

**AARHUS CONVENTION IMPLEMENTATION REPORT
CERTIFICATION SHEET**

The following report is submitted on behalf of Malta
[name of the Party or the Signatory] in accordance with decision I/8

Name of officer responsible for submitting the national report:	<i>Marguerite Camilleri</i>
Signature:	<i>(printed version will be signed)</i>
Date:	xx.xx.2017

IMPLEMENTATION REPORT

Please provide the following details on the origin of this report

Party	<i>Malta</i>
National Focal Point	
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1. Provide brief information on the process by which this report has been prepared, including information on which types of public authorities were consulted or contributed to its preparation, on how the public was consulted and how the outcome of the public consultation was taken into account and on the material which was used as a basis for preparing the report.

Answer:

This report was drawn up by Malta's National Focal Point for the Aarhus Convention, the Environment and Resources Authority (hereinafter referred to as ERA), which falls within the Ministry for Sustainable Development, the Environment and Climate Change. The necessary inter-ministerial consultations were carried out by the Ministry for Sustainable Development, the Environment and Climate Change.

In order to better understand this Report, it is worthwhile to explain that in April 2016 ERA became the competent authority for the Aarhus Convention, following the demerger of the Malta Environment and Planning Authority (MEPA) into two entities – ERA and the Planning Authority (PA).

In preparing the report, various public authorities (such as the Planning Authority) and selected stakeholders were consulted. The draft report was then issued for public consultation in March 2017 for a period of 3 weeks. The comments from the public were compiled and taken into account when drafting the final report.

The material used to compile the report includes European Union (EU) legislation, national legislation, both primary and secondary, as well as guidelines drafted for administrative purposes. The relevant pieces of legislation are listed hereunder and broadly grouped in relation to the respective pillars of the Aarhus Convention (though the scope of some will overlap):

General (all three pillars):

- *The 2016 Environment Protection Act (Cap. 549) and the 2016 Development Planning Act (Cap. 552) which replaced the 2010 Environment and Development Planning Act (Cap. 504)*

Access to information:

- *The Freedom of Access to Information on the Environment Regulations (S.L. 549.39)*
- *The Freedom of Information Act (Cap 496)*

Public Participation:

- *The Environmental Impact Assessment Regulations (S.L. 549.46)*
- *The Strategic Environmental Assessment Regulations (S.L. 549.61)*
- *The Industrial Emissions (Integrated Pollution Prevention and Control) Regulations (S.L. 549.77)*
- *The Plans and Programmes (Public Participation) Regulations (S.L. 549.41)*
- *The Water Policy Framework Regulations (S.L. 549.100)*
- *The European Pollutant Release and Transfer Register Reporting Obligations Regulations (S.L. 549.47)*

- *The Control of Major Accident Hazard Regulations (S.L. 424.19)*
- *The Development Planning (Procedure for Applications and their Determination) Regulations (S.L. 552.13)*

Access to Justice:

- *The Environment and Planning Review Tribunal Act (Cap. 551)*
- *The Administrative Justice Act (Cap. 490)*
- *The Code of Organization and Civil Procedure (Cap. 12)*
- *The Data Protection Act (Cap. 440)*

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

Answer:

N/A.

Article 3

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

(a) With respect to **paragraph 2**, measures taken to ensure that officials and authorities assist and provide the required guidance;

(b) With respect to **paragraph 3**, measures taken to promote education and environmental awareness;

(c) With respect to **paragraph 4**, measures taken to ensure that there is appropriate recognition of and support to associations, organizations or groups promoting environmental protection;

(d) With respect to **paragraph 7**, measures taken to promote the principles of the Convention internationally;

(i) Measures taken to coordinate within and between ministries to inform officials involved in other relevant international forums about article 3, paragraph 7, of the Convention and the Almaty Guidelines, indicating whether the coordination measures are ongoing;

(ii) Measures taken to provide access to information at the national level regarding international forums, including the stages at which access to information was provided;

(iii) Measures taken to promote and enable public participation at the national level with respect to international forums (e.g., inviting non-governmental organization (NGO) members to participate in the Party's delegation in international environmental negotiations, or involving NGOs in forming the Party's official position for such negotiations), including the stages at which access to information was provided;

(iv) Measures taken to promote the principles of the Convention in the procedures of other international forums;

(v) Measures taken to promote the principles of the Convention in the work programmes, projects, decisions and other substantive outputs of other international forums;

(e) With respect to **paragraph 8**, measures taken to ensure that persons exercising their rights under the Convention are not to be penalized, persecuted or harassed.

Answer:

The Environment and Development Planning Act (Cap. 504) was repealed in 2016 and succeeded by another two Acts namely, the Environment Protection Act (Cap. 549) and the Development Planning Act (Cap. 552). Both the Environment Protection Act and the Development Planning Act adhere to the Aarhus Convention as these address the role of the Government in -providing public access -and dissemination of information on the environment, and to facilitate the participation of the public in decisions that affect the environment, and by containing specific provisions on access to justice.

Administrative arrangements are in place to ensure that the public is given the necessary

assistance and guidance on the meaning and scope of the Aarhus Convention as well as to promote educational and environmental awareness. Persons exercising their rights under the provisions of the Aarhus Convention are adequately protected. Information and guidance for persons wishing to exercise their right on access to information is available online on the ERA's website: <http://era.org.mt/en/Pages/Access-to-Information.aspx>. Environmental information relating to planning applications is also available on the Planning Authority's website (<http://www.pa.org.mt/home?l=1>), and the Planning Authority regularly organises lectures open to the public which include specific sessions on the use of its online services.

Further guidance questions on specific aspects of implementation from: Guidance on Reporting Requirements ECE/MP.PP/WG.1/2007/L.4 20 February 2007

Paragraph 1: A clear, transparent and consistent framework to implement the Convention

Malta transposed via national legislation the EU Directives that provide for the Aarhus Convention and developed a clear, detailed and transparent framework of implementation (see ERA's website: <http://era.org.mt/en/Pages/Aarhus-Convention.aspx>).

- Have there been any legislative changes in non-environmental (sectoral) legislation significant for the environment that may *limit* public participation in certain cases (e.g. facilitating construction of highways or inland navigation issues)?

There have not been any legislative changes in non-environmental legislation significant for the environment that may limit public participation in certain cases.

- Is there any mechanism in place to *monitor implementation* of the Convention's provisions and those of the relevant domestic legislation (e.g. information ombudsperson or commissioner)?

The competent authority under the Environment Protection Act (Cap. 549) monitors implementation of the relevant legislation issued under the said Act.

Paragraph 2: Assistance and guidance to the public in public participation matters

- Which principal legal tools does the *general administrative law* provide to facilitate exercise by the members of the public of their procedural rights? Does environmental legislation provide for any additional such tools?

The procedural rights of the public with respect to participation are provided for in general terms under the Environment Protection Act (Cap. 549) and the Development Planning Act (Cap. 552). More specific rights are contained within subsidiary legislation, mainly the Environmental Impact Assessment Regulations (S.L. 549.46), the Strategic Environmental Assessment Regulations (S.L. 549.61) and the Industrial Emissions (Integrated Pollution Prevention and Control) Regulations (S.L. 549.77). Detailed guidance with respect to these rights and on public participation in general can be found on ERA's website (for the legal aspect: <http://era.org.mt/en/Pages/Environmental-Policy.aspx>; and for the information and participation aspect: <http://era.org.mt/en/Pages/Access-to-Information.aspx>). Information can also be found on the PA website at <http://www.pa.org.mt/info-participation>.

- What are the *institutional and budgetary* arrangements for capacity building (e.g. public relations departments, information booths, full- or part-time officers)?

The Environment and Resources Authority has a communications and customer care department that is currently undergoing capacity-building as part of an initiative that spans the whole authority.

The Ministry for Social Dialogue, Consumer Affairs and Civil Liberties has various roles including social dialogue with social partners and civil society, information and data protection. To this end, the Ministry has a dedicated page on its website on public consultations, where the Government through this platform, encourages the general public, civil society organisations, trade unions, business organisations, political parties, governmental institutions and all others that would like to contribute, to participate in the process of online public consultation. In addition, the Malta EU Steering Action Committee (MEUSAC), which is the government entity within the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties, has the objective of steering the consultation process on EU policy and legislation and disseminating EU-related information. The aim of MEUSAC's consultation process is to facilitate discussion between Government and civil society on draft EU legislation and policies, as well as on the transposition of EU directives, in order to enhance public access and the participation of civil society in decision-making processes.- This is done through meetings of the Core Group, Sectoral Committees and Consultation Sessions.

- Are there specific regulations and/or practices concerning capacity building for public authorities performing functions relating to the environment (e.g. water management, forestry, fishery authorities)?

Each public authority and ministry also has its own public relations departments.

- Are there specific training curricula for judges concerning environmental protection and issues addressed in the Convention?

There are no specific training curricula for judges concerning environmental protection and issues addressed in the Convention. However, it is the intention of the Judicial Studies Committee to include training on environmental matters in the future.

Paragraph 3: Environmental education and awareness raising

- How do curricula of lower-, medium- and higher-level education institutions address environmental and governance issues, in particular those addressed in the Convention? Are there any institutional arrangements that deal with this matter (e.g. memoranda of understanding between ministries of environment and education)?

The Sustainable Development Act (Cap. 521) acknowledges the need to “foster a higher level of knowledge and education in sustainable development across all strata of society”. Malta’s commitment towards Education for Sustainable Development (ESD) has matured over the years. Starting from limited initiatives, ESD developed progressively into a co-ordinated effort involving various stakeholders. Two major milestones in the development of national ESD were (i) the setting up of the Centre for Environmental Education and Research (CEER) that stepped up research and resource development in ESD, and (ii) the inclusion of ESD as a cross-curricular theme in the National Curriculum Framework (NCF). Moreover, the need to set up a National Strategy for ESD (NSES) was officially acknowledged by various local national documents. Consequently an independent Board of Governors was appointed with the specific remit of planning and initiating the development of the NSES and to publish the final version of the NSES document.

- Are there awareness-raising campaigns implemented by the environmental administration?

ERA has continued to sponsor a number of popular educational television programmes to effectively increase the public’s awareness on various environment-related theme including biodiversity, air quality, water quality, natural heritage, waste and noise, which had previously

been carried out by MEPA before the demerger. ERA has also continued to implement a number of EU-funded environmental projects and has implemented communication campaigns on a project-by-project basis, which had initiated under MEPA. Before the demerger, during the winter/spring months, MEPA had organised Sunday Biodiversity and Natural heritage tours. These are also being planned by ERA for the upcoming winter and spring months.

- Are there any relevant capacity-building activities aimed at *journalists* and, if so, which institutions or organizations implement them?

There are no relevant capacity-building activities aimed at journalists.

- Do environmental *non-governmental organizations* (NGOs) participate in environmental awareness raising? If so, how do they do this, and what support do they receive from the government to implement such activities?

Besides Government institutions, NGOs also participate in environmental education and awareness-raising campaigns, through a number of projects and initiatives such as training courses, the organisation of guided tours in the nature reserves that they manage and the organisation of nature and heritage walks around the Maltese Islands. They also work in schools, for example Nature Trust Malta, in collaboration with the Government of Malta, coordinates the EkoSkola programme, which encourages students to take an active role in the environmental management of their school. Additionally, Nature Trust also has a programme 'Young Reporters for the Environment' designed for secondary school pupils and teachers whereby groups must define and investigate a local environment issue. Finally, Birdlife Malta coordinates the 'Dinja Waħda' initiative to promote environmental education.

