

The UN/ECE Agreement on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters - Aarhus Convention for short - came into force on 30 October 2001. Austria is a contracting party to the Convention.

The content of the Aarhus Convention is structured around three pillars:

1. **Public access to information about the environment**
2. **Public participation** in certain environmentally relevant decisions
3. **Access to courts of law / tribunals** in environmental matters.

Access to information about the environment

1. The **first pillar** regulates **access to information about the environment**. The general public should be entitled - without needing to prove a special interest - to access to information about the state of the environment, of public health and of other factors affecting the environment.

This right exists vis-à-vis not only the administrative authorities, but also (in certain circumstances) private entities that exercise public responsibility in the field of conservation and would fall within the scope of the Aarhus Convention's very broad definition of an authority. Authorities should provide the information requested within one month; it is permissible to extend this deadline by a further month in the case of complicated applications.

An application for information about the environment may be rejected only for certain specific reasons, e.g. if the application is obviously being misused or if the authority in question does not possess the information applied for. Other reasons for rejection: if releasing the information in question would have (say) negative effects on the confidentiality of the proceedings of public authorities, of commercial and industrial information or of personal data.

The Convention also provides for more active dissemination of information about the environment among the general public. Here transparency is important, and care must be taken that the information can effectively be accessed. The Convention gives keeping publicly accessible lists or collections of data, and providing access to these free of charge, as examples of practical measures in this respect. The authorities should increasingly provide information about the environment via electronic databases. An appeal against a refusal to provide information about the environment is possible by way of a review procedure.

Public participation

2. The **second pillar** regulates **public participation in certain decision-making processes that could have an impact on the environment**. Here the Convention sets out, in Art. 6 (Public participation in decisions on specific activities), the mechanisms of public participation, particularly with respect to its time, form and scope. In a separate annex it lists the activities to which public participation applies. Public participation is also provided for in the case of other activities that could have a significant impact on the environment, whereby the detailed implementation of this provision is left to the individual signatory states.

The "public concerned" must be informed at an early stage in a "suitable, timely and effective manner", whereby a certain minimum amount of information about the decision-making procedure must be provided. A reasonable timeframe must be planned and early public participation must be ensured. The Convention further stipulates that the competent authorities must grant the public access to all information of relevance for the decision-making procedure. At the same time it allows the public the possibility of submitting statements,

analyses and the like regarding the activities planned. The authorities must take due account of the outcome of public participation, and the public must be informed about the outcome of the decision without delay. In procedures for the renewal of existing permits, the Convention lays down that these provisions relating to public participation should be applied by analogy as appropriate and reasonable.

Within the framework of their national law, the signatory states shall also apply these provisions - "as far as feasible and appropriate" - to decisions on whether to permit the deliberate release of genetically modified organisms into the environment.

With regard to public participation in procedures concerning plans, programmes and policies relating to the environment (Art. 7), the Aarhus Convention lays down that provision must be made for the public to participate within a transparent and fair framework during the preparation of plans and programmes relating to the environment, and that the necessary information must be provided to the public. Here the timeframe must be chosen so as to allow participation at an early stage of the procedure, when all options are still open.

Last but not least, the second pillar of the Aarhus Convention provides that the signatory states should strive to promote effective public participation during the preparation of legally binding rules (e.g. ordinances) that may have a significant impact on the environment (Art. 8).

Access to courts of law or tribunals in environmental matters

3. The **third pillar** of the Aarhus Convention deals with **access to courts of law or tribunals in environmental matters** (Art. 9). With reference to the first pillar, the Convention lays down that any person who considers that his or her request for information has been wrongfully refused or inadequately answered should have access to a review procedure. This review procedure must take place before a court of law or another independent and impartial body established by law. (Art. 9 Par. 1).

With reference to the 2nd pillar, the Convention provides that members of the public affected should have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive and procedural legality of any decisions within the scope of Art. 6. The Convention grants this right to those members of the public concerned who either have "a sufficient interest" or alternatively claim "impairment of a right", where the national administrative procedural law requires this as a precondition. What exactly constitutes "sufficient interest" and "impairment of a right" remains to be determined by national law. Non-governmental organisations (NGOs) active in the area of environmental protection that meet the preconditions specified by national law are recognised by the Aarhus Convention as having a "sufficient interest" (Art. 9 Par. 2).

As a third component within the scope of the **third pillar**, the Aarhus Convention lays down that "members of the public", where they meet the national criteria, shall have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene national law relating to the environment (Art. 9 Par. 3).