Aarhus Meets Kyoto
National Case Studies in Central and Eastern Europe on Public Participation in Climate Change Related Decision Making
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About the REC

The Regional Environmental Center for Central and Eastern Europe (REC) is a non-partisan, non-advocacy, not-for-profit international organisation with a mission to assist in solving environmental problems in Central and Eastern Europe (CEE). The center fulfils this mission by promoting cooperation among non-governmental organisations, governments, businesses and other environmental stakeholders, and by supporting the free exchange of information and public participation in environmental decision-making.

The REC was established in 1990 by the United States, the European Commission and Hungary. Today, the REC is legally based on a charter signed by the governments of 28 countries and the European Commission, and on an international agreement with the government of Hungary. The REC has its head office in Szentendre, Hungary, and country offices and field offices in each of its 15 beneficiary countries which are:

Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, FYR Macedonia, Poland, Romania, Serbia and Montenegro, Slovakia and Slovenia.

Recent donors are the European Commission and the governments of Albania, Austria, Belgium, Bosnia and Herzegovina, Canada, Croatia, the Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Italy, Japan, Latvia, Lithuania, FYR Macedonia, the Netherlands, Norway, Poland, Serbia and Montenegro, Slovenia, Sweden, Switzerland, the United Kingdom, and the United States, as well as other inter-governmental and private institutions.
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Implications of the Aarhus Convention

“The world’s most progressive instrument promoting human rights,” “the most ambitious venture in environmental democracy,” “a historical landmark for the environment,” “a trailblazer towards the right of people to protect their well-being and their children.” With these and other similar comments, signatories to the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention) saluted, on June 1998, the “birth of the Convention” which marked “a European and NIS countries’ acknowledgement of their adherence and commitment to the principles of democracy and publicity.”

The recognition of the underlying significance justifies this general enthusiasm for a juridical tool that requires parties to implement measures that require and imply basic transparency and accountability of their authorities.

The Aarhus Convention is a new kind of environmental agreement. It links environmental rights and human rights, environmental protection and governance. It promotes citizen involvement as a key to combating environmental mismanagement, and it establishes that sustainable development can be achieved only through the involvement of all stakeholders.

The Aarhus Convention promotes environmental transparency and accountability norms that extend beyond the nation state. It focuses on interactions between the public and public authorities in a democratic context, and it is forging a new process for public participation in the negotiation and implementation of international agreements.

The convention establishes common regional disclosure and participation standards, as well as what could be termed “horizontal accountability” by governments and corporations to NGOs and citizens, irrespective of their “citizenship, nationality, or domicile.”

It goes further than any other convention in imposing clear obligations on public authorities and its parties towards the public, as far as access to information, public participation and access to justice are concerned.

### BOX 1

**Signatories and parties(*) to the Aarhus Convention**

- Albania*
- Armenia*
- Austria
- Azerbaijan*
- Belarus*
- Belgium*
- Bulgaria
- Croatia
- Cyprus
- The Czech Republic
- Denmark*
- Estonia*
- The European Community
  - Finland
  - France*
  - Greece
  - Georgia*
  - Germany
  - Hungary*
  - Iceland
  - Ireland
- Italy*
- Kazakhstan*
- Kyrgyzstan*
- Latvia*
- Liechtenstein
- Lithuania*
- Luxembourg
- FYR Macedonia*
- Malta*
- Moldova*
- Monaco
- The Netherlands
- Norway
- Poland*
- Portugal
- Romania*
- Slovenia
- Spain
- Sweden
- Switzerland
- Tajikistan*
- Turkmenistan*
- Ukraine*
- The United Kingdom
Three principles of public involvement in environmental management

The convention is organised around three pillars. Broadly stated, these are:

- **access to information**: that the public should have access to environmental information, with limited, explicit exceptions;
- **access to decision making**: that the public should have the right to participate in the environmental decision-making process and have that participation taken into account; and
- **access to justice**: that the public should ultimately have access to an independent and impartial review process which can bind public authorities to protect claimants’ rights.