Paragraph 4: Support for environmental NGOs

- What is the level of complexity of the existing procedures for NGO *registration* (e.g. registration by a court or an administrative authority, length of procedure, expenses involved, required documentation, need of legal assistance)?

NGOs in Malta are encouraged to register with the Commissioner for Voluntary Organisations. In order to register with the Commissioner for Voluntary Organisations, an organisation has to supply the following information/documentation: application form; statute/deed; resolution letter; written consent signed by all committee/Board members; annual accounts; annual report; and, application fee (€40). The Commissioner for Voluntary Organisations must give a decision on an application within 3 months.

- Is there an established practice of *including* NGOs in environmental decision-making structures (committees, etc.)?

There is an established practice in Malta to include NGOs in environmental decision-making. For example, MEPA's Board, which was the main environment and land-use planning decision-making body in Malta, included an Environmental Non-Governmental Organisation (ENGO) representative. Following the demerger, the composition of the new ERA Board includes a person nominated by ENGOs. Furthermore, the Planning Authority's (PA) Board includes, inter alia, a member representing the interests of ENGOs, who shall be chosen from amongst a number of persons nominated by the said NGOs.

- How do any existing recognition and support measures address *local-level* and grass-roots (community) organizations?

Local level communities participate in debates related to their particular locality, including environmental affairs. As previously indicated, local level organisations also participate in activities and debates with the Government through MEUSAC, which facilitates the dialogue and the support to them. Moreover, ENGOs have the facility to download development permits and development planning application reports without any charges. These stakeholders have also been given full access to view online planning applications and plans.

- Does the government provide *financial support* to environmental NGOs?

The Government of Malta provides financial support to ENGOs.

Paragraph 7: Public participation in international environmental decision-making processes

- Is there a practice of including NGO members in *delegations* representing the State in international environmental negotiations or in any national-level discussion groups forming the official position for such negotiations?

NGO members have been included in national delegations to major international environmental negotiations or in international-level discussion groups, for example NGOs were members of the delegation that attended the Rio de Janeiro UN Conference on Environment and Development in 1992 and the 2002 Johannesburg World Summit on Sustainable Development.

- What measures have been undertaken by the Party to implement the *Guidelines on Public Participation in International Forums* adopted at the second meeting of the Parties?

During the 2013-2015 biennium, Malta held the Presidency of the Steering Committee of the UNEP/MAP Mediterranean Commission for Sustainable Development, which is a multi-stakeholder advisory body to the Conference of the Parties of the Barcelona Convention. During this period Malta led the process of the review of the Mediterranean Strategy for Sustainable Development 2006-2015. It was a priority of the Maltese Presidency that the review of the Strategy would take place in a participatory manner, through dialogue processes with relevant NGOs and stakeholders. To this end, Malta sponsored a stakeholder conference to review the first draft of the Strategy, which was subsequently adopted through Decision IG.22/2 during the 19th Conference to the Parties on the Barcelona Convention in February 2016. Such Strategy aimed, amongst others, to promote the adoption and implementation of the Aarhus Convention and its accession by two thirds of the Mediterranean countries.

During the 2013-2015 biennium, Malta also led the process of the reform of the Mediterranean Commission for Sustainable Development in order to strengthen it, to sharpen its mandate and to widen its stakeholder base.

- Has there been *internal consultation* between the officials dealing with the Aarhus Convention and officials involved in other international forums in matters relating to the environment with regard to the implementation of the Guidelines?

In preparation for international environment meetings, there has been consultation between the officials dealing with the Aarhus Convention and officials involved in other international forums in matters relating to the environment with regard to the implementation of the Guidelines.

Paragraph 8: Prohibition of penalization for public participation

- Have any *libel, slander* or similar provisions of civil or criminal law been used in the context of environmental decision-making processes?
- Have there been any cases of NGOs being ordered to pay *damages* (of a private entity or a public authority) in connection with their public interest environmental protection activities or litigation (e.g. due to a delay in a procedure)?

There was no case of NGOs being ordered to pay damages (of a private entity or a public authority) in connection with their public interest in environmental protection activities or litigation (e.g. due to a delay in a procedure) and no libel, slander or similar provisions of civil or criminal law were used in the context of environmental decision-making processes.

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

Answer:

N/A

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

Answer:

N/A.

6. Give relevant web site addresses, if available:

<http://era.org.mt/en/Pages/Environmental-Policy.aspx>

[https://eracms.gov.mt/en/Pages/Legislation%20under%20Environment%20Protection%20Act%20\(CAP%20549\).aspx](https://eracms.gov.mt/en/Pages/Legislation%20under%20Environment%20Protection%20Act%20(CAP%20549).aspx)

<http://era.org.mt/en/Pages/Aarhus-Convention.aspx>

<http://www.pa.org.mt/info-participation>

<http://konsultazzjoni.gov.mt>

<http://meusac.gov.mt>

Article 4

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

- (a) With respect to **paragraph 1**, measures taken to ensure that:
- (i) Any person may have access to information without having to state an interest;
 - (ii) Copies of the actual documentation containing or comprising the requested information are supplied;
 - (iii) The information is supplied in the form requested;

- (b) Measures taken to ensure that the time limits provided for in **paragraph 2** are respected;
- (c) With respect to **paragraphs 3 and 4**, measures taken to:
 - (i) Provide for exemptions from requests;
 - (ii) Ensure that the public interest test at the end of paragraph 4 is applied;
- (d) With respect to **paragraph 5**, measures taken to ensure that a public authority that does not hold the environmental information requested takes the necessary action;
- (e) With respect to **paragraph 6**, measures taken to ensure that the requirement to separate out and make available information is implemented;
- (f) With respect to **paragraph 7**, measures taken to ensure that refusals meet the time limits and the other requirements with respect to refusals;
- (g) With respect to **paragraph 8**, measures taken to ensure that the requirements on charging are met.

Answer:

Definitions are catered for in Regulation 2 of the Freedom of Access to Information on the Environment Regulations (S.L. 549.39). Moreover, the Customer Care sections within the competent authorities were set up to implement the legal requirements of the said Regulations by providing an effective and efficient interface with interested parties, providing information requested within the timeframes allocated by the same Regulations. The principle of non-discrimination is provided for in Article 45 of the Constitution of Malta, which states that 'no law shall make any provision that is discriminatory either of itself or in its effect'. Therefore, the national provisions on access to environmental information must be interpreted in terms of Article 45.

- (a) With respect to **paragraph 1**, measures taken to ensure that:
 - (i) Any person may have access to information without having to state an interest;
This requirement is catered for in Regulation 3 of the Freedom of Access to Information on the Environment Regulations (S.L. 549.39).
 - (ii) Copies of the actual documentation containing or comprising the requested information are supplied;
This requirement is catered for in Regulation 4 and 5 of the Freedom of Access to Information on the Environment Regulations (S.L. 549.39).
 - (iii) The information is supplied in the form requested;
This requirement is catered for in Regulation 6 of the Freedom of Access to Information on the Environment Regulations (S.L. 549.39).
- (b) Measures taken to ensure that the time limits provided for in **paragraph 2** are respected;
The time limits provided for in paragraph 2 are catered for through the application

of Regulations 4 and 5 of the Freedom of Access to Information on the Environment Regulations (S.L. 549.39) which hold inter alia that, if the requested environmental information is available, the competent authority must provide it to the applicant within thirty days at the latest. In order to further ensure strict compliance with the time limits set out in the said Regulations, administrative measures and guidelines were drawn up and are being implemented through the relevant sections of the competent authority. These measures and guidelines may be accessed from the ERA website below:

<http://era.org.mt/en/Pages/Aarhus-Convention.aspx>

- (c) With respect to **paragraphs 3 and 4**, measures taken to:
- (i) Provide for exemptions from requests;
This requirement is catered for in Regulation 7 of the Freedom of Access to Information on the Environment Regulations (S.L. 549.39).
- (ii) Ensure that the public interest test at the end of paragraph 4 is applied;
This requirement is catered for in Regulation 7(3) of the Freedom of Access to Information on the Environment Regulations (S.L. 549.39).
- (d) With respect to **paragraph 5**, measures taken to ensure that a public authority that does not hold the environmental information requested takes the necessary action;
This requirement is catered for in Regulation 5 of the Freedom of Access to Information on the Environment Regulations (S.L. 549.39).
- (e) With respect to **paragraph 6**, measures taken to ensure that the requirement to separate out and make available information is implemented;
This requirement is catered for in Regulation 7(4) of the Freedom of Access to Information on the Environment Regulations (S.L. 549.39).
- (f) With respect to **paragraph 7**, measures taken to ensure that refusals meet the time limits and the other requirements with respect to refusals;
This requirement is catered for in Regulation 7(5) of the Freedom of Access to Information on the Environment Regulations (S.L. 549.39).
- (g) With respect to **paragraph 8**, measures taken to ensure that the requirements on charging are met.
This requirement is catered for in Regulation 8 of the Freedom of Access to Information on the Environment Regulations (S.L. 549.39).

Further guidance questions on specific aspects of implementation from: Guidance on Reporting Requirements ECE/MP.PP/WG.1/2007/1.4 20 February 2007

Paragraph 1, chapeau: Ensuring provision of information and other general issues

- Are public authorities required to *keep records* of information requests received and responses provided, including refusals? If so, is there a practice in place to periodically report on such

activities?

No requirement exists to keep records of information requests received and responses provided, including refusals however, MEPA kept such records and ERA is maintaining them. MEPA initiated an environment enquiry system in late 2009, and ERA has retained this system through the website (<http://era.org.mt/en/Pages/Enquiries.aspx>). The database related to this system is kept updated on a monthly basis and is populated with details of the enquiry and response given, and also keeps track of the timeframe within which the response was provided. Moreover, as of 2011, the contents of this database are being transposed into monthly and 6-monthly enquiry reports to inform MEPA's, and now ERA's management. This reporting initiative is one of the requirements of the quality assurance system developed in 2011.

- Is there a separate body that oversees matters of access to environmental information (e.g. a data protection ombudsperson or a commission on access to administrative documents)?

There is a separate body as provided for in S.L. 549.39, which oversees matters of access to environmental information, as noted above, who is the Information and Data Protection Commissioner, whose office is set up through the Data Protection Act (Cap. 440) and the Freedom of Information Act (Cap. 496).

Paragraph 1 (a): The interest not having to be stated

- Is there a requirement or practice of requesting certain *basic data* from the applicant for administrative purposes (e.g. for budgetary purposes, record keeping, statistics)?
- Is there a mechanism in place to assist the original provider of information in identifying the applicants in cases of claims related to *misuse* of information?

While there is a practice of requesting certain basic data from the applicant requesting information, such requests are not obligatory for the applicant. Hence, if the original provider of information needs to identify the applicant in cases of claims related to misuse of information, this identification can only be made possible when the basic data was provided by the applicant.

Paragraph 2: Timeliness of information

- In addition to the specific deadline, is there a requirement to provide information *as soon as possible*?
- Are there separate deadlines for *refusals* to provide information or for other specific cases?

The deadlines for supplying information provided within the text of the Aarhus Convention are adhered to, irrespective of whether the information is to be supplied or a refusal to be made. In addition, information is always provided as soon as possible (Regulations 4 and 5 of the Freedom of Access to Information on the Environment Regulations [S.L.549.39]). On average, the environment enquiry, and now the ERA Info system issues a reply to a client within 5-7 working days of receipt of request.

- What is the legal effect of a *failure to respond* to an information request?

