

## European High Level Group on Nuclear Safety and Waste Management

# Current Community and International Law with relevance to Transparency

## Working Paper

### EURATOM

**Council Directive 89/618/Euratom** of 27 November 1989 on informing the general public about health protection measures to be applied and steps to be taken in the event of a radiological emergency

*OJ L 357, 7.12.1989, p. 31–34*

**91/C 103/03: Commission Communication** on the implementation of Council Directive 89/618/EURATOM of 27 November 1989 on informing the general public about health protection measures to be applied and Steps to be taken in the event of a radiological emergency

*OJ C 103, 19.4.1991, p.12–16*

- **Summary of content/obligations**

Member States are obliged to pass legislation covering public information as set out in the Directive. Transparency should create confidence.

- **Public Information**

1. prior (= “early”) information

- a. The prior Information supplied shall at least include the elements set out in Annex 1 (see Art 5 para 2, Council Directive 89/618/Euratom), e.g. basic facts, type of radiological emergency, measures and actions to be taken

2. information to be given in the case of an event

- a. Information in the event of a radiological emergency (Art 6, Council Directive 89/618/Euratom), see Annex 2

- b. responsible authorities have to be mentioned (Art 8, Council Directive 89/618/Euratom)

- c. individual procedures for circulating the information are determined by each MS (Art 9, Council Directive 89/618/Euratom), ev. also notified to the Commission

- **Reporting**

There is no regular reporting mechanism apart from notifying the Commission of the transposition of the Directive into national law. Only the information referred to in Art 5 (Council Directive 89/618/Euratom) shall be notified to the Commission (Art 10, Art 8, Council Directive 89/618/Euratom).

**Council Directive 2009/71/Euratom** of 25 June 2009 establishing a Community framework for the nuclear safety of nuclear installations  
*OJ L 172, 2.7.2009, p. 18–22*

- **Summary of content/obligations**

To establish a Community framework to maintain and promote the continuous improvement of nuclear safety and its regulation and to ensure that Member States provide appropriate national arrangements for a high level of nuclear safety to protect workers and the general public against the dangers arising from ionising radiations from nuclear installations the Directive shall apply to all civilian nuclear installations as defined in this Directive (e.g. enrichment plants, nuclear fuel fabrication plants, nuclear power plants, reprocessing plants, research reactor facilities, and spent fuel storage facilities).

- **Public Information**

Art 8 defines information to the public: *Member States shall ensure that information in relation to the regulation of nuclear safety is made available to the workers and the general public. This obligation includes ensuring that the competent regulatory authority informs the public in the fields of its competence. Information shall be made available to the public in accordance with national legislation and international obligation, provided that this does not jeopardise other interests such as, inter alia, security, recognised in national legislation or international obligations.*

- **Reporting**

Art 9 states in para 1 that *Member States shall submit a report to the Commission on the implementation of this Directive for the first time by 22 July 2014, and every three years thereafter, taking advantage of review and reporting cycles under the Convention on Nuclear Safety. Para 2 says that on the basis of the Member States' reports, the Commission shall submit a report to the Council and the European Parliament on progress made with the implementation of this Directive. Finally para 3 says that Member States shall at least every 10 years arrange for periodic self-assessment of their national framework and competent regulatory authorities and invite an international peer review of relevant segments of their national framework and/or authorities with the aim of continuously improving nuclear safety. Outcomes of any peer review shall be reported to the Member States and the Commission, when available.*

**Articles 35 and 36 Euratom Treaty** (radioactive airborne and liquid discharges)  
(environmental monitoring & environmental monitoring data)

**2004/2/Euratom: Commission Recommendation** of 18 December 2003 on standardised information on radioactive airborne and liquid discharges into the environment from nuclear power reactors and reprocessing plants in normal operation (notified under document number C (2003) 4832)

*OJ L 2, 6.1.2004, p. 36–46*

**Corrigendum** to Commission Recommendation 2004/2/Euratom of 18 December 2003 on standardised information on radioactive airborne and liquid discharges into the environment from nuclear power reactors and reprocessing plants in normal operation

*OJ L 63, 28.2.2004, p. 83*

Verification of environmental radioactivity monitoring facilities under the terms of Art 35 of the Euratom Treaty – **Practical Arrangements** for the conduct of verification visits in the Member States (2006/C 155/02)

*OJ C 155, 4.7.2006; p. 2–4*

**2000/473/Euratom: Commission recommendation** of 8 June 2000 on the application of Article 36 of the Euratom Treaty concerning the monitoring of the levels of radioactivity in the environment for the purpose of assessing the exposure of the population as a whole (notified under document number C(2000) 1299)

