rules; staying at home; distribution and use of protective substances; evacuation procedure.

The IA website has permanent information on the results of the data collected on-line by the RADNET alert network, and also information of a more general nature related to radiological emergencies. Should such occur, information on its progress and recommended protection measures will also be published.

3.2. Measures adopted to ensure that environmental information is available on databases of easy public access

A policy for the development of the information society has been actively promoted since 1995 through the implementation of several initiatives (Portugal Digital/Iniciativa Internet). The information society is considered to be a national priority because of the critical role of widespread access to information and knowledge transmission in national development.

The information made available in electronic format (websites) by MAOT’s bodies and services includes reference documents, information and thematic brochures, policy documents, plans and programmes, legislation in force, financial support instruments, technical and documental databases, information on products and services, forms, addresses and other contact elements, in accordance with the competencies of each organism.

The majority of this information is also available to the public in more conventional supports, namely in publications and other print editions.

The national environmental legislation can be freely consulted through the System of Documental Information on Environmental Law (SIDDAMB), a system based on integral texts and a relational structure which integrates national, Community and international law, national and Community jurisprudence, doctrine, as well as the legal analysis of the texts.

In the last few years, more information has been made available to the public in the form of databases, accessible in electronic format, of which the following are good examples: information on environmental impact assessment proceedings; results of the quality control of water for human consumption, water resources (National Information System on Water Resources. SNIRH), quality of bathing waters and air quality (On-line Database on Air Quality – QualAr); the industrial licensing and the listing of facilities covered in the context of the procedures on serious industrial accidents.

Water Resources

The availability of information on water resources has been subject to improvements, namely through the internet, although it is still not possible to satisfy the growing interest of the public on these matters.

There is currently a shortfall in the monitoring of the status and uses of water. Also, the dissemination of this data is not yet done as quickly as is desired.

With regard to the water quality of the public supply system, a sensitive issue for most citizens, although the number of quality tests has been increasing, public dissemination of the data is still incomplete.

Air Quality

In terms of availability of air quality information, the data on the concentration of certain pollutants must be disseminated regularly through media channels and the internet.

The National Air Quality Database (QualAr) was implemented in this context, providing near real-time access to information on the concentrations of several pollutants being monitored and respective statistics, violations of thresholds of public information and/or alert thresholds, and the air quality index (IQar).

The Air Quality Index (IQar), available daily on the internet, is based on data from QualAr and has the objective of providing the public with objective and easily readable information on air quality in a given area.

As for the public notification of violations of the information and alert thresholds, and in addition the normal dissemination through QualAR, a procedure was implemented under the responsibility of the Commissions of Regional Development Coordination (CCDR) which consists of sending in real-time faxes/emails to various entities and media bodies whenever these incidents occur.

The main problems of this information mechanism are related to the logistics and management of the technical staff of the CCDRs in order to ensure “round the clock” prevention against pollution incidents, especially ozone.

Environmental licensing - Integrated Pollution and Prevention Control (IPPC)

The Decree-Law 194/2000, of August 21st, transposed to national law the Council Directive 96/61/EC, of September 24th, on Integrated Pollution and Prevention Control. It aims at the integrated prevention and control of pollution from certain activities, striving toward reaching a high level of protection of the environment as a whole.

The dissemination of information on IPPC is made through the IA website. The information considered to be relevant to the public includes: lists of the installations covered, installations that responded to the emissions inventory, installations with environmental licences and the respective contents of these licenses and/or amendments, and installations with non-conformities.

The provision of information by industry to the public, on activities and operations, is part of the conditions imposed by the licenses. The dissemination of information on emissions is made in accordance with the terms of the EPER inventory.

State of the Environment Report (SER)

The Framework Law on the Environment establishes that “the Government is obliged to present to the Assembly of the Republic, together with the Broad Options of the Plan of each year, a Report on the State of the Environment (SER) relative to the previous year”.

The IA must ensure the collection, treatment and analysis of the environmental information necessary to promote the annual preparation of the SER. It must also study and make proposals on the use of structural indicators, namely a system of sustainable development indicators to evaluate progress in these matters.

These annual SER have been prepared since 1987. In 2000, a “Proposal on a System of Indicators on Sustainable Development – SIDS” was edited and made available for download on the internet. At present, many of these indicators are used in the production of SER for a diverse range of themes.