If the competent authority fails to respond to the information request within the timeline stated by the Aarhus Convention, the applicant may resort to Regulations 11A and 12 of the Freedom of Access to Information on the Environment Regulations (S.L. 549.39), which provide recourse both to the Environment and Planning Review Tribunal and the Information and Data Protection

Commissioner. Article 11A, having due regard to the need for expeditiousness, obliges the Tribunal to hold its first hearing within six working days from receipt of the appeal.

If the applicant is still not satisfied with the result, recourse to the courts may be made. One may also make recourse to the Office of the Ombudsman.

Paragraph 3 (a): Information not in the public authority's possession

- What are the procedure and practice for handling situations when the public authority does not hold the requested information but *should have it* pursuant to the relevant legislation?

Applicants submitting queries, or part queries that concern issues beyond the competent authority's remit, are notified accordingly. In these cases, the request is forwarded to the relevant Department/Authority responsible. If the competent authority does not possess the information that it is legally obliged to hold, the authority will attempt to locate or gather this information, or forward it to the authority that holds it, if any. Recourse to the Information and Data Protection Commissioner is available if the applicant is not satisfied with the information provided.

Paragraph 3 (b): Unreasonable or overly general requests

- Do public authorities have a responsibility to try to *clarify* with the applicant requesting the information any questions which appear unreasonable or too general?

Guidance on how to ask for information can be found on ERA's website, at the following address: <http://era.org.mt/en/Pages/Access-to-Information.aspx>.

When an enquirer makes a request for information that is unreasonable or too general, in line with Regulation 4(2) of the Freedom of Access to Information on the Environment Regulations (S.L. 549.39), ERA requests additional information to clarify the requests, and provides the applicant with assistance if need be. When ERA receives a request that goes beyond the legal obligations it is set to honour, the applicant is advised accordingly, while their interest in the environment is acknowledged.

Paragraph 3 (c): Confidentiality of administration

- What mechanisms are in place to ensure free expression of *professional opinion* by the officials involved in internal communications or in preparing the relevant materials?

Mechanisms are in place to ensure the expression of professional opinion by the officials involved in internal communications or in preparing the relevant materials through Regulations 7 (1) (c), 7 (1) (d) and 7 (2) (a) of the Freedom of Access to Information on the Environment Regulations (S.L. 549.39), in the form of reasons for refusal as follows respectively: 'the requested material in the course of completion or unfinished documents or data, provided that in this case, the competent authority shall state the name of the authority preparing the material and the estimated time needed for completion' and 'the confidentiality of the proceedings of public authorities, where such confidentiality is provided for by law.'

Moreover, when interpreting whether any information is exempted from disclosure, regard should be had to Article 36 of the Freedom of Information Act (Cap.469): '36. (1) Subject to article 35 and to subarticles (2) and (3) hereof, a document is an exempt document if its disclosure under this Act would disclose matter in the nature of, or relating to, opinions, advice or recommendations obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of the Government or another public authority.'

- Can materials that directly or indirectly serve as a *basis* for an administrative decision be considered confidential?

Materials that directly or indirectly serve as a basis for an administrative decision can be considered confidential as long as the materials in question fall under any of the provisions mentioned in the law. Here due consideration has to be given to Regulation 7(3) of the Freedom of Access to Information on the Environment Regulations (S.L. 549.39) that the grounds for refusal mentioned in subregulations (1) and (2) shall be interpreted in a restrictive way taking into account for the particular case the public interest served by disclosure; and 7(4) - Environmental information held by or for public authorities which has been requested by an applicant shall be made available in part where it is possible to separate out any information falling within the scope of subregulation (1)(c) and (d) or subregulation (2) from the rest of the information requested.

Paragraph 4 (d): Commercial confidentiality

- Are *various categories* of confidentiality of commercial or industrial information defined by several laws (e.g. trade law, civil law, commercial law, business law, company law, competition law, banking law, insurance law), and are these definitions in harmony with each other and with the Convention?
- Does the original provider of information have to *justify* the existence of a potential adverse effect that a public release of information might have on a legitimate economic interest?

Various categories of confidentiality of commercial or industrial information are defined by several laws and these definitions are in harmony with each other and with the Aarhus Convention. Regulations 7(2) (d) of the Freedom of Access to Information on the Environment Regulations (S.L. 549.39) provides the following provision in this respect: 'the confidentiality of commercial or industrial information where such confidentiality is provided for by national or community law to protect a legitimate economic interest including the public interest in maintaining statistical confidentiality and tax secrecy.' In addition, Regulation 7 (5) obliges the provider of information to 'state the reasons for the refusal'.

Paragraph 4 (f): Personal data

- How does the national legislation *define* personal data?

Personal data is defined under the Data Protection Act (Cap. 440) as: 'any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity'.

- Can a *legal person* (entity) have personal data protection?

A legal person does not have a general right to data protection. Data protection as understood in the Data Protection Act (Cap. 440) is afforded only to natural persons. Commercially-sensitive data held by legal persons may however, be protected through ordinary civil law. Legal persons are then obliged to protect personal data which they possess as per the provisions of Cap. 440.

Paragraph 4 (general)

- Does confidentiality of classified information *remain protected* after such information has been made public through other means?

- Does the national legislation envisage a strict classification of certain types of information as confidential, or is there a requirement to *balance the argument* for and against the disclosure individually in each case?

There is a requirement in national legislation to balance the argument for and against the disclosure of environmental information individually in each case.

The Freedom of Information Act (Cap. 496), Article 29(2) also specifies documents that are strictly confidential:

- a) a document that has been submitted to the Cabinet for its consideration or is proposed by a Minister to be so submitted, being a document that was brought into existence for the purpose of submission to the Cabinet;*
- b) an official record of the Cabinet;*
- c) a document that is a copy of all or part of, or contains an extract from, a document referred to in paragraph (a) or (b);*
- d) a document the disclosure of which would involve the disclosure of any deliberation or decision of the Cabinet, other than a document by which a decision of the Cabinet was published.*

This is subject to Article 29(3) which states that the document shall not remain confidential if, and in so far as, it contains factual information relating to a decision of the Cabinet that has been published.

Paragraph 5: Forwarding requests submitted to the wrong authority

- How are the deadlines referred to in article 4, paragraph 2, applied in cases where a public authority does not hold the information requested and forwards the request to another authority?

Applicants submitting queries, or part queries that concern issues beyond the competent authority's remit, are notified accordingly. In these cases, the request is forwarded to the relevant Department/Authority responsible, who in turn act expeditiously.

Paragraph 8: Charges

- Are charges for public information services regulated *uniformly* (e.g. in a published table of charges or fees)? If not, are there large differences between charges for information in different sectors?
- Is there a charge for supplying information? If yes, what is the cost or range of costs *per page* for having official documents copied?
- Is there a requirement and/or practice with regard to waiving or partially waiving the charges (e.g. by determining preferential rates for certain users or purposes)?
- Is there a differentiation between the limited charges for making and providing copies of information that is and/or is required to be in the possession of a public authority and any *additional services* (e.g. research, compilation of data not required by laws)?

On the one hand, no charge is imposed if the information demanded is readily available and requested in electronic format. On the other hand, the applicant is charged minimal copy charges when physical copies of the information are required or when ERA needs to compile the information as requested by the applicant. In the latter case, charges are calculated on an hourly basis. Such charges are uniformly regulated and, as a result, no large differences between charges for information in different sectors exist. In some cases, such as student research, the charge can

be waived. Similar provisions are in place regarding environmental data related to planning applications.

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

Answer:

There has been a lack of common understanding of scope of Article 4 between the various policy actors. Nevertheless, a nationwide initiative across government (servizz.gov.mt) seeks to address access to information across government. The servizz.gov office is responsible for receiving requests for information, complaints and suggestions and for offering a reply in a timely, courteous and efficient manner.

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

Answer:

The Environment Enquiry system within MEPA, and now ERA, keeps a record of queries received. In 2014 environmental queries amounted to 491. In 2015, 603 queries were received, and 486 queries were received between January and June 2016, indicating a considerable increase. A reply was provided for 100% of queries whether by providing the environmental information requested, or by following up on matters requiring enforcement or by relaying alternative contacts for the holders of the information. In addition, monthly and 6-monthly environment enquiry reports are issued internally to inform on the genre and dossier of these enquiries.

10. Give relevant web site addresses, if available:

<http://era.org.mt/en/Pages/Access-to-Information.aspx>

Article 5

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

- (a) With respect to **paragraph 1**, measures taken to ensure that:
 - (i) Public authorities possess and update environmental information;
 - (ii) There is an adequate flow of information to public authorities;
 - (iii) In emergencies, appropriate information is disseminated immediately and without delay;

(b) With respect to **paragraph 2**, measures taken to ensure that the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible;

- (c) With respect to **paragraph 3**, measures taken to ensure that environmental

information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks;

(d) With respect to **paragraph 4**, measures taken to publish and disseminate national reports on the state of the environment;

(e) Measures taken to disseminate the information referred to in **paragraph 5**;

(f) With respect to **paragraph 6**, measures taken to encourage operators whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products;

(g) Measures taken to publish and provide information as required in **paragraph 7**;

(h) With respect to **paragraph 8**, measures taken to develop mechanisms with a view to ensuring that sufficient product information is made available to the public;

(i) With respect to **paragraph 9**, measures taken to establish a nationwide system of pollution inventories or registers.

Answer:

The principle of non-discrimination is provided for in Article 45 of the Constitution of Malta, which states that 'no law shall make any provision that is discriminatory either of itself or in its effect'. Therefore, the national provisions on collection and dissemination of environmental information must be interpreted in terms of Article 45.

(a) With respect to **paragraph 1**, measures taken to ensure that:

(i) Public authorities possess and update environmental information;

This requirement is catered for in Regulation 9 of the Freedom of Access to Information on the Environment Regulations (S.L. 549.39).

(ii) There is an adequate flow of information to public authorities;

This requirement is catered for in Regulation 9 of the Freedom of Access to Information on the Environment Regulations (S.L. 549.39).

(iii) In emergencies, appropriate information is disseminated immediately and without delay;

This requirement is catered for in Regulation 10(3) of the Freedom of Access to Information on the Environment Regulations (S.L. 549.39).

(b) With respect to **paragraph 2**, measures taken to ensure that the way in which public

authorities make environmental information available to the public is transparent and that environmental information is effectively accessible;

This requirement is catered for in Regulation 10 of the Freedom of Access to Information on the Environment Regulations (S.L. 549.39) and guidelines drafted by MEPA.

- (c) With respect to **paragraph 3**, measures taken to ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks;

This requirement is catered for in Regulation 10(1) and 10(2) of the Freedom of Access to Information on the Environment Regulations (S.L. 549.39) and guidelines drafted by MEPA.

- (d) With respect to **paragraph 4**, measures taken to publish and disseminate national reports on the state of the environment;

This requirement is catered for in Article 57(3) of the Environment Protection Act (Cap. 549).

- (e) Measures taken to disseminate the information referred to in **paragraph 5**;

This requirement is catered for in Regulation 10(2) of the Freedom of Access to Information on the Environment Regulations (S.L. 549.39).

- (f) With respect to **paragraph 6**, measures taken to encourage operators whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products;

Specific reporting conditions are incorporated in environmental permits such as the provision of an Annual Environment Report of activities. Actions were also taken to ensure that, prior to the issue of permit, continuous dialogue and dissemination of relevant information to the interested parties is effected. In certain cases, actions were also taken to engage a monitoring company to review the implementation of the environmental permit in conjunction with the operator, Local Council and ENGOs.