*OJ L 191, 27.7.2000, p. 37*

- **Summary of content/obligations**

*“Each Member State shall establish the facilities necessary to carry out continuous monitoring of the level of radioactivity in the air, water and soil and to ensure compliance with the basic standards. The Commission shall have the right of access to such facilities; it may verify their operation and efficiency.*

[Euratom Treaty, Art 35]

*The appropriate authorities shall periodically communicate information on the checks referred to in Article 35 to the Commission so that it is kept informed of the level of radioactivity to which the public is exposed.”*

[Euratom Treaty, Art 36]

Before 2004, verifications were undertaken on the basis of a bilateral meeting. After the Commission Recommendation 2004/2 coming into force a common basis in all Member States was established<sup>1</sup>. The Commission has the right to access facilities established by the Member States to carry out continuous monitoring of the level of radioactivity in the environment and may verify their operation<sup>2</sup>.

Verifications are initiated (a) where and when the Commission estimates it to be appropriate, (b) on request of national authorities, (c) on request of the European Parliament, (d) on request of a Member State.

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1 The verifications should be seen in compliance with the Basis Safety Standards: Council Directive 80/836/EURATOM, amended by Council Directive 84/467/Euratom, and replaced by Council Directive 96/29/EURATOM.

2 The Commission holds the view that the environment starts where the radioactive discharges pass out of operational control. The verifications, therefore, include the equipment for monitoring the gaseous and liquid discharges of plants.

- **Public Information**

The Commission's practice is to publish the main findings and the technical report. There is no legal requirement to publish these reports, but since 1999 all technical reports, incl. the main findings, as well as any official comments supplied by the MS are available on the website:

[http://ec.europa.eu/energy/nuclear/radiation\\_protection/article\\_35\\_en.htm](http://ec.europa.eu/energy/nuclear/radiation_protection/article_35_en.htm)

- **Reporting**

Each verification report consists of 2 documents: the technical report (relevant collected information, also basis for the following main findings) and the main findings (official conclusions).<sup>3</sup>

Information according to Art 36 is to be provided by Member States to the Commission annually.

**Note also:**

**EC (2007) 847 final: Communication from the Commission** Application of Article 35 of the Euratom Treaty – Verification of the operation and efficiency of facilities for continuous monitoring of the level of radioactivity in the air, water and soil, **Report** 1990-2007.

In 1986, the Commission announced its intention to exercise more systematically its right of verification under Art 35 (The EP adopted several resolutions to the same aim). Hence, in December 1989 the Commission decided that the numbers of verifications should be increased. EC (2007) 847 is the first report on the application of Art 35, it covers the years 1990-2007, whereas the verification periods are divided as following: 1990-2003 and 2004-2007.

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Be aware of the difference between verifications mentioned above and safeguard activities by the Commission (safeguard of nuclear materials) → see **Commission Regulation (Euratom) No. 302/2005 of 8 February 2005 on the application of Euratom safeguards**, *OJ L 54, 28.2.2005, p.1–71*. These safeguard activities apply to the production, separation, reprocessing and storage of source material.

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3 Until June 2009 the following country reports have been published: DK, DE (2x), ES (3x), IT (2x), IE, LU, FI, PL, PT (2x), SI, CY, MT, LV, FR (3x), SK, CZ, EL (2x), LT, EE, HU, UK (4x), AT, BE

**Article 37 Euratom Treaty** (radioactive discharges)  
(planned disposal of waste/impact on neighbouring state/transmission of general data)

**1999/829/Euratom: Commission Recommendation** of 6 December 1999 on the application of Article 37 of the Euratom Treaty  
*OJ L 324, 16.12.1999, p. 23–43*

**Corrigendum** to Commission Recommendation 1999/829/Euratom of 6 December 1999 on the application of Article 37 of the Euratom Treaty  
*OJ L 34, 9.2.2000, p. 28*

**Corrigendum** to Commission Recommendation 1999/829/Euratom of 6 December 1999 on the application of Article 37 of the Euratom Treaty  
*OJ L 45, 17.2.2000, p. 43*

**Replaced: 91/4/Euratom:** Commission Recommendation of 7 December 1990 on the application of Article 37 of the Euratom Treaty  
*OJ L 6, 9.1.1991, p. 16–24*

**SEC (90) 2290 final:** Report on the application of Art 37 EURATOM Treaty, January 1987 – June 1990

- **Summary of content/obligations**

*Each Member State shall provide the Commission with such general data relating to any plan for the disposal of radioactive waste in whatever form will make it possible to determine whether the implementation of such plan is liable to result in the radioactive contamination of the water, soil or airspace of another Member State. The Commission shall deliver its opinion within six months, after consulting the group of experts referred to in Art 31.*

[Euratom Treaty, Art 37].