Both the print and web editions of SER and SIDS, available since 2000, have allowed a dissemination of this information on a much larger scale, not only to the public but to public authorities as well. It is therefore a means of conveying in-depth information on the environment, on an annual basis, to local and central authorities, NGOs, universities, etc.

For the preparation of SER and SIDS, the IA has set up a network of focal points in many bodies and ministries with whom data is exchanged every year. Although there is openness and a will for this network to work, there are still difficulties in obtaining the appropriate information in due time.

Relevant URL addresses:

<http://www.iambiente.pt/sids/sids.pdf>

http://www.iambiente.pt/portal/page?_pageid=33,32142&_dad=gov_portal_ia&_schema=GOV_PORTAL_IA&_id_doc=5044&_id_menu=5033

Inventories

IA is the entity responsible for the coordination and execution of the national annual inventories of atmospheric emissions including Greenhouse Gases (GHG) and sinks, acidifying substances and other pollutants. The CCDRs are responsible for the regional inventories covering the territorial area under their jurisdiction.

Although the IA is the responsible entity for the calculation of emissions, namely with regard to the choice of methodologies and emission factors, other institutions/agents also contribute towards the process of inventory preparation by providing data, experts’ opinions, technical support and general comments.

The inventory data, as well as the annual report explaining the methodologies and background information, are made available at the IA site. Furthermore, the national emissions inventory and the emissions forecasts for 2010 are widely disseminated to the public and interested bodies, namely ENGOs.

With regard to waste, the website of the Portuguese Institute of Wastes provides access to a broad range of information on this matter.

3.3. Measure to encourage the operators of installations with an environmental impact

Environmental Management System (EMS)

Environmental Management Systems were conceived to help organisations in managing and improving their environmental behaviour. One of the conditions of this system is the obligation of the registered/certified organisations to demonstrate openness and dialogue with the public and other stakeholders, including the local communities and the clients.

As such, organisations implementing the European Eco-management and Audit Scheme (EMAS) must prepare an environmental declaration containing extensive information on their activities and environmental impacts.

In Portugal, the number of organisations registered in the EMAS and certified with ISO 14001 has been rising and there are currently 23 organisations registered with EMAS

(associate registration) or 26 sites registered (registration by site), and 313 organisations with ISO 14001 certification.

The IA has established a set of actions which have contributed towards the growing adoption of EMS, namely:

- a) Contracts of Continuous Improvements of Environmental Performance signed with some industrial sectors (cement, glass, cargo transports), with the aim of implementing a set of specific measures of environmental improvement leading to registration in the EMAS;
- b) Financial incentives for the implementation of EMS (EMAS and ISO14001) and adherence to the Community Eco-Label; MAET also awards incentives for these purposes.

Community Eco-label (CEL)

In Portugal, the Community system for awarding the eco-label is regulated by a Joint Official Communication of the Minister of Environment and Natural Resources and the Minister of Industry and Energy. The award of CEL is under the responsibility of a Selection Committee chaired by the IA.

Reward for Environmental Gains (REG)

The candidate projects to the "Programme of Incentives to the Modernization of the Economy (SIME)" can benefit from an added reward on top of the financial incentive whenever the project produces environmental gains. This is conditional on the promoter demonstrating that, with regard to the facility for which it is requesting this reward, it is complying with the applicable national and Community environmental law.

Eligibility for REG is met if the promoter voluntarily achieves an improvement in environmental performance through the following: obtaining an environmental license before the promoter is actually obliged to do so by law; EMAS registration; Eco-Label Registration; and significant reduction of GHGs and acidification.

Information to Consumers

The Decree-Law 304/2001, of November 26th, on information about fuel economy and CO₂ emissions, creates an information system for consumers of new passenger vehicles in order to allow an informed choice on the consumption of fuel and carbon dioxide emissions.

In the context of this system, all the promotional literature on new passenger vehicles must include information about the fuel consumption and CO₂ emissions.

The "Fuel Economy Guide" is a publication that compiles, on an annual basis, the data on official fuel consumption and the specific CO₂ emissions for every model of new passenger car available on the market.

Environmentally sustainable consumption has been addressed in several training initiatives at schools that are members of RedeEC (Consumer Education Network). This is one of the favourite topics of students and teachers.