- (g) Measures taken to publish and provide information as required in **paragraph 7**

This requirement is catered for in Articles 45 and 51 of the Environment Protection Act (Cap. 549). Furthermore, internal administrative measures cater for this requirement inter alia through the preparation of and public consultation on issues papers for the preparation of major environmental policy proposals, and information available on <https://www.gov.mt/en/Services-And-Information/Pages/Environmental-Regulation.aspx> and <https://www.gov.mt/en/Services-And-Information/Pages/Environmental-Enforcement.aspx>, and guidelines for the public on the Aarhus Convention.

- (h) With respect to **paragraph 8**, measures taken to develop mechanisms with a view to ensuring that sufficient product information is made available to the public;

In Malta, the Malta Competition and Consumer Affairs Authority (MCCAA) has been designated by the European Commission as the Competent Body that assesses applications and award the EU Eco-label to products and services that meet the criteria set for them. It is the first contact point for interested parties to learn more about the scheme, submit an application or ask any questions about the application process or the scheme in general.

- (i) With respect to **paragraph 9**, measures taken to establish a nationwide system of pollution inventories or registers.

Pollution inventories or registers are a requirement under the European Pollutant Release and Transfer Register Reporting Obligations Regulations (S.L. 549.47).

Further guidance questions on specific aspects of implementation from: Guidance on Reporting Requirements ECE/MP.PP/WG.1/2007/L.4 20 February 2007

Paragraph 1 (a) and (b): Existence and quality of environmental data

- Is there an institutionalized system of *data transfer* between the authorities of several branches of administration? If yes, what are the main features of the system (e.g. is environmental data provided free of charge within the system)?

There is no institutionalized system of data transfer between authorities, but there are memoranda of understanding between certain entities through which data is provided free of charge.

- Do various levels and kinds of environmental and sectoral authorities operate *parallel* data-processing systems? If so, are there any measures to make the information flow more effective and harmonize the data (e.g. linking several databases together, using standard definitions or operator codes)?

A number of authorities operate parallel data-processing systems in relation to the various dossiers, however where there is need for harmonisation or combination of datasets, particularly in view of reporting obligations, instruments such as MoUs and data specifications are drawn up.

- Are there mechanisms in place to ensure or control the *quality* (accuracy, categorization, comparability and timeliness) of environmental data included in the databases?

The quality of the environmental information made available is ensured through mechanisms found within the competent authorities as per EU obligations and standards of the European Environment Agency (EEA).

Environmental data quality was also enhanced by the deliverables of the ERDF156 Project entitled “Developing National Environmental Monitoring and Infrastructure Capability”, having been structured around a number of international instruments, aimed at ensuring the free delivery of data to the general public on air, water, noise, radiation and soil. This was the result of an integrated exercise to adhere to the requirements as outlined by the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions “Towards a Shared Environmental Information System” (COM(2008) 46 final), the Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) and the Aarhus Convention. A portal called SEIS-Malta was created to enable such a provision.

The website of the European Environment Information and Observation Network (EIONET) of the EEA (<http://eionet.europa.eu>) also enables the public to obtain environmental data about Malta.

The Planning Authority maintains lineage documentation ensuring and controlling the quality of data.

- Is certain information provided in *real-time* mode (e.g. information on air quality in larger cities)?

ERA's website provides real time data on air quality (<http://era.org.mt/en/Pages/Data-from-Air-Monitoring-Stations.aspx>) and on ionising radiation, which is also supplied to the European Radiological Data Exchange Platform (EURDEP).

The website of the Environmental Health Directorate within the Superintendence of Public Health provides updated data on bathing water quality (<https://health.gov.mt/en/environmental/Pages/Health-Inspectorate/Environmental-Health-Risk-Management/Bathing-Water-Programme.aspx>).

Paragraph 1 (c): Environmental emergency information

- How is communication of information to the public covered under the *emergency planning* legislation? Are there measures in place to coordinate emergency information dissemination efforts of the participating authorities?

Provision of emergency environmental information to the public is regulated by the Civil Protection Act (Cap. 411). Article 4 thereof lays down that the functions of the Civil Protection Department (CPD) shall be to prepare contingency plans to respond to a disaster as well as to natural, industrial and other emergencies that may occur. These contingency plans include the provision of information to the public. The same Act makes it incumbent on the CPD to promote public awareness of civil protection issues.

- Do *polluters* have an obligation to directly inform the public in emergencies?

Installations that store fuel/chemicals that are within the Seveso Regulation range have an obligation to inform the local population and issue information to the public. This is part of the Seveso 3 Directive.

- Is there a legal requirement and/or practice to disseminate *post-emergency* information (e.g. information about responsible parties, causes of the emergency, measures taken to prevent future accidents)?

The CPD declares that an emergency is over, as part of Cap. 411 obligations. Once an emergency is over, the CPD hands over to the Malta Police Force and any emerging court enquiry may determine the cause and necessary action to be taken but this will not necessarily mean that it will be divulged to the public, as it is the court which decides - though in general all final court judgements are available to be viewed by the public.

Paragraph 2: Information on the type and scope of the available environmental information and practical arrangements for information dissemination

- Is there an environmental *meta-database* (e.g. a catalogue of environmental data sources)?

An environmental meta-database (including, for example a catalogue of environmental data sources) is in the process of being developed.

Paragraph 5: Dissemination of information: strategic and normative materials

- Are environmental laws, strategies, policies, international agreements and the like, as well as information about their implementation, *widely and easily* accessible for the public?

Environmental laws, strategies, policies, international agreements and the like, as well as information about their implementation, are widely and easily accessible for the public through MEPA's (until March 2016) and ERA's (since April 2016) website: <http://era.org.mt/>. This web-based information is also supplemented with published material on specific dossiers, such as biodiversity, air monitoring arrangements, etc.

Paragraph 6: Encouraging operators to actively disseminate information

- Are there any measures of the kind referred to in this paragraph that have been specially designed for *small and medium-size enterprises*?

Reporting conditions are incorporated as part of permits issued under the Industrial Emissions (Integrated Pollution Prevention and Control) Regulations (S.L. 549.77) as well as environmental permits, which are targeted for small and medium enterprises that fall outside the scope of the said Regulations. In the case of Integrated Pollution Prevention and Control (IPPC) permits, the operators are requested to submit an Annual Environmental Report that is made publicly available through ERA's website. Operators are encouraged to initiate dialogues with the respective local councils both formally, through public consultation, and informally, through committee meetings that are held between certain operators, ERA and the respective local council as well as other interested parties such as ENGOs.

Paragraph 7: Dissemination of information: facts, analyses, explanatory materials and information on the performance of public functions relating to the environment

- What kinds of environmental *facts, analyses and explanatory materials* are being published?

As part of its commitment towards regular publication and dissemination of environmental information in a form that is easily accessible and user-friendly, the competent authority publishes regular State of the Environment Reports. The legal obligation to publish regular State of the Environment Reports was present under the 2010 Environment and Development Planning Act (Cap. 504) and is also present in the new Environment Protection Act (Cap. 549). In addition, MEPA published annual updates of the key environmental indicators used in the report. These annual updates inform policy makers, opinion leaders and members of the public on environmental trends, while having access to more long-term, detailed information and analysis in the State of the Environment Reports (<http://era.org.mt/en/Pages/State-of-the-Environment-Report.aspx>).

Furthermore, administrative measures cater for this requirement inter alia through the preparation of and public consultation on issues papers for the preparation of major environmental policy proposals.

The competent authority periodically publishes communication, education and public awareness material which is used during events such as exhibitions and fairs, and are actively disseminated in schools and to NGOs. Officers also take part in radio and TV programmes to disseminate environmental information. Information on environment topics is also available online on the ERA website (<http://era.org.mt/en/Pages/Topics.aspx>).

ERA and PA (and previously MEPA) are also engaged in the use of social media to disseminate and interact with the public on a wider scale.

Information about the public functions relating to the environment is available online: see <https://www.gov.mt/en/Services-And-Information/Pages/Environmental-Regulation.aspx> and

<https://www.gov.mt/en/Services-And-Information/Pages/Environmental-Enforcement.aspx>.

Furthermore, guidelines for the public on the Aarhus Convention are also available (<http://era.org.mt/en/Documents/GUIDELINES%20GENERAL%20PUBLIC.pdf>).

Paragraph 8: Product information

- Is there a legal requirement and/or practice of *public participation* in awarding or monitoring the use of eco-labels?

As noted above, the MCCA is a public entity established by the Malta Competition and Consumer Affairs Authority Act (Cap. 510) as the competent body for the EU Eco-Label Scheme in Malta.

Paragraph 9: Pollutant release and transfer registers (PRTRs)

- Please describe briefly your progress towards ratification of the *Kiev Protocol*.
- If a PRTR system is already in place, what are its *outstanding features* (unique to the given Party, elements additional to those of the Protocol or the EC Regulation)?

Malta acceded to the Protocol on Pollutant Release and Transfer Registers to the Aarhus Convention on 20 May 2016. Malta's PRTR system as per the obligations of Regulation (EC) No 166/2006, with which it is in line, is implemented through the European Pollutant Release and Transfer Register Reporting Obligations Regulations (S.L. 549.47) in relation to penalties, timeframes for reporting and reporting format as well as the template for the reporting of pollutant release and transfer data by installations to the competent authority.

- Have the PRTR reporting obligations been *harmonized* with the other existing environmental and related reporting obligations (e.g. CO₂ reporting, chemical safety, accident prevention) to reduce parallel reporting?

The reporting obligations under Regulation (EC) No 166/2006 were harmonized with the requirements of Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control when sites falling under the former also fall under the latter. Normally, IPPC permits contain a condition for submission of the report of pollutant release and transfer data as part of the Annual Environmental Report required by the permit. The PRTR system is also being included in the environmental permitting system where this is applicable as environmental permitting is being further implemented. PRTR reporting is also being linked administratively with monitoring programmes, for example for aquaculture operations. However, there needs to be, in general, a greater streamlining of reporting requirements.

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

Answer:

An increase on resources could further facilitate the user-friendly dissemination of environmental information which has been collected. Stakeholders indicated that a more regular publication of state of the environment reports would be of benefit. They also mentioned that online information about development applications should be improved in terms of quantity, quality and user-friendliness. The lists of planning applications were previously published on the PA website and in newspapers. Currently these lists are published in the Government Gazette which is accessible on the DOI website and there is a link to it from the PA Website. In addition, the Planning Authority not only publishes all PA applications received and decisions taken, but also all enforcement notices that are issued, together with applications related to the regularisation system. However

stakeholders indicated that in their view publication of lists of planning applications and decisions on the Government Gazette (accessible also through the Planning Authority website) makes them less accessible than the previous practice of publication on the Planning Authority website as well as printed in national newspapers.

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

Answer:

ERA, and previously MEPA, disseminated approximately 8,720 pieces of published environmental material in 2014, 15,880 in 2015 and 6,390 in the first six months of 2016.

It should be noted that over the years the dissemination of planning-related information has improved considerably with the introduction of eApplications (eApps), whereby all plans and necessary documents are available online for planning applications. The Planning Authority has also launched eApps 2 which further improves the interface with customers. In addition, the Planning Authority regularly organises lectures open to the public which includes specific sessions on the use of the Authority's on line services including the website and therefore ENGOs are invited to attend such lectures if they have concerns about using the website.