The Commission Recommendation 1999/829/Euratom specifies the content of information to be provided by the Member State concerned.

- **Public Information**

Short statement of the Commission published in the OJ.

- **Reporting**

“General data” relating to any plan for the disposal of radioactive waste in whatever form, has to be submitted to the Commission whenever possible one year but not less than 6 months before any authorisation for the disposal of radioactive waste is granted by the competent authority (see para 5, Commission Recommendation 1999/829/Euratom). Since the submission of a plan for the disposal of radioactive waste is the responsibility of the Member State concerned, the State accepts responsibility for all information submitted to the Commission in respect of such a plan (para 6, Commission Recommendation 1999/829/Euratom). That the Member State concerned informs the Commission of the actions it envisages in response to any recommendation given in an opinion of the Commission on a disposal plan (para 7, Commission Recommendation 1999/829/Euratom).

## **Article 40 Euratom Treaty** (illustrative programmes - PINC)

- **Summary of content/obligations**

*In order to stimulate action by persons and undertakings and to facilitate coordinated development of their investment in the nuclear field, the Commission shall periodically publish illustrative programmes indicating in particular nuclear energy production targets and all the types of investment required for their attainment. The Commission shall obtain the opinion of the Economic and Social Committee on such programmes before their publication.*

[Euratom Treaty, Art 40]

- **Public Information**

PINC, updates respectively, have been published in 1966, 1972, 1984, 1990, 1997, 2007 and 2008.

- **Reporting**

N.A.

## **Article 41 – 44 Euratom Treaty (investment projects)**

**Council Regulation (Euratom) No. 2587/1999** of 2 December 1999 defining the investment projects to be communicated to the Commission in accordance with Article 41 of the Treaty establishing the European Atomic Energy Community  
*OJ L 315, 9.12.1999, p. 1–3*

**Commission Regulation (Euratom) No. 1352/2003** of 23 July 2003 amending Regulation (EC) No. 1209/2000 determining procedures for effecting the communications prescribed under Article 41 of the Treaty establishing the European Atomic Energy Community  
*OJ L 192, 31.7.2003, p. 15–17*  
**(annulled, see OJ C 269/46 of November 10, 2007, Case T-240/04)**

**Commission Regulation (EC) No. 1209/2000** of 8 June 2000 determining procedures for effecting the communications prescribed under Article 41 of the Treaty establishing the European Atomic Energy Community  
*OJ L 138, 9.6.2000, p. 12–14*

- **Summary of content/obligations**

*Persons and undertakings engaged in the industrial activities listed in Annex II to this Treaty shall communicate to the Commission investment projects relating to new installations and also to replacements or conversions which fulfil the criteria as to type and size laid down by the Council on a proposal from the Commission. The list of industrial activities referred to above may be altered by the Council, acting by a qualified majority on a proposal from the Commission, which shall first obtain the opinion of the Economic and Social Committee.*

*The projects referred to in Art 41 shall be communicated to the Commission and, for information purposes, to the Member State concerned not later than three months before the first contracts are concluded with the suppliers or, if the work is to be carried out by the undertaking with its own resources, three months before the work begins. The Council may, acting on a proposal from the Commission, alter this time limit.*

*The Commission shall discuss with the persons or undertakings all aspects of investment projects which relate to the objectives of this Treaty. It shall communicate its views to the Member State concerned.*

*The Commission may, with the consent of the Member States, persons and undertakings concerned, publish any investment projects communicated to it.*

[Euratom Treaty, Art 41 to 44]

- **Public Information**

Currently, the view of the Commission is provided upon request on a case by case basis, if the Member States, persons and undertakings concerned explicitly agree. This should also apply to the communication to the Commission, but there is no reference case known yet.

- **Reporting**

The Council Regulation defines the projects which are to be communicated to the Commission. The Commission Regulation defines the scope and content of such communication.

## INFO-Box: “Espoo” and “Aarhus” (UNECE Conventions)

It should be noted that both conventions explicitly refer to nuclear activities in their annexes<sup>4</sup>.

The **Espoo Convention** on an Environmental Impact Assessment in a Transboundary Context - Espoo, February 25, 1991

- 1<sup>st</sup> Amendment: Sofia, February 27, 2001
- 2<sup>nd</sup> Amendment: Cavtat, June 4, 2004
- Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context, May 21, 2003 (SEA Protocol)

**Council Decision** of 27 June 1997 on the conclusion, on behalf of the Community, of the Convention on environmental impact assessment in a transboundary context (Espoo Convention) (proposal *OJ C 104, 24.4.1992, p. 5*; decision not published).