In 2003, the IA website had a daily average of 865 visits against 586 visits in 2002. In this same year, the number of queries received at IA via email was of 3.820, of which 52% were information requests, 26% were complaints, 15% were suggestions and 7% were comments.

Relevant URL addresses:

www.dra-n.pt – Commission for the Coordination of Regional Development in the North
www.dra-centro.pt - Commission for the Coordination of Regional Development in the Centre
www.drarn-lvt.pt - Commission for the Coordination of Regional Development of Lisbon and Tagus Valley
www.ccr-alt.pt - Commission for the Coordination of Regional Development of the Alentejo
www.dra-alg.min-amb.pt - Commission for the Coordination of Regional Development of the Algarve
www.iambiente.pt – Environment Institute
www.inag.pt – Water Institute
www.inresiduos.pt - Institute of Waste
www.icn.pt – Nature Conservation Institute

www.dgotdu.pt – General Directorate for Spatial Planning and Urban Development
www.igeo.pt – Portuguese Geographic Institute
www.ic.pt - Instituto of the Consumer
www.dgsaude.pt – General Directorate for Health
www.meteo.pt – Meteorology Institute
www.dgv.pt - General Directorate for Road Transport
www.dgempresa.min-economia.pt - General Directorate for Enterprise
www.dgge.pt - General Directorate for Geology and Energy
www.diramb.gov.pt - System of Documental Information on Environmental (SIDDAMB)
www.snbpc.pt – National Service of Firefighters and Civil Protection

4. Public Participation in decisions on specific activities (article 6)

4.1. Environmental Impact Assessment

A set of activities has been developed with the general objective of ensuring the necessary means to effective participation by citizens in the decision-making process and of promoting the right of consultation and access to environmental information, with regard to Environmental Impact Assessment (EIA).

As the responsible entity for the management of the public participation process, the IA has developed efforts towards:

- Promoting and ensuring the necessary means to public participation.
- Selecting the most adequate forms of carrying out the public consultation.
- Providing answers to questions arising in the process of public consultation.
- Publicising documents in the context of the different stages of the EIA process.
- Organising and updating a national Database on EIA.

The advertising regarding consultation documents is done through publicity in newspapers, press releases sent to media outlets, letters to selected entities of national, regional and local reach (NGOs, Universities, Industry associations, among others), Internet and, in some cases, “door to door” distribution of flyers. In all processes there is always a clear indication of where the documents are available for consultation.

With the objective of promoting and diversifying the types of clarification and consultation of the interested parties, as well as improving public participation in the EIA processes, from 2000 onwards a model of public consultation was put in place which gives preference to the involvement of local authorities in the geographical area of the project. This model is based on technical meetings for the clarification of issues. More specifically, helpdesks and clarification meetings with the participation of the project proponent, consultants and the Environment Institute have been carried out to respond to queries by citizens directly affected by the projects.

A database was also developed and made available on the internet in order to publicise and provide further information on EIA processes such as the public consultation process; non-technical summaries (NTS) of the EIA; executive summaries of the environmental conformity reports concerning the Environmental Impact Declaration; and the proposals for the Definition of Scope with public consultation. The results of the decision on the projects under evaluation are also published on the internet.

In the last few years, there has been an upward trend in public consultations, in line with the rise in the number of projects subject to EIA, as can be seen in the table below:

Public Consultations (PC)				
Year	2000	2001	2002	2003
Nr. of PC	61	64	74	107

The table below provides a clearer picture of the levels of public participation achieved. Although it has been improving relative to previous years, it is still not entirely satisfactory in light of the human, material and financial resource outlay involved.

Public Consultations (PC)		Number of Participations in EIA Processes					
year	Nr.	Citizens	ENGO	Central Public Admin.	Local Public Admin.	Others	Total
2000	61	1.931	31	189	143	124	2.418
2001	64	6.476	43	90	138	142	6.889
2002	74	2.776	52	73	198	131	3.230
2003	107	3.290	98	132	164	133	3.817

The difficulties in achieving larger participation levels are partly due to a lack of interest and tradition of the citizens in participating in decision-making processes. The EIA processes with the highest levels of participation are those which affect directly the public's interests or those with most media coverage. The level of participation is, therefore, not directly associated to the importance of the project.