14. Give relevant web site addresses, if available:

<http://era.org.mt/en/Pages/Access-to-Information.aspx>

<http://www.pa.org.mt/apps-rec-intro>

Article 6

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

- (a) With respect to **paragraph 1**, measures taken to ensure that:
- (i) The provisions of article 6 are applied with respect to decisions on whether to permit proposed activities listed in annex I to the Convention;
 - (ii) The provisions of article 6 are applied to decisions on proposed activities not listed in annex I which may have a significant effect on the environment;

(b) Measures taken to ensure that the public concerned is informed, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, of the matters referred to in **paragraph 2**;

(c) Measures taken to ensure that the time frames of the public participation procedures respect the requirements of **paragraph 3**;

(d) With respect to **paragraph 4**, measures taken to ensure that there is early public participation;

(e) With respect to **paragraph 5**, measures taken to encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit;

(f) With respect to **paragraph 6**, measures taken to ensure that:

- (i) The competent public authorities give the public concerned all information relevant to the decision-making referred to in article 6 that is available at the time of the public participation procedure;
- (ii) In particular, the competent authorities give to the public concerned the information listed in this paragraph;

(g) With respect to **paragraph 7**, measures taken to ensure that procedures for public participation allow the public to submit comments, information, analyses or opinions that it considers relevant to the proposed activity;

(h) With respect to **paragraph 8**, measures taken to ensure that in a decision due account is taken of the outcome of the public participation;

(i) With respect to **paragraph 9**, measures taken to ensure that the public is promptly informed of a decision in accordance with the appropriate procedures;

(j) With respect to **paragraph 10**, measures taken to ensure that when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 are applied making the necessary changes, and where appropriate;

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

Answer:

The principle of non-discrimination is provided for in Article 45 of the Constitution of Malta, which states that ‘no law shall make any provision that is discriminatory either of itself or in its effect’. Therefore, the national provisions on public participation in decisions on specific activities must be interpreted in terms of Article 45.

(a) With respect to **paragraph 1**, measures taken to ensure that:

- (i) The provisions of article 6 are applied with respect to decisions on whether to permit proposed activities listed in annex I to the Convention;
- (ii) The provisions of article 6 are applied to decisions on proposed activities not listed in annex I which may have a significant effect on the environment;

The Industrial Emissions (Integrated Pollution Prevention and Control) Regulations (S.L. 549.77) (Industrial Emissions (IPPC) Regulations) provides for public participation with regards to the

permitting of installations. Public participation with regard to non-IPPC environmental permits is also provided for through procedural measures in certain cases depending on the envisaged impacts.

In addition, the Development Planning Act (Cap. 552) provides for public participation in decision-making for any development whether it requires an environmental impact assessment (EIA) or otherwise. In particular the Development Planning (Procedure for Applications and their Determination) Regulations (S.L. 552.13) provide more detailed provisions regarding public participation inter alia. The Environmental Impact Assessment Regulations (EIA Regulations) (S.L. 549.46) also call for public participation as shall be explained below.

Therefore, the provisions of article 6 are applied both to decisions on activities that fall within annex I and those that do not.

(b) Measures taken to ensure that the public concerned is informed, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, of the matters referred to in **paragraph 2**;

These requirements are provided for in the Industrial Emissions (IPPC) Regulations (S.L. 549.77), whereby Regulation 18 states that ERA must ensure that the public concerned are given early and effective opportunities to participate – more details are then provided in Schedule 4.

As regards planning applications, the Development Planning (Procedure for Applications and their Determination) Regulations (S.L. 552.13) obliges the Executive Chairperson (established under the Development Planning Act [Cap. 552]) to ensure that information about the applications are available online, on the actual site, as well as at the relevant local council at an early stage in order to allow for members of the public to make representations.

As regards EIAs, this procedure is catered for under Regulation 25 of the EIA Regulations (S.L. 549.46) which provides inter alia, that the public shall be informed at least 15 but not later than 30 days before the date of the public hearing about their right to attend and make representations on the proposal. The public will be informed of the date, time and place of the hearing through a publication in the Government Gazette and in a local newspaper. The applicant is also requested to publish in at least one daily newspaper in the Maltese language and in at least one daily newspaper published in the English language, a notice with details including the details on the public hearing and opportunities for public participation.

(c) Measures taken to ensure that the time frames of the public participation procedures respect the requirements of **paragraph 3**;

Time limits for public participation are listed in the relevant legal instruments as listed below and there is a practice to authorise an extension of the consultation period if reasonable.

The Industrial Emissions (IPPC) Regulations (S.L. 549.77) provide for a 30 day or (15 day in cases of minor changes to an application or similar decisions) time frame;

The Development Planning (Procedure for Applications and their Determination) Regulations (S.L. 552.13) provide for a 15 day time frame in the case of summary procedures, i.e. specific types of development applications falling within the provisions of Schedule 2 therein; and a 30 day time frame for all other cases (including those which required an EIA) – though such periods may be shortened to seven days in urgent cases.

The EIA Regulations (S.L. 549.46) provide for the opportunity for the public to make comments prior to the public hearing (see above), during it, and up to seven days after it.

(d) With respect to **paragraph 4**, measures taken to ensure that there is early public

participation;

See answers provided above.

(e) With respect to **paragraph 5**, measures taken to encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit;

As per the Industrial Emissions (IPPC) Regulations (S.L. 549.77) Schedule 4, the public consultation process shall be initiated through a notice in at least one local newspaper and on ERA's website, and ERA may also require the operator to organise one or more public meetings as part of the public consultation process. In addition supplementary procedural measures include matters such as the identification of relevant stakeholders.

Development applications are found on the Department of Information's website, as well as on the Planning Authorities website; in the case of major applications as listed in Schedule 1 therein, the applicant may also be requested to place additional adverts in local newspapers and to hold consultations in relation to such an application. In addition, as per the EIA Regulations (S.L. 549.46), the applicant must publish a notice available to the public that includes details on the proposed application. In addition, supplementary procedural measures include matters such as the identification of relevant stakeholders.

(f) With respect to **paragraph 6**, measures taken to ensure that:

- (i) The competent public authorities give the public concerned all information relevant to the decision-making referred to in article 6 that is available at the time of the public participation procedure;
- (ii) In particular, the competent authorities give to the public concerned the information listed in this paragraph;

Under the Industrial Emissions (IPPC) Regulations (S.L. 549.77), this requirement is catered for under Regulation 18 and Schedule 4. The Planning Authority also makes planning applications and details available online for effective public access. The provisions of paragraph 6 are also catered for in the EIA Regulations (S.L. 549.46).

(g) With respect to **paragraph 7**, measures taken to ensure that procedures for public participation allow the public to submit comments, information, analyses or opinions that it considers relevant to the proposed activity;

Under the Industrial Emissions (IPPC) Regulations (S.L. 549.77), the procedure is specifically regulated under Schedule 4. Regulation 11 of the Development Planning (Procedure for Applications and their Determination) Regulations (S.L. 552.13), allows any person to declare an interest in any development application and make representations to the Planning Authority by any means of communication, written or electronic, in the Maltese or English language, and must include an electronic address. As per the EIA Regulations (S.L. 549.46), the Director of Environment Protection shall arrange for a public hearing to take place, at which the public may make comments and express their views on the impact of the proposed development – the process is regulated through Regulation 25(7) – though comments in writing are also accepted prior to and even after the hearing.

(h) With respect to **paragraph 8**, measures taken to ensure that in a decision due account is taken of the outcome of the public participation;

Under the Industrial Emissions (IPPC) Regulations (S.L. 549.77), Schedule 4 provides that the results of the consultations must be taken into due account in the taking of a decision and furthermore, Regulation 18 states that the results of the consultations held before the decision was taken and an explanation of how they were taken into account in that decision must be published. Article 72(2) of the Development Planning Act (Cap. 552) also states that in its determination upon an application for development permission, the Planning Board shall have regard to representations made in response to the publication of the development proposal. In relation to EIAs, this requirement is catered for in Regulation 26 of the EIA Regulations (S.L. 549.46).

(i) With respect to **paragraph 9**, measures taken to ensure that the public is promptly informed of a decision in accordance with the appropriate procedures;

Under the Industrial Emissions (IPPC) Regulations (S.L. 549.77) this is catered for by Regulation 18(2) which requires the competent authority to make the decision publicly available online. Under Regulation 6(6) of the Development Planning (Procedure for Applications and their Determination) Regulations (S.L. 552.13), the Executive Chairperson shall establish the publication date of the decision which shall not be later than fifteen days from such decision; and the proposal together with the name of the applicant and a note as to whether the application has been approved or refused shall be published on the websites of the competent authority and the Department of Information.

(j) With respect to **paragraph 10**, measures taken to ensure that when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 are applied making the necessary changes, and where appropriate;

The abovementioned rules relating to the Industrial Emissions (IPPC) Regulations (S.L. 549.77) apply to a decision on granting, reconsideration or updating of a permit. As per Article 71(8) of the Development Planning Act (Cap 551) and regulations 5(4) and 12(6) of the Development Planning (Procedure for Applications and their Determination) Regulations (S.L. 552.13), when material changes in the application are proposed, or fresh/revised drawings or documents are submitted, those who had previously made representations on the original proposal are informed and are allowed to make comments. Under the EIA Regulations (S.L. 549.46), if there are any requested changes or extensions of a development which would result in significant adverse effects on the environment, the operator may be required to undertake another EIA. In addition, carrying out public consultation where there is an EIA update is considered best practice in the implementation of EIA.

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

As regards the deliberate release of genetically modified organisms, this is regulated by the Deliberate Release into the Environment of Genetically Modified Micro-Organisms Regulations (S.L.549.60), whereby the public is given the opportunity to make representations and comments on any proposed release as per Regulations 9 and 12.

Further guidance questions on specific aspects of implementation from: Guidance on Reporting Requirements ECE/MP.PP/WG.1/2007/1.4 20 February 2007

Paragraph 1: Activities falling under article 6

- Does national legislation or practice apply the procedures of article 6 of the Convention exclusively to decision-making requiring an environmental impact assessment (EIA) or also to *other types* of decision-making?

Public participation is catered for under the Development Planning (Procedure for Applications and their Determination) Regulations (S.L. 552.13), in which the public may make representations on any planning application (whether it required an EIA or not), and as regards applications relating to Projects of Common Interests (as per EU Regulation (EU) no 347/2013) or the Seveso III Directive (Directive 2012/18/EU transposed through the Control of Major Accident Hazard Regulations [S.L. 424.19]) whereby the public must be given the right to participate in the application process. Public participation is also included in the decision-making process under the Industrial Emissions (IPPC) Regulations (S.L. 549.77).

With respect to development applications, planning regularisation procedures and summary planning procedures were introduced in May 2016 through the Development Planning (Procedure for Applications and their Determination) Regulations (S.L. 552.13). For the regularisation procedure (which does not require an EIA), an application needs to be submitted which is published on the Government Gazette, and is subject to public consultation. With respect to the summary procedure, most relevant applications were previously processed through the Development Notification Order procedure and were not published for public consultation. Through the summary procedure, applications are now published on the Government Gazette and Department of Information website, have a site notice affixed to the site and the public is allowed to submit any comments/objections generally within 15 days.

- In case a number of *consecutive decisions* are required in order to permit a proposed activity listed in annex I (e.g. a planning permission, a construction consent, an environmental permit, a mining license), does the legislation require public participation only in relation to one of such decisions (which one?), some of them (which ones?) or all of them?

Public participation is a requirement for: planning applications under the Development Planning Act (Cap. 552), EIAs under the EIA Regulations (S.L. 549.46) and environmental permits under the Industrial Emissions (IPPC) Regulations (S.L. 549.77). The trend is to harmonise these processes.