**Council Decision** on the approval, on behalf of the European Community, of the first and the second amendments to the UN/ECE Espoo Convention on Environmental Impact Assessment in a Transboundary Context, not published in the OJ (Doc 14352/07, date of approval: November 29, 2007)

**2008/871/EC: Council Decision** of 20 October 2008 on the approval, on behalf of the European Community, of the Protocol on Strategic Environmental Assessment to the 1991 UN/ECE Espoo Convention on Environmental Impact Assessment in a Transboundary Context

*OJ L 308, 19.11.2008, p. 33-34*

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The **Aarhus Convention** on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (Aarhus, June 25, 1998) is based on 3 pillars:

1<sup>st</sup> pillar Public Access to Information (implemented through Directive 2003/4/EC)

2<sup>nd</sup> pillar Public Participation in Decision Making (implemented through Directive 2003/35/EC<sup>5</sup>)

3<sup>rd</sup> pillar Access to Justice: (a Directive proposed by the Commission in 2003 on Article 9(3) is still pending before the Community legislature<sup>6</sup>)

**2005/370/EC: Council Decision** of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters

*OJ L 124, 17.5.2005, p. 1–3*

4 for Aarhus Convention Annex I, list of activities referred to in Article 6, para 1(a) Energy sector, for Espoo Convention see Appendix I, list of activities

5 amending Directives 85/337/EEC and 96/61/EC as well as other instruments, notably Directive 2001/42/EC, Directive 2000/60/EC).

6 It should be noted that both Directives, 2003/4/EC and 2003/35/EC, contain provisions on access to justice. All 27 Member States, except one, are Parties to the Convention and therefore, responsible for this pillar as well. Within the Convention Article 3, para 7 requires each Aarhus party to promote the application of the principles of the Convention also in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment. In decision II/4 of the Meeting of the Parties from 2005, the Parties adopted non-binding guidelines, so called “Almaty Principles”: Promoting the Application of the Principles of the Aarhus Convention in International Forums, adopted at the Almaty Meeting 25-27 May 2005.



## “Aarhus” in Community Institutions

**Regulation (EC) No. 1367/2006** of the European Parliament and of the Council of 6 September 2006 on the **application of the provisions of the Aarhus Convention** on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies  
*OJ L 264, 25.9.2006, p. 13–19*

**2008/50/EC: Commission Decision** of 13 December 2007 laying down **detailed rules for the application of Regulation (EC) No. 1367/2006** of the European Parliament and of the Council on the Aarhus Convention as regards requests for the internal review of administrative acts  
*OJ L 13, 16.1.2008, p. 24–26*

**2008/401/EC, Euratom: Commission Decision** of 30 April 2008 amending its Rules of Procedure as regards detailed rules for the application of Regulation (EC) No 1367/2006 of the European Parliament and of the Council on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institution and bodies  
*OJ L 140, 30.5.2008, p. 22–25*

- **Summary of content/obligations**

It is appropriate to deal with the three pillars of the Aarhus Convention, in one piece of legislation and to lay down common provisions regarding objectives and definitions. This contributes to rationalising legislation and increasing the transparency of the implementation measures taken with regard to Community institutions and bodies (Preamble para 5, Regulation (EC) No. 1367/2006).

According to Art 1 the objective of the Regulation is to contribute to the Implementation by laying down rules to apply the provisions of the Convention to Community institutions and bodies.

Based on this Regulation (EC) No. 1367/2006/EC detailed rules for the application of the Regulation are formulated in the Commission decision, in particular concerning contents of request for internal review, (Art 1, Regulation (EC) No. 1367/2006), submission of request (Art 2, Regulation (EC) No. 1367/2006), criteria for and assessment of the entitlement of non-governmental organisations to request internal review (Art 3 and 4, Regulation (EC) No. 1367/2006) and administrative cooperation (Art 5, Regulation (EC) No. 1367/2006).

- **Public Information**

Art 9 para 1, Regulation (EC) No. 1367/2006 stresses that community institutions and bodies shall provide, through appropriate practical and/or other provisions, early and effective opportunities for the public to participate during the preparation, modification or review of plans or programmes relating to the environment when all options are still open. In particular, where the Commission prepares a proposal for such a plan or programme which is submitted to other Community institutions or bodies for decision, it shall provide for public participation at that preparatory stage.