It is also important to mention that the national legislation contemplates the provision in paragraph 4 of article 6 of the Convention, allowing the proponent to present to the environmental authorities a project proposal together with a document identifying the relevant questions to be tackled in the future in the EIA. At this stage, these documents can be distributed to the interested public so that they can provide an opinion on the project.

4.2. Integrated Pollution Prevention and Control

With regard to IPPC, public participation in the decisions leading to the award of an installation license is part of the established procedure for evaluation of a licensing request. Thus, all submitted opinions must be considered in the decision.

The main difficulty in ensuring a full application of the Convention's principles is connected to the level of interaction necessary to ensure a broad participation over a short time frame. However, this aspect should improve as the internet gradually grows as a means of dissemination and information exchange among the stakeholders.

4.3. Public Participation in Decisions on Genetically Modified Organisms (GMOs)

Portugal approved legislation which allows not only that the public has access to information on GMOs, but that there is also public participation in related decisions.

For this purpose, the publication of the Decree-Law 72/2003, of April 10th, transposing to national law the Directive 2001/18/EC, of March 12th, on the deliberate release to the environment of genetically modified organisms (GMOs), includes in its articles the public access to information. As such, article 26 clearly establishes that the competent authority must provide the public with information on the deliberate release to the environment as well as the market placement of GMOs. Concerning the former, it specifies that the public has a period of 60 days to produce comments and it determines that the public announcement is made through two media bodies of national scope.

At a different level, the ratification of the Cartagena Protocol on Biological Safety by the Decree 7/2003, of April 17th, meant the compliance with an international requirement for public participation and awareness.

5. Public Participation Concerning Plans, Programmes and Policies relating to the Environment (article 7)

5.1. Right of participation in proceedings

The Law 83/95, of August 31st, regulates the right of participation in proceedings. This diploma obliges PA to hear the interested citizens and the entities for the defence of the interests at stake in the preparation stages of plans for development of activities; urbanism plans; master plans and spatial plans; decisions on the localisation and execution of public

works or other public investments with a relevant impact on the environment or economic and social conditions of the population.

The studies and other preparatory elements of projects, plans and works, must be made available for consultation and can be subject to queries and the submission of written comments. Public hearings are carried out whenever the interested parties wish to be heard orally. The contents of these hearings are duly recorded on paper (minutes).

5.2. Participation on instruments of land management

The Law 48/98, of August 11th, approved the framework of the policy of spatial planning and urbanism.

To complement this law, the Decree Law 380/99, of September 22nd, as amended by the Decree-Law 310/2003, of December 10th, defines the regime of coordination of the system of land management at the national, regional and municipal levels, the general regime of land use and the regime for the preparation, approval, implementation and evaluation of the instruments of land management.

This regime is applicable to: the national programme of the policy of spatial planning; the sectoral plans with relevance to land use (such as transports, energy, geological resources, agriculture, forestry and environment); the special plans of spatial planning (spatial plans for protected areas, public water lagoons and coastal strip).

This diploma is also applicable, within the spatial planning framework, to the regional, inter-municipal and municipal plans.

All the interested parties have the right to be informed on the preparation, approval, monitoring, implementation and evaluation of the instruments of land management. As such, they can consult the various processes, and obtain a copy of the minutes of the deliberative meetings, of the certifications of the approved instruments, as well as information on the provisions in the instruments of land management. The entities responsible for the preparation and registration of the above mentioned instruments must create and update a system that guarantees the right to information.

The right of participation in the preparation, modification, revision, implementation and evaluation of the plans is assured to all citizens and to the associations representing economic, social, cultural and environmental citizens. This right includes the ability to make suggestions, request explanations, and also of intervening in the public discussion that invariably takes place before any approval.

Furthermore, individuals are conferred the right to pursue a direct contestation of the plans, in the context of to municipal spatial planning and special plans.

The public entities are obliged to disseminate, namely through media outlets, decisions on the beginning of the processes of preparation, modification or revision; the conclusion of the various stages of the process; the contents of the elements being submitted to public discussion and respective conclusions; and the evaluation procedures. These entities also have the duty of evaluating the submitted proposals and adequately responding to the clarification requests.

