

# UNECE Aarhus Convention – Disclosing Environmental Information: **Guidance for Operators Providing Public Services**

Operators that provide a public service should be aware of the commitments of an international convention that might affect them. While international conventions normally place legally binding obligations on the governments that ratify them (requiring the governments to implement relevant legislation to address the conventions' requirements), the UNECE *Aarhus Convention* (the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters) also has requirements that place a number of small but important obligations on Operators to which governments have delegated public responsibilities or which provide a public service. These obligations focus on the public's rights to have access to information about environmental matters.

**If the country in which your facility or service operates (or is headquartered) is a Party to the Aarhus Convention, then you may have obligations in accordance with the government's legal commitment to the Convention. An up-to-date list of countries that are Parties to the Convention is available online.<sup>1</sup> This guidance note primarily focuses on the requirements concerning the public's right to have access to environmental information, and what Operators that provide a public service relating to the environment may need to do about them.**

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## Background

The UNECE Convention on Access to Information, Public Participation in Decision making and Access to Justice in Environmental Matters was adopted in the city of Aarhus, Denmark, in 1998, and hence is commonly known as the *Aarhus Convention*. The Convention entered into force in 2001 and over 45 countries and the European Union have to date become Parties to the Convention.

As its full name suggests, the Aarhus Convention requires Parties to ensure the public's right to have access to environmental information, to participate in decision-making that may affect the environment, and to have access to justice regarding environmental matters.

## Operators providing public services

Article 2(c) of the Convention states that the Convention applies not only to government at all levels, but also to "any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of [a public authority]."

The Convention does not specifically define what is considered to be *public responsibilities, functions or services*, but under international law, their plain and ordinary meaning is to be preferred. Thus, because Operators of services such as power supply, public transportation, drinking water, wastewater treatment and solid waste management provide what are generally viewed as public services, these types of Operators should be aware of their potential obligations under international law to provide environmental information to the public and to develop necessary tools and procedures to meet those requirements. This guidance note for Operators explains what should be done to meet the requirements of the Aarhus Convention and good international practice. In each case, it is recommended that an Operator contact its relevant environmental authority to clarify the exact requirements and to assist the Operator to better identify the relevant public concerned and the most effective means of communication bearing in mind any special characteristics of the public concerned (e.g., relevant language requirements, technological or literacy constraints, vulnerable groups).

In general, Parties to the Aarhus Convention implement the Convention's requirements through legal and administrative measures, including measures specifying the obligations for entities providing public services. Ideally, Governments should ensure that Operators are provided with adequate guidance regarding handling requests for information, timing of responses, and relevant procedures. For many countries, however, the Convention's requirements have not yet been clearly transposed into the national law. If they have not been transposed into national law, a complaint regarding non-compliance can be raised at the Compliance Committee of the Convention. It is therefore important that Operators providing public services relating to the environment clarify their obligations with the relevant environmental authorities and consider implementing these guidelines as *good practice*.

## What does this mean in practice?

The Convention's obligations concerning environmental information are based on the principle that the public has a right to have access to such information. The Convention defines both "the public" and "environmental information" widely:

**"The public"** means any natural or legal person.

**"Environmental information"** includes any information, in any material form, on:

- (a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the

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- interaction among these elements;
- (b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;
  - (c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above.

## What needs to be done?

The Convention contains two types of obligations regarding environmental information that are important for Operators providing public services under the control of a public authority to address:

1. Responding to requests from the public for environmental information
  2. Regular collecting and disclosure of environmental information to the public (such as an annual report on discharges to air, land and water, water quality, etc.) and notifying the public that the information is available (e.g., through information given to customers and through the website).
- (a) Routine reporting
  - (b) Providing information in emergency situations

Each of these is described in more detail below.

### 1. Responding to requests for environmental information

Operators providing public services in relation to the environment and which are under the control of a public authority must respond to requests from the public for environmental information and provide the requester with the requested information that they hold.

A member of the public making a request for environmental information does not need to be a customer of the Operator, to explain why he or she wants the information or to prove that they might be affected by the Operator's activities. Any member of the public can make a request, regardless of citizenship, nationality or domicile and cannot be penalized in any way for doing so.

Operators should be clear about how long they will take to respond to requests. The requested information should be made available as soon as possible, at the latest within one month, unless the volume and complexity justify an extension of up to two months, in which case the Operator

should inform the applicant accordingly. The Operator should provide the requested information in the format requested, unless another format is already available. It should be the full requested information, not a summary.

If the Operator intends to charge for supplying the requested information, any charges must not exceed the reasonable administrative costs of copying the information and the schedule of charges should be made available in advance, indicating the circumstances in which the charges will be levied or waived and if the supply of information is conditional on advance payment of the charges.