Art 9 para 4, Regulation (EC) No. 1367/2006 describes a time-limit of at least 8 weeks for receiving the documents.

Art 9 para 5, Regulation (EC) No. 1367/2006 points out that in taking a decision on a plan or programme relating to the environment, Community institutions and bodies shall take due account of the outcome of the public participation. Community institutions and bodies shall inform the public of that plan or programme, including its text, and of the reasons and considerations upon which the decision is based, including information on public participation.

Art 10, Regulation (EC) No. 1367/2006 states that any non-governmental organisation which meets the criteria set out in Art 11 is entitled to make a request for internal review to the Community institution or body that has adopted an administrative act under environmental law or, in case of an alleged administrative omission, should have adopted such an act. NGOs also may institute proceedings before the Court of Justice (Art 12, Regulation (EC) No. 1367/2006).

- **Reporting**

The Commission adopted on 7 May 2008 the first Implementation Report reviewing how the Community has implemented the Aarhus Convention (SEC (2008) 556)

**2006/548/EC, Euratom: Commission Decision** of 2 August 2006 amending Decision 2001/844/EC, ECSC, Euratom  
*OJ L 215, 5.8.2006, p. 38–43*

By this Decision an annex laying down Commission provisions on security are added to the Commission's Rules of Procedure.

Amended: **2001/844/EC, ECSC, Euratom: Commission Decision** of 29 November 2001 amending its internal Rules of Procedure (notified under document number C(2001) 3031)  
*OJ L 317, 3.12.2001, p. 1–55*

## Public access to information (1<sup>st</sup> pillar Aarhus)

**Directive 2003/4/EC** of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC  
*OJ L 41, 14.2.2003, p. 26–32*

Repealed: **Council Directive 90/313/EEC** of 7 June 1990 on the freedom of access to information on the environment  
*OJ L 158, 23.6.1990, p. 56–58*

- **Summary of content/obligations**

According to Art 3 para 1, Directive 2003/4/EC, Member States shall ensure that public authorities are required, in accordance with the provisions of this Directive, to make available environmental information held by or for them to any applicant at his request and without his having to state an interest.

- **Public Information**

According to Art 3 para 1, Directive 2003/4/EC, environmental information shall be made available to any applicant at his request and without having to state an interest. Pursuant to Art 3 para 2 (specified) information shall be provided (a) as soon as possible, within 1 month after requesting or (b) within 2 months (because of its complexity). Member States shall ensure that public authorities inform the public adequately, and ensure guidance and advice (Art 3 para 5, Directive 2003/4/EC). An information request can be refused because of criteria mentioned in Art 4 (exceptions, Directive 2003/4/EC). Member States shall ensure that the information is updated appropriate (details see Art 7 para 2, Directive 2003/4/EC).

- **Reporting**

Pursuant to Art 9, Directive 2003/4/EC Member States shall report on the experience gained in the application of this Directive not later than 14 February 2009. They shall communicate the report to the Commission not later than 14 August 2009.

In the light of experience and taking into account developments in computer telecommunication and/or electronic technology, the Commission shall make a report to the European Parliament and to the Council together with any proposal for revision, which it may consider appropriate.

Provisions implementing the 3rd pillar of the Aarhus Convention (“access to justice”) are to be found in Art 6.

**(Transboundary) Environmental Impact Assessment**  
**Public participation in environmental procedures (2<sup>nd</sup> pillar Aarhus)**

**Council Directive 85/337/EEC** of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment  
*OJ L 175, 5.7.1985, p. 40–48*

**Council Directive 97/11/EC** of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment  
*OJ L 73, 14.3.1997, p. 5–15*

**Directive 2003/35/EC** of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC<sup>7</sup>  
*OJ L 156, 25.6.2003, p. 17–25*

- **Summary of content/obligations**

Any changes or extensions of projects<sup>8</sup>, which may have significant adverse effects on the environment, have to be subject to a transboundary Environment Impact Assessment (EIA). An EIA is necessary if the extension/change will likely have significant effects on the environment of another member state (Art 7 para 1, Directive 85/337/EEC, consolidated version 2003).

Furthermore, while the EU *acquis* contributed to both conventions, it is the objective of the latest Directive mentioned here (Directive 2003/35/EC) to contribute to the implementation of the obligations arising under the Aarhus Convention (2<sup>nd</sup> and 3<sup>rd</sup> pillar), in particular by providing and improving public participation in certain legal matters.