Paragraph 2: Notification of the public concerned

- Does the national law define the *public concerned* and, if so, *how*?

National legislation provides a definition of the 'public concerned' In the EIA Regulations (S.L. 549.46): "the public concerned" means the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures referred to in these regulations; for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest: Provided that where the term "public" appears in these regulations it shall include "the public concerned".

- Are any special measures taken to *encourage* public participation in the most significant environmental decision-making cases?

The Planning Authority makes use of social media in order to encourage public participation in certain major cases. To encourage the public to participate in EIAs, adverts are issued in the press and on ERA's website, inviting the public to comment within stipulated timeframes in the legislation.

- What is the *legal effect* of failing to duly notify the public concerned?

In all cases, if the responsible authority fails to duly notify the public concerned, this may nullify the procedure.

Paragraph 3: Time frames for public participation

- How much time is usually allocated for public consultation? Is there a *minimum* period prescribed by law?
- What are the *time frames* for:
 - notifying the public about the availability of the relevant information?
 - the public to access the relevant information, form its opinion and submit its comments?
 - notifying the public about the commencement of public hearings?

Schedule 4 of the Industrial Emissions (IPPC) Regulations (S.L. 549.77) sets the periods for consultation applicable to installations covered by the directive. More specifically, the timeframe for public consultation shall be thirty days for the procedures described in Regulation 18(1)(a) to (d) and shall be fifteen days in all other cases where the competent authority deems consultation necessary, provided that where the application for reconsideration of a permit in accordance with Regulation 18(1)(e) includes a request for a substantial change, the timeframe for public consultation shall be thirty days. Moreover, the competent authority may also require the operator to organise one or more public meetings as part of the public consultation process.

The Development Planning (Procedure for Applications and their Determination) Regulations (S.L. 552.13) provide for a 15 day time frame in the case of applications falling within the provisions of Schedule 2 therein, and a 30 day time frame for all other cases (including those which required an EIA) – though such periods may be shortened to seven days in urgent cases as may be indicated in the publication of the application on the website of the Department of Information.

In the case of EIAs, the EIA Regulations (S.L.549.46) in Malta provide various opportunities for public participation, i.e. at the scoping stage and at the review stages of the process. Members of the public are allowed 21 days to submit any issues they wish to see included in the EIA Terms of Reference. The public is given a 21-day period to comment on the Environmental Statement. In addition to the latter, a public meeting is called for Annex I projects for which the public has an additional 7 days, following the public meeting/hearing, to comment on the Environmental Statement. For the public meeting/public hearing, the public cannot be notified less than 15 days prior to the meeting.

Paragraph 4: Early public participation

- Does the law clearly identify *specific stage(s)* of a decision-making procedure at which the public notification shall take place?
- Is public participation provided for in the *screening and/or scoping* phase of an EIA procedure?
- Does public participation in a decision-making process for proposed activity which is subject to an EIA take place at a stage when *alternatives* are still open?

The Industrial Emissions (IPPC) Regulations (S.L. 549.77) also set various mechanisms for public participation as defined in Regulation 18.

As regards planning applications, the Development Planning (Procedure for Applications and their Determination) Regulations (S.L. 552.13) provides for public notification in the following

cases: upon a request for the planning permission as discussed above, upon any change of plans or documents provided by the applicant, after the decision notice is taken, and in cases of a request for a reconsideration of a decision, the date of the sitting.

Public participation is provided for in the scoping phase of the EIA procedure. For Annex I projects, scoping meetings are set for the Local Councils and NGOs.

Paragraph 5: Encouraging prospective applicants to enhance public participation

- What is the developer's role in *organizing* public participation during the decision-making procedure?

In the case of IPCC the competent authority may require the operator to organise one or more public meetings as part of the public consultation process (Schedule 4 of the Industrial Emissions (IPPC) Regulations [S.L. 549.77]).

The developer is requested to organise the public meeting/hearing held at the review stage of the EIA process to encourage public participation in accordance with the EIA Regulations (S.L. 549.46). This stage happens before the actual decision-making session called by the Planning Authority.

The decision-making session where the Planning Authority Board determines a development planning application is open to the public and the role of the developer is for his/her architect and the EIA Coordinator (where an EIA has been undertaken) to present the case and EIA findings.

Paragraph 6: Ensuring access to information relevant to decision-making

- Have there been cases where a complete set of *EIA documentation* was classified on the basis of commercial confidentiality or intellectual property rights?

During the period under review, there were no complete sets of EIA documentation that were classified on the basis of commercial confidentiality or intellectual property rights.

Paragraph 7: Public comments

- What role do *multilateral discussion techniques* (e.g. public hearings, clarification meetings) play in the environmental decision-making procedures?

Schedule 4 of S.L. 549.77 provides that the competent authority may require the operator to organise one or more public meetings as part of the public consultation process in the case of IPCC.

With respect to planning applications under the Development Planning Act (Cap. 552), the public is requested to submit its comments in writing. Relevant comments received by the public are assessed as part of the application and presented to the decision-making body during the decision-making process. During Planning Board meetings, interventions from the public are made at the discretion of the Chairperson, however it is standard practice that members of the public are given the chance to make their observations to the Board.

In the case of EIAs, a public meeting/hearing is held at the review stage of the EIA process to encourage public participation in accordance with the EIA Regulations (S.L. 549.46). This stage happens before the actual decision-making session called by the Planning Authority.

Paragraph 8: Taking due account of the results of public participation

- Are there practical techniques for taking due account of public comments in cases where *many comments* have been received? Are there legal regulations to this end?
- Can *public comments* which have already been submitted be viewed by other members of the public throughout the commenting procedure?

The IPPC process pursuant to the Industrial Emissions (IPPC) Regulations (S.L. 549.77) ensures that any comments received from the public are answered by the Authority and the operator of the IPPC facility and where necessary conditions arising from concerns raised are included in the permit issued to the installation. In addition, Regulation 18 states that the results of the consultations held before the decision was taken and an explanation of how they were taken into account in that decision must be published.

With respect to representations made upon any planning application, the Development Planning (Procedure for Applications and their Determination) Regulations (S.L. 552.13) oblige the Planning Authority to reply to the individual by electronic means. In the case of EIAs, relevant comments made by the public during the process are replied to by the EIA Consultant and are included as an Addendum to the Environmental Statement. For the comments to be included in this report, these have to reach ERA by the stipulated deadline.

Paragraph 9: Information about the decision

- Does the *reasoning* part of the decision refer to the factual, professional and legal arguments raised in the procedure? If not, can such omissions be challenged under the procedure referred to in article 9, paragraph 2 of the Convention?

Under the Industrial Emissions (IPPC) Regulations (S.L. 549.77), Regulation 18 states that the reasons on which the decision is based must be published, and these would include an explanation of how the results of public consultation were taken into account, as well as more technical points as listed in Regulation 18(2).

Article 33 in the Development Planning Act (Cap. 552) obliges the PA to keep and make available for public inspection a register/s of applications for development permissions, its decisions on such applications and other decisions relating to building regulations. Furthermore, any person shall have access to that part of the file containing ‘decisions relating to development permissions issued by the Authority together with the relative plans and documents including the reasons for the grant of such permissions or refusal’.

Regulation 44(4) of the EIA Regulations (S.L. 549.46) obliges the competent authority to inform the public on a decision taken regarding the application – including the content of the decision, any conditions, and main reasons and considerations on which the decision is based, including information about the public participation process.

Omissions may be challenged under Regulations 11A and 12 of the Freedom of Access to Information on the Environment Regulations (S.L. 549.39) and more generally under the Articles 11 and 47 in the Environment and Planning Review Tribunal Act (Cap. 551). As a last resort one may appeal under Article 469A of the Code of Organization and Civil Procedure (Cap. 12).

Paragraph 10: Public participation in reconsideration or updating of the decision

- What kinds of changes in the operating conditions of an activity falling within the scope of paragraph 1 of article 6 qualify as *significant* and therefore lead to a new decision-making procedure where public participation should be provided for?

A change in operating conditions of IPPC installations requires a variation of the permit, which in

turn requires public consultation procedures as regulated by the Industrial Emissions (IPPC) Regulations (S.L. 549.77).

As regards development planning applications, the kinds of changes in operating conditions that qualify as significant (and therefore lead to a new decision-making procedure where public participation should be provided for) are listed in Regulation 2 of the Development Planning (Procedure for Applications and their Determination) Regulations (S.L. 552.13) under the definition of 'material changes'.

Under the EIA Regulations (S.L. 549.46), Schedule IA provides that if there are any requested changes or extensions of a development which would result in significant adverse effects on the environment, the operator may be required to undertake another EIA.

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

Answer:

It is the perception of developers that the EIA process delays the planning process. On the other hand, certain sections of the public tend to harbour certain misconceptions about the process, and have too many expectations for what is essentially a consultation exercise.

Stakeholders mentioned concerns about the impact of the planning regularisation procedures and summary planning procedures introduced in May 2016, through the Development Planning (Procedure for Applications and their Determination) Regulations (S.L. 552.13) related to access to information in the case of planning regularisations and timeframes for submissions from the public in the case of summary procedures. They mentioned that the minimum period (2 weeks) provided for public consultations on summary procedures is too short and should be extended.

With respect to the summary procedure, the relevant applications were previously processed through the DNO procedure and therefore they were never published for public consultation. Through the summary procedure, applications are now published on the Government Gazette and DOI website, have a site notice affixed to the site and the public is allowed to submit any comments/objections generally within 15 days - thereby they are fully part of a public consultation process. Additionally, the law also gives third party rights of an appeal on all planning decisions

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

Answer:

No such cases arose during the period under review.

18. Give relevant web site addresses, if available:

<http://era.org.mt/en/Pages/Environmental-Permitting.aspx>

<http://era.org.mt/en/Pages/EIA.aspx>

Article 7

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

Answer:

The public is given the opportunity to participate in the preparation of plans, programmes and policies relating to the environment by virtue of the following pieces of legislation: the Environment Protection Act (Cap. 549), the Development Planning Act (Cap. 551), the Strategic Environmental Assessment Regulations (SEA Regulations) (S.L. 549.61) and the Plans and Programmes (Public Participation) Regulations (S.L. 549.41). The relevant definitions have been transposed through the aforementioned Acts and Regulations, and they are all non-discriminatory as they provide all members of the public equal rights of participation.

Under the Environment Protection Act (Cap. 549), ERA is required to draw up the National Strategy for the Environment as per Article 45, which is a strategic governance document setting the policy framework for the preparation of plans, policies and programs issued under this Act or under any other Act for the protection and sustainable management of the environment. During the preparation or review of the Strategy, the Minister responsible for Environment shall make known to the public the matters intended for consideration and shall provide adequate opportunities for individuals and organisations to make representations (within a time frame of at least six weeks). The Strategy, together with a statement of the representations received and the responses made to those representations, are then published. ERA may also publish subsidiary plans, defined as: a plan that deals with a specific environmental policy or matter setting out detailed specifications for its implementation, as per Article 48; as well as more detailed plans and policies as per Article 50. In preparing or reviewing such plans, ERA must inform the public of the matters it intends to consider and provide for public consultation on such preliminary issues. Public consultation is also provided for after the draft plan has been prepared and published (for a period of at least six weeks). The plan is formally adopted by ERA after taking into consideration all the representations submitted to it.