Access to information

The first of the pillars deals with access to environmental information and requires each party to ensure that public authorities will make information available to the public when requested (Article 4). The convention requires parties to ensure that public authorities collect, retain and disseminate information on the state of the environment. The rationale behind this is to require parties to have information for:

- emergency preparedness and response in the event of an accident;
- publishing and dissemination of regular reports on the state of the environment; and
- establishment of reporting systems for activities that may significantly affect the environment.

Moreover, the public is entitled to receive information — and authorities are obliged to disseminate information of public interest — without a specific request (Article 5). Refusals to provide information should be in writing and should state the reasons for the refusal. The convention contains a presumption in favour of information disclosure. Public authorities can only deny a request for information on the basis of a list of specific grounds for refusal. Grounds for denial of information must be clearly established in national law.

Access to decision making

The second pillar of the Aarhus Convention sets rules for public involvement in three kinds of environmental decision making. First, decisions regarding specific development activities, described in its Annex I (see Box 2), are subject to public review and consultation (Article 6). Second, public plans, programmes and policies that relate to the environment — for example, national environmental action programmes or waste management policies — should undergo public consultation (Article 7). Finally, the participation of the public in the preparation of laws, rules and legal norms contained in actual legislation or agreements is safeguarded (Article 8).

In essence, this pillar establishes a framework that requires public authorities at regional, national and sub-national levels to ensure the representation of competing interests in decision making, with the underlying assumption that participation will render decisions fair to all parties.

All three articles on decision making require public authorities to take public participation into account in the final decision, and notice of the pending decision-making process should come early enough for effective participation (i.e. when options are still open). The public should also be able to provide comments or input into the process.

Access to justice

No legal right is effective unless it is enforceable. In order to adequately ensure that the law is respected — including the principles of access to information and access to decision making — members of the public must have access to a court or other independent and impartial body, established by law.

The access-to-justice pillar allows the public and NGOs to seek justice for non-performance of public authorities and non-compliance of private persons, whether individuals or corporations, and to seek recourse in cases of non-compliance with Aarhus obligations (Article 9). NGOs are explicitly included under the definitions of “the public” and “the public concerned” set out in Article 2 of the convention.

While the first two pillars create an enabling environment for public participation, the third confers to authorities the capacity to enforce and protect the public’s rights to get information and have a say about decisions. Such a court or body must also have the ability to create a binding obligation on a public authority, and it must issue a decision in writing that is publicly accessible. At the same time, the public must also be informed of the access to such review procedures and have adequate information to be able to exercise the right of access.

Aarhus Convention and the UNFCCC

Public participation appears to play a critical role in addressing climate change and its effects, and in developing adequate responses.
Article 6 (Education, Training and Public Awareness) of the United Nations Framework Convention on Climate Change (UNFCCC) provides a link to the UNECE Convention. It seeks the promotion at the “national, sub-regional and regional levels of educational and public awareness programmes” needed to understand and deal with climate change and its impacts. The intent of this article is also reflected in Article 4.1(i) of the convention, as well as in Article 10(e) of the Kyoto Protocol.

Signatories are also requested “to facilitate public access to information on climate change and its effects,” provide for “public participation in addressing climate change and its effects,” with the “development and exchange of educational and public awareness material on climate change and its effects” being foreseen at international level.

Education, training and public awareness are seen as critical for gaining public support for measures to combat climate change, making them relevant not only to government officials engaged in negotiations, but to all sectors of civil society. Education, training and public awareness are intertwined, each of them adding something to the fulfilment of access to information and public participation.

When achieved at an early stage, awareness allows the public to acknowledge the facts as they stand, and education provides people with the tools to understand and interpret the surrounding an event or decision. This understanding is then further deepened through training, so that when solutions to climate change are discussed or adopted, the public can grasp their full meaning and repercussions on a wider scale and practical level.