The Convention allows for a limited number of grounds upon which a request for environmental information may be refused. Some of these include if disclosure would adversely affect the following:

- the confidentiality of commercial and industrial information, where such information is protected by law (information on emissions relevant for the protection of the environment must still be disclosed);
- intellectual property rights;
- the confidentiality of personal data and/or files relating to a natural person who has not consented to disclosure of the information, where such confidentiality is provided for in national law;
- the interests of a third party which has supplied the information requested without being under a legal obligation to do so, and where they do not consent to the information's release;
- the environment to which the information relates, e.g. the breeding sites of rare species.

The Convention requires the listed grounds for refusal to be interpreted in a restrictive way, taking into account the public interest served by disclosure and whether the information relates to discharges into the environment. Wherever possible, the exempted information should be separated from the rest of the requested information, and the remainder of the requested information made available.

A request for environmental information may also be refused if the Operator does not in fact hold the information requested, or the request is manifestly unreasonable or too general (e.g. "please supply all environmental information you hold"). If the Operator does not hold the requested information (e.g. because the information requested pre-dates its tenure as Operator), it should refer the applicant to the relevant authority it believes holds the information, or even better, transfer the request to that authority and inform the applicant accordingly.

A refusal of an information request should be in writing, if the request was in writing or if the applicant so requests. It must state the reasons for the refusal and give information on how the applicant might access a review procedure to challenge the refusal.

## 2. Collecting and disclosing environmental information to the public

The Convention requires governments to ensure that Operators providing public services in relation to the environment under the control of a public authority actively collect and disclose environmental information relevant to their functions. The information could be routine environmental information or information regarding specific planning activities, such as public works (e.g., repair or replacement of infrastructure that might temporarily disrupt services) or planning for emergency situations.

### (a) Collecting and disclosing routine environmental information

The Convention requires Operators providing public services to hold and update environmental information which is relevant to their functions. Operators whose activities and/or products may have a significant impact on the environment should inform both the relevant public authorities and the public regularly of the environmental impact of their activities. They should also provide sufficient information to the public about the type of environmental information they hold, and the process by which it can be obtained. The Convention encourages the development of electronic databases that the public can access free of charge, and Operators should discuss and clarify with the relevant authorities what is expected from them in this regard (e.g. to contribute information to an existing database or to develop a database themselves).

The following information should be provided to the public:

- Regular reports on the environmental impact of the Operator's activities and, where relevant, products which may have a significant effect on the environment
- Routine environmental information that will be made available to the public, without request, e.g.
  - Regular (e.g. annual) reports on environmental impacts such as greenhouse gas emissions, energy consumption, water quality, waste
  - Information on preventing environmental problems
  - Information on water/gas/energy efficiency and conservation, materials recovery, recycling, etc.
  - How customers will be notified if future works will affect them
- A list of environmental information that will be made available only upon request
- An easy-to-understand guide to terminology used (e.g., water quality terms, such as hard and soft water, fluoride, colour, taste, etc.)

### (b) Providing information for emergencies

In the event of any threat to human health or the environment, whether caused by human activities or natural causes, all information which could enable the

public to take measures to prevent or minimise harm must be disclosed immediately to members of the public that might be affected. As a good practice, the public should know in advance whether the relevant authority or Operator will contact them in the event of such a threat. The public also needs to know how they can report any problems that may threaten human health or the environment. The Operator should clarify with the relevant authority during emergency prevention and response planning whether the authority or the Operator is responsible for providing information during emergencies, and whoever has the responsibility should communicate that fact to the public.

Examples of information which the Operator may wish to provide to the public may include:

- How to report contamination, leaks, or low pressure, safety concerns, or other threat to the environment or human health
- Customer alerts: explain how emergency measures or warnings for consumers will be given (e.g., traffic diversions for gas or water repairs, treating water before using)
- How to get additional information on request

## Good practice in handling complaints and grievances

Although not legally required by the Aarhus Convention, good international practice for Operators is to put in place a public grievance mechanism to handle complaints from the public and to make stakeholders aware of how grievances will be managed. Information about the grievance mechanism should be prominently displayed in the public domain, such as prominent noticeboards at the Operator's premises, on the Operator's posters and publicity material, on the Operator's website, and mentioned in information for customers. Such information should include:

- An easy-to-understand description of the grievance mechanism in relevant local language(s)
- A simple form for complaints
- Contact details for who to contact for more information

This guidance note was prepared by EBRD with advisory support from the Aarhus Convention secretariat and representatives of operators of public services. The Guidance is aimed at assisting any operator providing public services.