The Development Planning Act (Cap. 551) contains similar provisions as regards the preparation of the Spatial Strategy for Environment and Development and other subsidiary plans. The former is a strategic document regulating the sustainable management of land and sea resources covering the whole territory and territorial waters of the Maltese Islands; whilst the latter include subject plans, local plans, action plans or management plans and development briefs. Articles 44 and 53 state that public consultation must be provided for during the preparation of the plan, as well as after the draft has been published in a similar manner as that described above.

Furthermore, provisions for public participation are included in the SEA Regulations (S.L. 549.61) for plans and programmes undertaken by public authorities which are likely to have significant environmental effects.

The above Regulations define "the public" as one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups. In addition, the said Regulations define "make available to the public" as meaning publishing in the Government Gazette or in at least one daily newspaper in the English language and in the Maltese language, a notice indicating where the document may be viewed or acquired; the price of the said document shall not exceed the cost of its printing and distribution. This with a view to ensuring access to documentation to all interested stakeholders without barriers.

According to these Regulations, there are opportunities for the public to be constantly informed

and to comment during the Strategic Environmental Assessment (SEA). Responsible authorities are obliged to ensure that their conclusions on the need, or otherwise of an SEA, are made available to the public. Moreover, legislation also requires that the draft plan or programme and the environmental report prepared are made available to the public. In so doing, the public is given an early and effective opportunity within an adequate time-frame, which shall not exceed sixteen weeks from the publication of the plan or programme and its environmental report, to express its opinion on the draft plan or programme and the accompanying environmental report before the adoption of the plan or programme or its submission to the legislative procedure. In order to reach out to the public affected or likely to be affected by, or having an interest in, the decision making (e.g. those promoting environmental protection and other organisations concerned), the notice of availability of the plan or programme and the environmental report shall be published in at least the Government Gazette together with specific details of where the documentation is available and how comments can be submitted and by which date. As a matter of good practice, responsible authorities are also advised to make the Scoping Report available to the public and interested stakeholders.

In concluding the SEA process and communicating the decisions taken, the responsible authority is obliged to ensure that, when a plan or programme is adopted, the public is informed and the following items are made available:

(a) the plan or programme as adopted;

(b) a statement summarising how environmental considerations have been integrated into the plan or programme and how the environmental report prepared, the opinions expressed and the results of consultations have been taken into account and the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with;

(c) the measures that have been decided concerning monitoring.

In addition to the above, the Plans and Programmes (Public Participation) Regulations (S.L. 549.41) provide for public participation in the drawing up of specific plans and programmes that relate to waste, water and air as specified in the Schedule therein. The competent authority (ERA) must ensure that the public is given early and effective opportunities to participate in the preparation, modification or review of the specified plans or programmes. ERA must take into account the results of the public participation when making its decision and must inform the public of the final decisions along with the reasons and considerations upon which those decisions are based, including information about the public participation process.

Further guidance questions on specific aspects of implementation from: Guidance on Reporting Requirements ECE/MP.PP/WG.1/2007/1.4 20 February 2007

- What are the most important differences between *definitions of plans, programmes and policies* according to the national legislation (e.g. in scope, in details, in binding force)?
- Which types of strategic decisions are considered to be “*relating to the environment*”?

National legislation defines "plans and programmes" as plans and programmes, including those co-financed by the European Community, as well as any modifications to them: (a) which are subject to preparation and, or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government, and (b) which are required by legislative, regulatory or administrative provisions.

Environmental assessments are carried out for all plans and programmes, (a) which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to

Directive 85/337/EEC, or (b) which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of Directive 92/43/EEC.

In all cases the following criteria are taken into account in order to ensure that plans and programmes with likely significant effects on the environment are covered by an SEA namely:

1. The characteristics of plans and programmes, having regard, in particular, to:

- the degree to which the plan or programme sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources,*
- the degree to which the plan or programme influences other plans and programmes including those in a hierarchy,*
- the relevance of the plan or programme for the integration of environmental considerations in particular with a view to promoting sustainable development,*
- environmental problems relevant to the plan or programme,*
- the relevance of the plan or programme for the implementation of Community legislation on the environment (e.g. plans and programmes linked to waste-management or water protection).*

2. Characteristics of the effects and of the area likely to be affected, having regard, in particular, to:

- the probability, duration, frequency and reversibility of the effects,*
- the cumulative nature of the effects,*
- the transboundary nature of the effects,*
- the risks to human health or the environment (e.g. due to accidents),*
- the magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected),*
- the value and vulnerability of the area likely to be affected due to:*
 - special natural characteristics or cultural heritage,*
 - exceeded environmental quality standards or limit values,*
 - intensive land-use,*
 - the effects on areas or landscapes which have a recognised national, Community or international protection status.*

The SEA Regulations in Malta are subsidiary regulations under the Environment Protection Act (Cap.549) as the parent act which defines "environment" as meaning the whole of the elements and conditions, natural or man-made, whether together or in isolation, and in particular: (a) the air, water, land, soil and sea, including their bedrock, aquifers and subsurface features; (b) all the layers of the atmosphere; (c) all biodiversity; and (d) the landscape and its features.

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

Answer:

Articles 45-46 and 48-52 of the Environment Protection Act (Cap. 549) and Articles 38, 44, 45, 46 and 53 of the Development Planning Act (Cap. 552) provide for public participation in the formulation of plans and policies as described above. In addition, where various environmental

policies are required under national legislation relating to the EU acquis, provision for public participation is required under the separate pieces of legislation (e.g. the Water Policy Framework Regulations (S.L. 549.100), transposing Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, and the Flora, Fauna and Natural Habitats Protection Regulations (S.L. 549.44), transposing Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora and so on).

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

Answer:

No specific difficulties were encountered.

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

Answer:

N/A

23. Give relevant web site addresses, if available:

<http://msdec.gov.mt/en/sea/Pages/sea.aspx>

<http://era.org.mt/en/Pages/Strategic-Environmental-Assessment-.aspx>

Article 8

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

Answer:

Under the Environment Protection Act (Cap. 549), ERA exercises a standard quality procedure to ensure the effective transposition of EU and international legislation and regulations. This procedure acknowledges consultation as a crucial factor in bringing EU and international binding obligations into national law. From the onset, a transposition time plan is prepared, outlining the key stakeholders that shall be affected by the transposition of the regulations coming into force, and what type of consultations need to be carried out. This identification process is in line with the definitions of article 2 (4 & 5) of the Aarhus Convention, since it identifies the public concerned that shall be directly influenced through the decisions of these environmental regulations.

A mailshot of the regulations is sent to stakeholders together with the regulations. These are made available on the ERA website and on the MEUSAC website. This ties in with the non discrimination requirement in article 3 of the Aarhus convention, since all relevant stakeholders are involved in the decision-making process of environmental obligations without prejudice or discrimination.

Under the Development Planning Act (Cap. 552), legally binding regulations shall be made by the Minister after consultation with the PA. A draft of the said regulations must be issued for public consultation, thereby allowing any person a minimum of two weeks to make representations to the Minister stating how in his opinion the proposed regulations could be improved to reach their

ultimate aim. The regulations open for public consultation are published on the PA website (<http://www.pa.org.mt/public-consultation>). Development orders under article 55 of the Development Planning Act (Cap. 552) are also issued for public consultation for a period of two weeks. These orders will amend or establish subsidiary legislation relating to development notification orders or similar, and are therefore legally binding.

Further guidance questions on specific aspects of implementation from: Guidance on Reporting Requirements ECE/MP.PP/WG.1/2007/1.4 20 February 2007

- Are there any requirements for public participation at the *conceptual stage* of the legislative procedure?

Regulations under the Environment Resources Act (Cap. 549) and the Development Planning Act (Cap.552) are drawn up by the relevant Ministers after consultation with ERA and PA respectively. The draft regulations are then published for public consultation and stakeholders are invited to submit their comments to the authority. In the case of regulations under the Environment Resources Act (Cap. 549), after the closing of the consultation phase, all comments forthcoming from the public are gathered into a single document and made available on the authorities' website. Due to the relevance that environmental legislation may have on industry and/or NGOs, such key stakeholders may be specifically identified and requested to offer substantial feedback, particularly at the onset prior to the legislation being drafted. On Planning Regulations, all public consultation exercises are published on the Ministry for Social Dialogue and Consumer Affairs and Civil Liberties main portal for public consultations. (http://socialdialogue.gov.mt/en/Public_Consultation/Pages/Home.aspx)

- What are the *time limits* given to the members of the public to form their opinion?

Timeframes for public consultation on draft regulations are four weeks, as provided for in Article 55 of the Environment Protect Act (Cap. 549), from the date that they are uploaded on the ERA and MEUSAC websites.

Consultation on draft regulations and development orders under the Development Planning Act (Cap. 552), allows any person a period of at least two weeks to make representations stating how in his opinion the proposed regulation could be improved to reach their ultimate aim.

- Are there specific techniques for *facilitating* public participation in the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment (e.g. public committees, advisory bodies with NGO members)?

The draft regulations are presented to advisory bodies, public committees and NGOs through bilateral meetings, public consultation or information sessions as well as through mailshots that are sent by MEUSAC as noted above.

- Are drafts regulations and rules available through the *Internet*?

Draft environmental rules and regulations together with the consultation brief are available during public consultation phases through the ERA website (<http://era.org.mt/en/Pages/Active-Public-Consultations.aspx>) and the MEUSAC website (<http://www.meusac.gov.mt/aboutconsultation?l=1>).

The draft regulations and development orders under the Development Planning Act are uploaded on the PA website (www.pa.org.mt) and the public consultation portal of the Ministry for Social Dialogue and Consumer Affairs and Civil Liberties (https://socialdialogue.gov.mt/en/Public_Consultations/Pages/Home.aspx).

- Are the public comments received in the course of the participation process under article 8 of the Convention *communicated* to the legislature?

Once laws have been finalised, they are presented to the Maltese Cabinet of Ministers for final approval together with a memo and impact assessment form. This accompanying documentation specifically outlines the public consultation process, what methods of consultation and communication have been engaged, as well as whether all relevant stakeholders have been approached and made fully aware of the implications of such laws coming into force.

A response to public consultation comments along with a summary of the outcome are provided in line with the procedure adopted through the public consultation portal of the Ministry for Social Dialogue and Consumer Affairs and Civil Liberties.

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

Answer:

Stakeholders mentioned that the minimum period (2 weeks) provided for public consultations on regulations under the Development Planning Act (Cap. 552) is too short and should be extended. Stakeholders also suggested that holiday periods are avoided when planning public consultation initiatives.

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

Answer:

The two week time limit as established by the Development Planning Act (Cap. 552) for public consultation is at times extended when requested to do so by ENGOS

27. Give relevant web site addresses, if available:

<http://era.org.mt/en/Pages/Public-Participation.aspx>

Article 9

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

- (a) With respect to **paragraph 1**, measures taken to ensure that:
 - (i) Any person who considers that his or her request for information under article 4 has not been dealt with in accordance with the provisions of that article has access to a review procedure before a court of law or another independent and impartial body established by law;
 - (ii) Where there is provision for such a review by a court of law, such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law;

(iii) Final decisions under this paragraph are binding on the public authority holding the information, and that reasons are stated in writing, at least where access to information is refused;

(b) Measures taken to ensure that within the framework of national legislation, members of the public concerned meeting the criteria set out in **paragraph 2** have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6;

(c) With respect to **paragraph 3**, measures taken to ensure that where they meet the criteria, if any, laid down in national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of national law relating to the environment;

(d) With respect to **paragraph 4**, measures taken to ensure that:

(i) The procedures referred to in paragraphs 1, 2 and 3 provide adequate and effective remedies;

(ii) Such procedures otherwise meet the requirements of this paragraph;

(e) With respect to **paragraph 5**, measures taken to ensure that information is provided to the public on access to administrative and judicial review.