- **Public Information**

Art 6 para 2, Council Directive 85/337/EEC, consolidated version 2003: the public shall be informed, whether by public notices or other appropriate means such as electronic media where available, of the following matters early in the environmental decision-making procedures referred to in Article 2 para 2 and, at the latest, as soon as information can reasonably be provided. Para 6 concretises the time-frame as a reasonable time-frame.

Art 6 para 5, Council Directive 85/337/EEC, consolidated version 2003: relevant information should be sent to the affected party as soon as possible, and no later than when its own public is informed. The detailed arrangements for Art 7 para 1 may be determined by the Member States.

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7 “IPPC Directive”: Directive 2008/1/EC of 15 January 2008 concerning integrated pollution prevention and control (codified version).  
OJ L 257, 10.10.1996, p. 26–40, see also Corrigendum OJ L 302, 26.11.1996, p. 28.

8 The wording of the Directive indicates that it has a wide scope and a very broad purpose: see also ECJ case C-72/95 (“Kraaijefeld”), ECR 1996, I-5403, para 31 and 39, as well as ECJ case C435/97 (“WWF”), ECR 1999, page 05613, para 40.

Art 10a, Council Directive 85/337/EEC, consolidated version 2003 on access to justice: Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned (having a sufficient interest or alternatively maintaining the impairment of a right, where administrative procedural law requires this as a precondition) have access to a review procedure before a court of law or another independent and impartial body to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.

- **Reporting**

By 25 June 2009, the Commission shall send a report on the application and effectiveness of Directive 2003/35/EC to the European Parliament and to the Council (Art 5, Directive 2003/35/EC). With a view to further integrating environmental protection requirements, in accordance with Art 6 of the Treaty establishing the European Community, and taking into account the experience acquired in the application of this Directive in the Member States, such a report will be accompanied by proposals for amendment Directive 2003/35/EC, if appropriate. In particular, the Commission will consider the possibility of extending the scope Directive 2003/35/EC to other plans and programmes relating to the environment (Art 5, Directive 2003/35/EC).

### **Access to justice (3<sup>rd</sup> pillar Aarhus)**

The 3<sup>rd</sup> pillar (Art 9 para 3 of the Convention) requires the Parties to grant access to justice in cases of actions and omissions by private persons and public authorities which contravene national law relating to the environment.

A Directive implementing Art 9 para 3 of the Convention has been proposed by the Commission in 2003 but has not been approved by the Council yet.

Both Directives, 2003/4/EC and 2003/35/EC, contain provisions on access to justice (implementing Art 9 para 1 and 2 of the Convention).

## Strategic environmental assessment

**Directive 2001/42/EC** of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment; („SEA Directive“)

*OJ L 197, 21.7.2001, p. 30–37*

A UNECE Strategic Environmental Assessment Protocol (SEA Protocol) was adopted on 21 May 2003 under the Espoo UNECE Convention (see also Info-Box). While the ratification process is ongoing, implementing this protocol will also assist Parties in their Aarhus engagement.

- **Summary of content/obligations**

The purpose of the SEA Directive is to ensure that environmental consequences of certain plans and programmes are identified and assessed during their preparation and before their adoption. SEA will contribute to more transparent planning by involving the public and by integrating environmental considerations.

- **Public Information**

The public and environmental authorities can give their opinion which shall be taken into account during the preparation of the plan or programme and before its adoption or submission to the legislative procedure (Art 8 SEA Directive). After the adoption of the plan or programme the public is informed about the decision (Art 9 SEA Directive), in particular a statement summarising how environmental considerations have been integrated should be made available (Art 9 SEA Directive para 1 lit b). In the case of likely transboundary significant effects the affected Member State and its public are informed (Art 6 and 7 SEA Directive) and have the possibility to make comments which are also integrated into the national decision making process.

- **Reporting**

Whereas a first report on the application and effectiveness of this Directive should be done by the Commission five years after its entry into force, and at seven-year intervals thereafter (Recital 20, Art 12 para 3, SEA Directive).

## General

**Regulation (EC) No. 1049/2001** of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents  
*OJ L 145, 31.5.2001, p. 43–48*

**2001/937/EC, ECSC, Euratom: Commission Decision** of 5 December 2001 amending its rules of procedure (notified under document number C(2001) 3714)  
*OJ L 345, 29.12.2001, p. 94–98*

The Decision lays down detailed rules for the application of Regulation No. 1049/2001.

- **Summary of content/obligations**

Regarding to Art 1 the purpose of the Regulation is to define the principles, conditions and limits on grounds of public or private interest governing the right of access to European Parliament, Council and Commission (hereinafter referred to as 'the institutions') documents provided for in Art 255 of the EC Treaty in such a way as to ensure the widest possible access to documents.