5.3. Participation on plans and programmes related to water resources

In addition to that already referred regarding the special plans for spatial planning, it is important to comment on the role of the National Water Council (CNA).

The CNA is an independent national consultation body of the Government and the MAOT, in the domain of national water planning. It is in charge of accompanying and evaluating the preparation of plans and projects with relevance to water resources; proposing measures that improve the development and coordination of the actions associated to these plans and projects; and formulating or evaluating strategic options for the sustainable management of national water resources. This body comprises representatives selected by the services of central administration, local authorities, environmental NGOs and institutions representing socio-economic interests.

In the context of its activities, the CNA has analysed and adopted a position on:

- National Water Plan;
- Hydrographical Basin Plans of the national and international (Luso-Spanish) rivers;

- National Hydrological Plan of Spain;
- Luso-Spanish Convention on Cooperation in the domain of water resources;
- Framework Directive for Community action in the field of water policy.

5.4. Participation on plans and programmes on wastes

The Institute of Wastes is the competent authority for the preparation of the national plan of waste management, which is built upon four sectoral plans related to the management of urban, industrial, hospital and agriculture wastes.

Until recently, the following plans had been prepared: the Strategic Sectoral Plan for Management of Urban Solid Wastes (PERSU); the Strategic Plan for Industrial Wastes (PESGRI); and the Strategic Plan for Hospital Wastes (PERH); the National Plan for Prevention of Production of Industrial Wastes (PNAPRI), in the context of PESGRI; and the National Strategy for the Reduction of Urban Biodegradable Wastes for Landfills. The Strategic Plan of Agriculture Wastes (PERAGRI) is presently being finalised.

The autonomous regions of Azores and Madeira have also prepared their respective strategic plans for waste management.

Monitoring Councils and Committees and Work Groups were created in order to monitor the preparation and implementation of these plans. These involved the Public Administration, environment and consumer protection NGOs, professionals and private sector representatives, Local Authorities, Universities and operators of waste management systems.

5.5. Examples of public discussions on strategies, plans and programmes

The best examples, given their importance as society's participation indicators in decision processes, are related to the public discussions that took place around documents of great relevance to the country, namely the National Strategy for Nature and Biodiversity Conservation (ENCNB) in 2001, the National Strategy for Sustainable Development (ENDS) in 2002, The National Plan for Climate Change (PNAC) and the National Programme for Allocation of Emissions Permits (PNALE) in 2004.

National Strategy on Nature and Biodiversity Conservation (ENCNB)

This document was subject to public discussion in 2001. This strategy, of a transversal nature, is an essential document for steering, in a consistent, focused and transparent manner, the policies and priorities on nature conservation in Portugal. A version of the ENCNB was made public on the 22nd May 2001 and available for public consultation until 15th June. A report on the public discussion process was disclosed in August of that same year, and on the 20th September 2001 the Council of Ministers approved the final document.

National Programme on Climate Change (PNAC)

PNAC has the objective of controlling and reducing Greenhouse Gas (GHG) emissions, anticipating the impacts of climate change and making proposals on adaptation measures to mitigate these negative impacts. Due to the broad nature and high relevance of this theme to the main policies and programmes of the country, this document was subject to public consultations at the many stages of its preparation.

The Council of Ministers Resolution 59/2001, of May 30th, paved the way for the first version of PNAC, officially presented to the public on 18th December 2001. The IA promoted three public sessions in Evora, Lisbon and Oporto, two sectoral roundtables with guests from the various sectors of activity, and a final roundtable with NGOs. The document was under public discussion during January and February 2002. The outcome of this process was later incorporated in the PNAC 2001 version.

The work then continued with the preparation of reference scenarios to be used as the basis for assessing the GHG reduction efforts to be carried out by the many sectors of national economic activity. These scenarios were also subject to public discussion in February 2003.

Additional Measures were also prepared to update, conclude and proceed to the effective implementation of PNAC. A new period of public discussion started, on December 18th 2003, with the public presentation of these measures. The relevant documents were publicized and

published at the IA website for comments and suggestions up until the 29th February 2004. This feedback was subsequently summarised in the public discussion report.