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**BOX 2**

**Annex I of the Aarhus Convention**

Annex I of the Aarhus Convention Annex I of the Convention lists the activities requiring procedures for public participation. Sectors in which such activities are subject to public participation include the following:

- Energy sector (e.g., mineral oil and gas refiners, nuclear and thermal power stations);
- Production and processing of metals (e.g., installations for the processing of metal ore and steel);
- Mineral industry (e.g., cement and asbestos installations);
- Chemical industry (e.g., a wide variety of installations for organic and inorganic chemicals, fertilisers, and health products);
- Waste management (e.g., incinerators, landfills);
- Waste-water treatment plants with a capacity exceeding 150,000 population equivalent;
- Infrastructure (e.g., railways, roads, inland waterways, ports, and overhead electrical power lines);
- Extraction of minerals and water (e.g., groundwater extraction, water transfer, oil and natural gas extraction and transfer).
The objective of this study is to assess the access to information and public participation in decision making affecting greenhouse gas (GHG) emissions in six CEE countries. Case studies were conducted in Bulgaria, Estonia, Hungary, Poland, Romania and Slovakia by six national non-governmental organisations (NGOs) in their respective countries.

The study was conducted in the framework of the project Capacity for Climate Protection in Central and Eastern Europe developed by the Regional Environmental Center for Central and Eastern Europe (REC) in partnership with the World Resources Institute (WRI).

Its specific objectives were to:

- apply, test and promote the use of a methodology designed by the WRI to measure the performance of governments through a set of indicators of law and practice;
- identify gaps between stated commitments to public participation and actual performance on the part of the public authorities; and
- elaborate recommendations for the future development of public participation.

NGO partners were asked to conduct surveys, interviews, legal and document research and other information-gathering methods to assess public access to information about GHG emissions and compliance, through looking at three general categories:

- information about national communications;
- information about greenhouse gas (GHG) inventories; and
- facility-level information on GHG emissions or fuel use.

The methodology used for this assessment was developed by World Resources Institute (WRI) in consultation with its NGO partners at the Access Initiative. The methodology was designed to generate indicators assessing the performance of national governments in implementing commitments to ensure public access to environmental information, as well as to create the conditions for public participation in decision making and access to redress and remedy.

Indicators of accessibility and effort are generated as researchers answer over 100 detailed questions about access to information, participation, justice, and capacity building. These questions address specific aspects of law and practice, focusing on both the legislation and case studies that researchers choose as appropriate for the situation in their country. The questions are designed to help researchers gather information that illustrate the presence and the quality of a legal framework, organisational capacity and infrastructure to provide access to information or respond to requests and engage the public actively in shaping relevant decisions.

The research gathered in these areas allows teams to compile a detailed score of their government’s performance in providing access to environmental decision making. For more information on the methodology and partner research, please see <www.accessinitiative.org>.

The team of NGOs working with the REC and WRI in the Capacity for Climate Protection Project adapted and tested the methodology to assess public access to information relevant to climate change or efforts to reduce emissions of greenhouse gases. The national NGO teams conducted interviews, surveys and on-the-spot checks. They reviewed and analysed documents and laws to answer requests for information.
Public participation was investigated according to:

- access to the decision-making process involved in policies, plans, and strategies;
- access to activities implemented jointly/joint implementation; and
- efforts to build the capacity of the public.

National communications and GHG inventories over the past 10 years provide insight into a country’s reporting process, in terms of both performance and compliance of a party with its commitments to the UNFCCC. Facility-level information provides important insight on the availability of information regarding the levels of GHG emissions and measures taken by individual economic entities to reduce GHG emissions.

Policies are often broad statements of intent that focus the political agenda. They set the decision cycle in motion, which includes:

- intent, formulation, draft, review, revision, and final draft;
- approval of the final decision;
- implementation, including performance monitoring; and
- review and evaluation.

In addition, a national system of participation in decisions related to GHG emissions is only meaningful if the general public is able to make use of it. A public that is aware of its rights and knowledgeable about climate change issues can contribute effectively to decision making. Consequently, a national public participation system must ensure that the public has the capacity to engage in the decision-making process.