**COM/2007/0127 final - Communication from the Commission** - Follow-up to the Green Paper 'European Transparency Initiative' SEC(2007) 360

- **Summary of content/obligations**

Key components of the ETI (European Transparency Initiative) are: more structured framework for the activities of lobbyists, "consultation standards", and mandatory disclosure of information about the beneficiaries of EU funds under shared management.

Aim of the Commissions initiative is to strengthen public trust through openness and accessibility. Main components are: influence EU decision making and upholding minimum standards of consultation, increasing transparency about the use of EU funds, ethical rules and standards for public officials, public access to documents.

The Financial Transparency Website and search engine started October 2008 ([http://ec.europa.eu/grants/search/index\\_en.htm](http://ec.europa.eu/grants/search/index_en.htm)).



## **Related Information and Activities**

### **Relevant Communications from the Commission (examples)**

Communication from the Commission to the European Parliament and the Council of 12 December 2007 – **Second Report on the use of financial resources earmarked for the decommissioning of nuclear installations, spent fuel and radioactive waste COM(2007) 794 final** - Not published in the OJ.

Communication from the Commission to the European Parliament and the Council of 26 October 2004 – **Report on the use of financial resources earmarked for the decommissioning of nuclear power plants COM(2004) 719 final** - Not published in the OJ

Communication from the Commission – **Summary of Commission activities carried out in 2007 in implementation of Title II, Chapters 3 to 10, of the Euratom Treaty COM(2008) 417 final** - Not published in the OJ.

Report from the Commission to the European Parliament and the Council – **Sixth situation report on radioactive waste and spent fuel management in the European Union COM(2008) 542 final** - Not published in the OJ.

Communication from the Commission – **Application of Article 35 of the Euratom Treaty - Verification of the operation and efficiency of facilities for continuous monitoring of the level of radioactivity in the air, water and soil - Report, 1990-2007 COM(2007) 847 final** - Not published in the OJ.

European Atomic Energy Community Report on the Implementation of the obligations under the Convention on Nuclear Safety – 4th Review meeting of the Contracting Parties C(2007) 4492 final

Report on implementation of the obligations under the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management – Third Review Meeting of the Contracting Parties C(2008) 5724 final

### **European Nuclear Safety Regulator Group (ENSREG)**

is an independent authoritative expert body composed of senior officials from national regulatory or nuclear safety authorities from all 27 member states in the EU. There is also a Working Group on Transparency. For more details see [http://ec.europa.eu/energy/nuclear/ensreg/ensreg\\_en.htm](http://ec.europa.eu/energy/nuclear/ensreg/ensreg_en.htm)

### **Western European Nuclear Regulator's Association (WENRA)**

Although WENRA activities are not primarily focused on transparency and participation, WENRA operates a web-site [www.wenra.org](http://www.wenra.org).

### **European Nuclear Energy Forum (ENEF)**

It should be noted that the ENEF has established a Working Group on Transparency. For more details see [http://ec.europa.eu/energy/nuclear/forum/forum\\_en.htm](http://ec.europa.eu/energy/nuclear/forum/forum_en.htm).

## Selected International Legal Instruments

### **Convention on Early Notification of a Nuclear Accident (INFCIRC/335)**

- **Summary of content/obligations**

Adopted in 1986 following the Chernobyl nuclear plant accident, this Convention establishes a notification system for nuclear accidents which have the potential for international transboundary release that could be of radiological safety significance for another State. It requires States to report the accident's time, location, radiation releases, and other data essential for assessing the situation. Notification is to be made to affected States directly or through the IAEA, and to the IAEA itself. Reporting is mandatory for any nuclear accident involving facilities and activities listed in Art 1. Pursuant to Art 3, States may notify other accidents as well. The five nuclear-weapon States (China, France, Russia, the United Kingdom, and the United States) have all declared their intent also to report accidents involving nuclear weapons and nuclear weapons tests.

- **Public Information**

N.A.

- **Reporting**

N.A.

### **Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (INFCIRC/336)**

- **Summary of content/obligations**

Adopted in 1986 following the Chernobyl nuclear plant accident, this Convention sets out an international framework for co-operation among States Parties and with the IAEA to facilitate prompt assistance and support in the event of nuclear accidents or radiological emergencies. It requires States to notify the IAEA of their available experts, equipment, and other materials for providing assistance. In case of a request, each State Party decides whether it can render the requested assistance as well as its scope and terms. Assistance may be offered without costs taking into account inter alia the needs of developing countries and the particular needs of countries without nuclear facilities. The IAEA serves as the focal point for such cooperation by channelling information, supporting efforts, and providing its available services.