National Strategy for Sustainable Development (ENDS)

ENDS 2002 was presented to the public on the 5th June 2002, connecting by videoconference the cities of Coimbra, Évora, Faro, Funchal, Horta, Lisbon and Oporto and broadcasted on the internet. This was meant to be a clear signal of the overarching nature of the theme and the necessity of bringing the government decisions closer to the regions, local communities and citizens, thus encouraging their active participation. This day marked the beginning of a public discussion period that would last until the 5th August 2002.

The document was subject to approximately 5,300 direct downloads. Print copies were available for consultation at the five Regional Directorates of the Environment, at the Autonomous Regions and at IA itself. Seven public sessions were organised during the month of July. The public discussion also occurred through informal sessions in autonomous and spontaneous meetings all across the country. In the end, 120 opinions were received from all sectors of society, ranging from individuals to associations representing a significant number of citizens.

The decision to move on to the preparation of an Action Plan / ENDS Implementation was adopted on April 2003. Seven sectoral institutional panels were established, covering the many sectors of public administration and open to their respective professional organisations, and worked, between May and July 2003, on an IA proposal for a Plan of Implementation of ENDS.

The seven thematic documents produced were then subject to an informal public consultation, between 16th July and 16th September 2003, with NGOs, Professional Associations, Universities, as well as other interested parties.

National Allocation Plan for Emissions Permits (PNALE)

PNALE is intrinsically related to PNAC, emerging after the adoption of the Directive creating an EU market for GHG emissions permits. The PNALE proposal for the period 2005-2007, prepared by the Work Group on Climate Change, was submitted to public consultation between the 17th March and the 31st March 2004. In order to finalise a preliminary version of PNALE 2005-2007 to be sent to the European Commission for approval, a set of points considered to be relevant were incorporated, as summarised in the respective public discussion report.

6. Public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments (article 8)

In the development of article 52 of the Portuguese Constitution consecrating the right to petition, the Administrative Proceedings Code states that the interested parties can submit petitions to the competent authorities requesting the preparation, modification or revocation of the regulations. The bodies with regulatory competence inform the interested parties on the status/destination of their petitions.

The Decree-Law 221/97, of August 20th, created the National Council on the Environment and Sustainable Development (CNADS). CNADS is a horizontal body with consultative functions, which combines the participation of various social, cultural and economic forces with the objective of achieving a broad consensus regarding the environmental policy. The Council is responsible for producing opinions and recommendations on all the questions on the environment and sustainable development, namely the foundations of environmental policy, the strategic plans and programmes, Conventions and other international legal instruments and monitoring the implementation of the Framework Law of the Environment.

The National Water Council participates in the preparation of normative instruments and it recently analysed the following projects:

- Transposition to national law of the Community directives on water quality and respective compliance;
- A new legal and institutional framework for water management (Framework Law on Water).

Public consultations have been carried out in the areas of environmental legislation considered most relevant, with the proposed legal diplomas being disseminated to the public through the internet and other means, with the objective of achieving a broad discussion in the preparation of the laws. The following are examples of this procedure: the Law 35/98, of July 18th, defining the statutes of ENGOs; the legal proposal for transposition of the Directive 2000/60/CE, of October 23rd, establishing an action framework in the domain of water policy; and the legal proposal for transposition of the Directive 2001/42/EC, of June 27th, on the evaluation of the effects of certain environmental plans and programmes.

7. Access to justice (article 9)

In the terms of article 20 of the Portuguese Constitution, all citizens are guaranteed access to the law and courts for the defence of their rights and legally protected interests, and such cannot be denied due to lack of financial means. Thus, anyone should have the right of access to information, legal consultation and judiciary representation. The law also guarantees swift judicial procedures for an effective defence of the rights and liberties of citizens.

In order to guarantee the right of access to environmental information, the Law 65/93, of August 26th, states that in the cases of outright refusal, lack of decision or a decision limiting the right of access by the Administration, the interested party has the possibility of appealing to administrative courts or submit a complaint to CADA within a 20-day period.

CADA will produce a report, within a maximum period of 30 days, to be sent to the interested parties. After receiving the report, the Administration will communicate, with due justification, its final decision in a period of 15 days, otherwise it will be considered a lack of decision.

The decision (or lack of it) can be subject to impeachment at the administrative courts, in accordance with the regulation on the summon process for document consultation or emission of certifications.