What follows are the main findings, case by case. A survey was conducted from September to December 2001 and the country reports were concluded in June 2002. Hence, changes in the general situation concerning both access to information and public participation may have occurred in the meantime, and some of the findings and conclusions may not reflect the current situation entirely.

**Bulgaria**

Access to information

An assessment by local partner Center for Energy Efficiency (EnEffect) found that national communications and greenhouse gas inventories in Bulgaria are compiled in compliance to UNFCCC commitments and according to guidelines of the Intergovernmental Panel on Climate Change (IPCC). The information is provided in a timely manner, but accessibility in the national language is scarce (only the first national communication of three was printed in Bulgarian) due to the lack of defined institutional set-up and of regulations for fund allocation for the preparation of communications and inventories.

Dissemination is poor; the only access to this information is through the Ministry of Environment and Water Information Center, and the importance of communicating the data has been underestimated. No materials for the press or other media are produced.

Legal instruments supporting the statistical retrieval of data provide the mandate to obtain and collect data on fuel and emissions from the facilities. This data may be used for statistical purposes only and cannot be disseminated without the explicit prior consent of the person/entity that has provided the data. The information on fuel consumed and carbon dioxide (CO2) emitted by facilities is easily accessible upon request to the facilities directly or through the Ministry of Energy and Energy Resources. There is no existing legal mandate for establishing at the national level electronic databases for GHG emissions or fuel used by facilities.

According to the authors, the general level of public access to information on climate change in the country is inadequate. The institutional framework for the development of climate change related activities is weak. The entire state administration suffers from a lack of both human and financial resources, which results in the absence of a governmental strategy on climate change. There is a lack of funding for activities to mitigate the impacts of climate change, and there are insufficient means of public information dissemination.

There is, however, some progress in the access to information on climate change issues in light of the binding international commitments (national communications and inventories).

Public participation

Public participation in decision making on policies, plans, and strategies (the extent of which was assessed on the basis of information about the National Strategy for Development of Energy and Energy Efficiency until 20109 and the National Action Plan on Climate Change) is hindered by the absence of a legal mandate for timely notification about the intention to develop regulatory acts, plans, programmes and policies. The result is that the public cannot participate at a stage early enough to influence decision making.

The authors have noted that government institutions have opened up a dialogue with the public by posting draft versions of strategic documents on the Internet for public discussion and comments. The media has become very active in initiating informal public discussions on policy development and performance evalua-
tion. Both NGOs and the media are active in discussions of energy and environmental strategies, but not in discussions of national climate change policies.

NGOs are submitting reviews on draft laws, policies and strategies related to the environment and the development of the energy sector via their websites or that of BlueLink <www.bluelink.net>, which provides an electronic forum for communication and exchange of information and ideas among environmental organisations in Bulgaria.

EnEffect also observes that there is virtually no public participation in the development of policies, programmes, plans and strategies related directly or indirectly to climate change. The group reports there is no feedback provided on how public opinion has influenced the final decisions.

Overall, the institutional framework for climate change related activities is still weak, and the capacity for information and public awareness activities is limited. Experience with activities implemented jointly (AIJ) and joint implementation (JI) in Bulgaria is not wide enough to provide a basis for the development and assessment of public participation in the respective decision making. The elaboration of criteria and rules for selection and screening of JI proposals has not been finalised, nor have they been officially approved. These materials have therefore not been made public, but they can be obtained from the JI Unit upon request.

EnEffect concludes in noting that any success of climate change related policy is possible only if all stakeholders are deeply involved throughout the whole process of development, approval, implementation, review and evaluation. All possible groups who might launch activities and allocate resources to abatement of climate change should therefore be considered. In order to achieve such substantial involvement, EnEffect recommends broad efforts to raise public awareness and to ensure access to specific climate change information. This effort should target municipal authorities, industry associations and enterprises.

The authors also advocate a launch of public awareness campaigns on the impact of climate change, involving everyone in mitigation of GHG emissions via simple or no-cost actions. The capacity and interest of NGOs and the media should also be trusted and relied on to a greater extent.