Answer:

The relevant definitions from article 2 of the Convention have been transposed into national law through the Environment and Planning Review Tribunal Act (Cap. 551) and the Freedom of Access to Information of the Environment Regulations (S.L. 549.39). The principle of non-discrimination as per article 3(9) is enshrined in the Constitution of Malta through Article 45, thereby ensuring that the national provisions on access to justice adhere to such a principle.

(a) With respect to **paragraph 1**, measures taken to ensure that:

(i) Any person who considers that his or her request for information under article 4 has not been dealt with in accordance with the provisions of that article has access to a review procedure before a court of law or another independent and impartial body established by law;

The applicant has two options (contained in the Freedom of Access to Information on the Environment Regulations [S.L. 549.39]): recourse to the Environment and Planning Review Tribunal or to the Information and Data Protection Commissioner. The applicant may appeal from the Commissioner's decision to the Information and Data Protection Appeals Tribunal, and if still dissatisfied may further appeal to the Court of Appeal. Appeals from the Environment and Planning Review Tribunal are only possible on points of law and are also heard by the Court of Appeal.

(ii) Where there is provision for such a review by a court of law, such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by

an independent and impartial body other than a court of law;

The Tribunal, as per Regulation 11A of the Freedom of Access to Information on the Environment Regulations (S.L. 549.39) gives due regard to the need for expeditiousness and 'shall hold its first hearing within six working days from receipt of the appeal', and requires the payment of a small fee (see table below). Recourse to the Data Protection Commissioner is free of charge and the Commissioner acts as expeditiously as possible.

- (iii) Final decisions under this paragraph are binding on the public authority holding the information, and that reasons are stated in writing, at least where access to information is refused;

As per Article 23 of the Freedom of Information Act (Cap. 496), the decision of the Information and Data Protection Commissioner must be adhered to by the competent authority, and in cases of refusal, the grounds for such refusal must be stated in the decision. Decisions of tribunals and courts are binding on public authorities and the decisions must contain reasons (see: the Data Protection Act [Cap. 440] and the Environment and Planning Review Tribunal Act [Cap. 551]).

(b) Measures taken to ensure that within the framework of national legislation, members of the public concerned meeting the criteria set out in **paragraph 2** have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6;

(c) With respect to **paragraph 3**, measures taken to ensure that where they meet the criteria, if any, laid down in national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of national law relating to the environment;

With respect to the implementation of paragraphs 2 and 3, members of the public concerned have the option of appealing to the Environment and Planning Review Tribunal via Articles 11 and 47 of the Environment and Planning Review Tribunal Act (Cap. 551). Such decisions are subject to further appeal by the Court of Appeal on points of law. An overriding judicial review procedure before the Courts of Justice is also catered for in Article 469A of the Code of Organization and Civil Procedure (Cap. 12). Actions between private persons must be instituted by normal proceedings in the Civil Courts as per the Code of Organisation and Civil Procedure (Cap. 12).

- (d) With respect to **paragraph 4**, measures taken to ensure that:
 - (i) The procedures referred to in paragraphs 1, 2 and 3 provide adequate and effective remedies;
 - (ii) Such procedures otherwise meet the requirements of this paragraph;

Decisions of the Tribunal are delivered in public and are published, thereby ensuring transparency. The Tribunal must adhere to the principles of good administrative behaviour and respect the right to a fair hearing of the applicant. In this regard, see also the answers to the supplementary questions on paragraph 4 below.

(e) With respect to **paragraph 5**, measures taken to ensure that information is provided to the public on access to administrative and judicial review.

When a request for information has been denied in part or in whole, the Competent Authority must provide reasons for the denial as well as guidance on the procedure for review of the decision. In

addition, information about access to environmental information is available at <http://era.org.mt/en/Pages/Request-env-info.aspx>; and general information about access to justice is provided online at <http://era.org.mt/en/Pages/Access-to-Justice.aspx>.

Further guidance questions on specific aspects of implementation from: Guidance on Reporting Requirements ECE/MP.PP/WG.1/2007/L.4 20 February 2007

General issues

- Do the courts apply the text of the Aarhus Convention *directly*?

With respect to Access to Information, the legislation that the courts apply directly is more detailed than the text of the Aarhus Convention. With respect to Public Participation, the legislation that the courts apply directly involves more substantive procedures, which are applied under various obligations. With respect to Access to Justice, while the text of the Aarhus Convention is not applied directly, measures are in place to cover the provisions of the Aarhus Convention.

- Do the courts have only *cassation* or also *reformatory* rights in cases under this article?

While in general the courts have cassation rights in cases in line with article 9 of the Aarhus Convention, exceptionally some cases are. Reformatory. For example, as per Article 31 of the Environment and Planning Review Tribunal Act (Cap. 551), the Tribunal shall have the power to confirm, revoke or alter the decision appealed from and give such directions as it may deem appropriate.

Paragraphs 1 and 2: Remedies

- How is the *independence* of the administrative review ensured?

The Information and Data Protection Commissioner is established under the Data Protection Act (Cap. 440) – the Commissioner is appointed by the Prime Minister after consultation with the Leader of the Opposition, and there are numerous qualifications which apply to ensure the Commissioner’s independence and impartiality. The applicant may appeal from the Commissioner’s decision to the Information and Data Protection Appeals Tribunal, and if still dissatisfied may further appeal to the Court of Appeal which is constituted under the Constitution of Malta and therefore independence and impartiality is guaranteed by law.

The Environment and Planning Review Tribunal is defined under the Environment and Planning Review Tribunal Act (Cap. 551) as: ‘an independent and impartial tribunal ... for the purpose of reviewing the decisions of the Planning Authority and the decisions of the Environment and Resources Authority, referred to it in accordance with this Act or any other law ...’.

With reference to the judicial review procedure under Article 469A of the Code of Organizations and Civil Procedure (Cap. 12), the courts are independent entities under the Constitution of Malta.

How do the national law and adjudication interpret the phrase “NGOs promoting environmental protection and meeting any requirements under national law”?

The Development Planning Act (Cap. 552) defines ENGOs as non-governmental organizations promoting environmental protection and which are registered under the Voluntary Organisations Act (Cap. 492). Therefore under national law, in order for an ENGO to be recognised, it has to register with the Voluntary Organisations office.

Paragraph 3: The public's right to challenge acts and omissions by private persons and authorities

- Which *level of legislation* implements the requirements of article 9, paragraph 3?

The right to challenge acts and omissions by private or public persons and authorities in relation to contraventions of national law relating to the environment, is found under various pieces of primary legislation – namely, the Environment and Planning Review Tribunal Act (Cap. 551), the Environmental Protection Act (Cap. 549), the Development Planning Act (Cap. 552), and the Code of Organisation and Civil Procedure (Cap. 12).

- Can members of the public initiate administrative cases through *petitions, complaints or motions*?

Although such mechanisms are not prohibited; actual judicial or semi-judicial proceedings have to be initiated through the procedure set out in the law. Such procedure is not complex and not prohibitively expensive.

- Can a member of the public challenge decisions of the type regulated by *articles 7 and 8* of the Convention by challenging them as contravening the provisions of the national law relating to the environment?

A member of the public can object to decisions of the type regulated by articles 7 and 8 of the Aarhus Convention by challenging them as contravening the provisions of the national law relating to the environment under judicial review procedures (Article 469A of the Code of Organization and Civil Procedure [Cap. 12]).

- What are the conditions of issuing an *injunctive relief* by the court in cases brought under article 9, paragraph 3, of the Convention and/or the relevant national legislation?

The conditions of issuing an injunctive relief by the court in cases brought under article 9, paragraph 3 of the Aarhus Convention and/or the relevant national legislation can be found in the general provisions of the Code of Organization and Civil Procedure (Cap. 12) whereby a prohibitory injunction may be issued even before a decision is taken.

Paragraph 4: Timely, adequate, effective, fair, equitable and not prohibitively expensive remedies

- What kinds of *sanctions* are available in cases where an official fails to fulfil his or her responsibilities concerning access to information or public participation?

Any responsibilities concerning access to information or public participation fall under the remit of the organisation and not of the official concerned.

- Are there judges *specializing* in environmental cases?

The incidence of environmental cases in Malta does not warrant formal specialization of judges, although a number of them have an interest and considerable practical experience in this area.

- What overall *costs* do members of the public incur in bringing cases to court?

Overall costs are not prohibitive in Malta for members of the public to bring cases to court. There

is no cost to appeal to the Information and Data Commissioner under the Freedom of Access to Information on the Environment Regulations (S.L. 549.39) as per Regulation 12.

Fees due to the Registry of the Tribunal:

In respect of appeal:	Rates (€)	Notes
Against a decision of the Planning Authority for a development permission	5% of the Development Permit Fee	Minimum fee of €150 Maximum fee of €3500
Against a decision of the Planning Authority under a development notification order or under a regularisation process or under a planning control application	150	
Against a decision following a request for screening of a proposed development permission	150	
Against a notice issued under the provisions for Part IX of the Development Planning Act (Cap. 552)	50	
Against any other decision of the Planning Authority	150	
Against any decision, ruling or direction in relation to Building Regulations and Building Control Regulations	150	
Against any decision of the Environment and Resources Authority	150	
Against a notice issued under the provisions for Part VII of the Environment Protection Act (Cap. 549)	50	
Against a decision for registration by the Registration Board	150	

With respect to appeals against decision of the Planning Authority for a development permission, pre-2016 appeals fees were 5% of the Development Permit Fee and capped at 4,658 Euros for Local Councils, and 5% of the Development Permit Fee, with no capping for all other parties. As per the Environment and Planning Appeals (Fees) Regulations (S.L. 549.105), fees are now 5% of the Development Permit Fee but capped at a maximum fee of 3,500 Euros for all, as indicated above.

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

Answer:

Although appeal fees were capped at 3,500 Euros in 2016, ENGOs reported that appeal fees with respect to development permissions are too expensive.

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

Answer:

The following table provides information about the number of appeals by type received by the Tribunal between 2014 and mid-2016.

Description	2014	2015	Jan-Jun 2016
Appeals against the imposition of fine/building levy/bank guarantee/planning gain/UIF/CPPS	1	10	5
Appeal from Condition in permit	6	6	3
Dismissal of Application	1	5	1
Appeal from Enforcement Notice	30	51	19
Appeal against the issue of an Emergency Conservation Order	0	1	0
Appeal against GDO/DN	2	2	0
Appeal against letter	3	1	2
Third Party Appeal against approval	38	35	40
Appeal from Refusal	138	142	99
Appeal against Scheduling of Property	2	0	1
Appeal Against Screening Letter	0	2	0
against the withdrawal/revocation of permit	0	1	1
	221	256	171

31. Give relevant web site addresses, if available:

<http://era.org.mt/>

<http://www.pa.org.mt/home?l=1>

Articles 10-22 are not for national implementation.

General comments on the Convention's objective:

32. If appropriate, indicate how the implementation of the Convention contributes to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.

Answer:

The implementation of the Aarhus Convention contributes significantly to the protection of the right of persons of present and future generations to live in an environment adequate to his or her health and well-being and hence indirectly to the aims of the United Nations Sustainable Development Goals. The transposition of the Aarhus Convention has proved to be a very useful benchmark in the evolution of environmental governance in the Maltese Islands.