This type of urgent process – the administrative action of summons for the provision of information, process consultation and emission of certifications – is foreseen in the **Code of Proceedings at the Administrative Courts** (CPTA), approved by the Law 15/2002, of February 22nd.

As such, the interested party can summon the administrative entity if not entirely satisfied, in line with its right to proceedings information and right of access to administrative archives and registries.

In the afore-mentioned instance, the judge will declare the obligation of the administrative entity of responding within 10 days. Should the action go forth, the judge determines the deadline for compliance with the summon, which should not exceed 10 days. In the case of non-compliance without acceptable justification, there are grounds for compulsory pecuniary sanctions and the evaluation of civil, disciplinary and criminal liability.

The CPTA also foresees special administrative action to compel the Administration to practise a corrective action. The practise of a legally corrective administrative action can be requested when the body with competence to decide did not communicate a decision within the time frame defined by law; refused the practise of the corrective action or refused to evaluate the request for such action.

- The **right to class action** is consecrated in article 52 of the Portuguese Constitution, and entitles all citizens, either individually or through associations for defending the interests at stake, with the right of obtaining the legal guardianship in cases of infraction against public health, the rights of consumers, the quality of life and the preservation of environmental and cultural heritage. This is true regardless of their having a direct interest in the claim, and includes the right to legal prevention, cessation and prosecution, as well as demanding a corresponding compensation.

The Law 83/95, of August 31st, defines the cases and terms for the exercise of the right to class action.

The exercise of this right takes the shape of administrative proceedings action or civil class action. The administrative proceedings action refers to the defence of the afore-mentioned interests and the litigation (in the instance of illegal conduct) against the harmful effects of the administrative actions.

Exercising this right does not require preparation and the author is free from incurring the costs, as long as the request is evaluated as partially valid.

A responsibility for fraudulent or guilty violation of the interests protected by the Class Action Law obliges the guilty party to compensate the victim(s) for the damages.

- **The Ombudsman** is an independent public body, nominated by the Assembly of the Republic, to whom citizens can complain for actions or omissions of the public powers, whenever their rights, liberties and legitimate interests are at stake. Although without decision powers, the Ombudsman evaluates the complaints and puts forward the necessary recommendations to prevent and repair the unfair practises of the competent bodies.

- The **Framework Law on the Environment** (FLE) states that any direct threat or harm to the right to a pleasant and balanced environment, entitles a citizen with the legitimacy to act legally against the author of these threats or injuries. This can result in:

- Cessation of the acts or activities at the origin of the threats or injuries incurred;
- Compensation for the property or moral damages that may have resulted;
- Removal of the causes of infraction and the restoration of the previous situation or equivalent.

In addition to the citizen, the Public Ministry can also resort to the instruments foreseen in this law for identical purposes.

Any person (regardless of its direct interest in the claim), environmental associations and foundations, and even local authorities, has the right to propose and intervene in all processes aimed at the protection of the values defended by the FLE, in accordance with relevant provisions in the law.

- The Law 35/98 states that NGOs, regardless of having a direct interest in the claim, have the legitimacy to:

- Propose legal actions necessary for the prevention, correction, suspension and cessation of actions and omissions by public and private entities that represent, or may represent, a cause of environmental degradation;
- Propose legal actions to enforce the civil liability regarding the actions and omissions previously mentioned;
- Resort to litigation for the actions and administrative regulations that violate the legal provisions of environmental protection;
- Submit a complaint or accusation, become an observing part in the criminal process on crimes against the environment and monitor the process of compliance with the penalties.

The ENGOs are free from incurring the costs of intervention in the process.

With regard to the municipal plans and the special plans for spatial planning, and beside the afore-mentioned general safeguards of citizens, these are also entitled with the right to promote their direct contestation at the courts, as defined by the Decree-Law 310/2003, of December 10th.

In response to a European Commission request, a study was carried out, between November 2002 and May 2003, to make a diagnosis of the development of access to justice in environmental matters, with regard to ENGOs and the citizens in general.

In Portugal, this study was prepared by an ENGO named EURONATURA – Centre for Environmental Law and Sustainable Development – giving rise to a document titled “Access to Justice in Environmental Matters: The Legal System and Judicial Practise”, which includes the analysis of judicial processes and administrative proceedings.

Report’s Coordination:

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