**Estonia**

**Access to information**

Access to information regarding decisions affecting climate change has made more progress than access to participation in Estonia. The Stockholm Environment Institute Tallin Centre (SEIT) attests to the good quality and timely compilation of national communications and GHG inventories.

A legal mandate ensures sufficient state resources for their production, but the notices are printed in English only, scarcely distributed and disseminated, and with no outreach to the media. The general public is entitled by law to request public information from government authorities, and the overall assessment is that the system has been implemented quite effectively, although information is not always available (none of the communications have been published in the national language), and information sharing by public authorities to the public is still limited. Media coverage is also very poor, and NGOs’ dissemination of information could be improved significantly.

SEIT reports that access to information varies among different government authorities. Despite extensive training of Ministry of the Environment staff after Estonia ratified the Aarhus Convention in 2001, the availability of information still depends heavily on the official who is responsible for the given issue. Legal mandate provides the necessary tool for disclosure of information on fuel use by incineration plants (based on which CO2 emissions are calculated), which is to be submitted to the Ministry of the Environment on a yearly basis. Information on GHG emission is not considered confidential, and the holder of information is obliged to disclose (among other things) information concerning the state of the environment, environmental damage and dangerous environmental impacts. Facilities have, on the whole, little obligation to compile and disseminate environmental reports, yet the number of enterprises issuing voluntary environmental report is increasing, which is considered very helpful by several stakeholders.

**Public participation**

According to the authors, much remains to be done to ensure access to participation in Estonia. Public participation in decision making is legally acknowledged, but policies, plans and strategies are prepared with limited consultation with the public. It is not clear how requests for comments are treated. Although some efforts to ensure public participation have been made regarding participation in environmental policies, such as involving interested parties and allowing external comments to be taken into consideration, there is no transparency as to how the comments were treated or how different stakeholders were able to influence the decision-making process.

SEIT assessed participation in policies, plans and strategies through the National Environmental Action Plan 2001-2003 (2001) and the Action Plan for Restructuring the Oil-Shale Energy Industry (2001), and acknowledged a very poor level of environmental information notification. Public consultation during the
development of plans is also poor, and there is little eagerness to involve the general public. In general, the climate change staff of government authorities lack training on the public’s access and participation rights.

There is no procedure to initiate and process AIJ or JI, nor are there responsible agencies. The relevant procedure has not been transposed to the Estonian legislation, yet the Ministry of Environment has started elaborating the framework for AIJ/JI procedures. However, the availability of administrative information about it is still very poor and therefore accessibility and comprehensiveness of administrative information were given poor marks.

SEIT calls for more cooperation among different ministries (especially between the ministries of environment and education) in order to widen the dissemination of information. The importance of public awareness should be given greater weight, and in this context more intense engagement of the media and NGOs is needed.

**Hungary**

The assessment for Hungary was conducted by the National Society of Conservationists.

**Access to information**

The status of national communications and inventories were analysed. Three national communications had been submitted according to UNFCCC guidelines. They employ data from national inventories, which is compiled with one year of delay. The accessibility of the national communications is not satisfactory; it can be downloaded only from the UNFCCC website and only in English. Due to the lack of financial resources the communications have not been published in the national language. The mass media has not received any information about the communications or the reporting process as a whole.

Hungary regularly submits annual inventories of GHG emissions by sources and removals by sinks. The inventories follow the IPCC guidelines. Inventory based information is presented only as required by UNFCCC and does not include any additional presentation tool (as statistical tables, graphs, figures, or maps). The inventories are not available in Hungarian. All the inventories can be downloaded from the UNFCCC website. No materials for media were produced related to the inventories. There is no national review process for the inventories. Although some air-pollution gasses must be reported, there is no legal mandate for facilities to report all GHG emissions. Facilities are obliged to provide information about the fuels used.

**Public participation**

The degree of public participation in climate related decisions was assessed by analysing the Climate Protection Strategy and the status of JI. It was stated that there was no review process. Few of the tasks appearing in the strategy have been completed, although the deadlines have passed. There are some positive signals, namely that some legislation and policy documents are available on the Internet, but it is not relevant for the climate related documents. As for public participation in decision making on JI activities, there is no legislation approved for the JI process — no regulations or institutional framework. The approval of JI projects is made on a case-by-case basis without any transparency or public involvement. JI guidelines are under preparation.