- **Public Information**

N.A.

- **Reporting**

N.A.

### **Convention on Nuclear Safety (INFCIRC/449)**

- **Summary of content/obligations**

The Convention's - adopted in 1994 - aim is to legally commit participating States operating land-based nuclear power plants to maintain a high level of safety by setting international benchmarks to which States would subscribe.

The obligations of the Parties are based to a large extent on the principles contained in the IAEA Safety Fundamentals document "The Safety of Nuclear Installations". These obligations cover for instance, siting, design, construction, operation, the availability of adequate financial and human resources, the assessment and verification of safety, quality assurance and emergency preparedness.

The Convention is an incentive instrument. It is not designed to ensure fulfillment of obligations by Parties through control and sanction but is based on their common interest to achieve higher levels of safety which will be developed and promoted through regular meetings of the Parties.

- **Public Information**

Reports by the Parties to the Convention are usually published by the Parties nowadays (see also <http://www-ns.iaea.org/conventions/nuclear-safety.htm>)

In addition the IAEA Secretariat<sup>9</sup> refers to (several) international instruments under the auspices of the IAEA, which concern within their scope of application, inter alia, the provision of information to, and consultation with the public.

- **Reporting**

The Convention obliges Parties to submit reports on the implementation of their obligations for "peer review" at meetings of the Parties to be held at the IAEA. This mechanism is the main innovative and dynamic element of the Convention.

## **Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (INFCIRC/546)**

- **Summary of content/obligations**

The Joint Convention of 1997 is the first legal instrument to directly address these issues on a global scale. The Joint Convention applies to spent fuel and radioactive waste resulting from civilian nuclear reactors and applications and to spent fuel and radioactive waste from military or defence programmes if and when such materials are transferred permanently to and managed within exclusively civilian programmes, or when declared as spent fuel or radioactive waste for the purpose of the Convention by the Contracting Party. The Convention also applies to planned and controlled releases into the environment of liquid or gaseous radioactive materials from regulated nuclear facilities.

- **Public Information**

Reports by the Parties to the Convention are usually published by the Parties nowadays (see also <http://www-ns.iaea.org/conventions/waste-jointconvention.htm>).

In addition the IAEA Secretariat refers to (several) international instruments under the auspices of the IAEA, which concern within their scope of application, inter alia, the provision of information to, and consultation with the public.

- **Reporting**

The Convention calls for review meetings of Contracting Parties. Each Contracting Party is required to submit a national report to each review meeting that addresses measures taken to implement each of the obligations of the Convention.

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9 Consultation Process on issues addressed by the Almaty Guidelines to the Aarhus Convention – Contribution of the IAEA Secretariat, see: <http://www.unece.org/env/pp/ppif/responses/Cat.1-2.IFs/Global/IAEA.from.2006.10.12.questionnaire.pdf>

## **Code of Conduct on the Safety and Security of Radioactive Sources and the Supplementary Guidance on the Import and Export of Radioactive Waste (INFCIRC 663)**

- **Summary of content/obligations**

The Code of Conduct – revised in 2003 – should serve as guidance to States for – inter alia – the development and harmonization of policies, laws and regulations on the safety of radioactive sources.

The Code of Conduct, in para 23 - 29, contains guidance concerning the import and export of Category 1 and 2 radioactive sources. In this connection, the non-legally binding Guidance on the implementation of those provisions has been developed – approved by the Governing Board of the IAEA in 2004.

A formalized process for a periodic exchange of information and lessons learned and for the evaluation of progress made by States towards implementing the provisions of the Code was elaborated upon in June 2006 and subsequently endorsed by the IAEA Board of Governors. The first international meeting on sharing information about States' implementation of the Code was held in Vienna, Austria, in June 2007.

- **Public Information**

In addition the IAEA Secretariat refers to (several) international instruments under the auspices of the IAEA, which concern within their scope of application, inter alia, the provision of information to, and consultation with the public.

- **Reporting**

N.A.

## **Code of Conduct on the Safety of Research Reactors**

- **Summary of content/obligations**

While the Code of Conduct on the Safety of Research Reactors - adopted by the Board of Governors of the IAEA in 2004 - is non-binding, it should serve as guidance on the development and harmonization of laws, regulations and policies on the safety of research reactors. It provides 'best practice' guidance to the State, the regulatory body and the operating organization for management of research reactor safety.

- **Public Information**

In addition the IAEA Secretariat refers to (several) international instruments under the auspices of the IAEA, which concern within their scope of application, inter alia, the provision of information to, and consultation with the public.

- **Reporting**

N.A.