Efforts to build capacity and inform the public about climate change are limited. The media provides some information on the issue, especially when important climate events are taking place. Systematic and regular efforts are needed to increase public awareness on climate change issues.

In conclusion, there is a lack of open, strategic debate before decisions are made. There is no organised education on climate change by the ministry. The media’s role in providing easily understandable information should be increased. Although climate-related activities are increasing, it is high time for governmental institutions to develop and establish an institutional and legal framework for developing and implementing climate-related policies and activities.

**Poland**

**Access to information**

In Poland, the Institute for Sustainable Development (ISD) conducted the national assessment. It established that the three national communications produced by the government provide sufficient data and indicators to demonstrate the levels of emissions and their trends for most greenhouse gases. The communications could be considered relatively full and complete, and in compliance with the standards laid down by the UNFCCC guidelines.

The inventories have also been prepared in compliance with the IPCC guidelines and well illustrated, though they were not produced in a timely manner.

Dissemination of both sets of documents is poor — no abridged or simplified versions are prepared, and no press conferences are held, though the public is given access to information contained in the national communications in the national language.

The absence of a legal mandate enables legal entities to treat their emission data as confidential. Facilities communicate such data for statistical purposes (e.g. cal-
Public participation


On the whole, interested institutions and organizations are able to provide periodic feedback, and the Ministry of Environment’s website is regularly updated. Nevertheless, the general degree of public consultation and transparency remains low. No mechanisms are in place to take public comments and suggestions into account, nor is opportunity given to a wider audience to submit comments. Consultations resemble advisory group meetings rather than public assemblies, and no formal measures are taken to provide information about the launch of new policies.

Disclosure of AIJ/JI information is obtainable only to a limited extent. Only after the agreement has been approved is it possible to gain access to information on the details of a JI agreement specifying the division of obligations and credits to be gained through the project’s implementation. Consultations have limited scope, and no consultations are conducted with residents, non-governmental organisations or other groups that could be interested in the implementation of a specific project.

The government’s efforts to promote knowledge and ensure cooperation in the implementation of climate policy reveal that the only source of information on this subject is the website of the Executive Office for the Climate Convention. No other detailed data on this subject is provided.

Moreover, in recent years no training courses have been conducted on climate protection issues for government officials, nor have training courses been conducted on the right of the public to access information. Information campaigns and awareness-raising programs are left to NGOs and, to some extent, the media. Other initiatives related to environmental education do not exist.

ISD concludes that tighter cooperation between administrations and NGOs is needed. Climate protection policy can help establish the conditions to bring them together to seek strategies to reduce GHG emissions. Without such cooperation, industry — the third major stakeholder — will remain indifferent to the need for action, which, in the long run, will hamper the country’s efforts to meet its commitments to international agreements on climate change.

Access to information

Concerning GHG emissions and compliance, the UNFCCC required reporting process is said to be in place, providing coverage of all relevant sectors (although with more than a two-year delay in the generation of GHG data), yet no copies of the two national communications are printed in the national language (as with inventories), nor are copies of reports available upon request from the Ministry for Waters and Environmental Protection (MWEP). Moreover, little effort has been made to reach the general public.

The positive aspect is that reports assessing both the country’s GHG emissions and trends, as well as the climate mitigation policies and options, are in some cases produced without the MWEP’s involvement. This implies a rather high degree of collaboration and participation in the reporting process. The main flaw is that secondary legislation is not yet in place, and therefore existing provisions regulating access to information of public interest cannot be applied.

With reference to access to facility-level information about GHG emission and fuel use, TERRA Mileniul III could verify the existence of a legal mandate requiring reports of fuel consumption and GHG emissions reports, and respective enforcement. No legal mandate is put on legal entities to disseminate information on fuel consumption or GHG emissions — submitted solely to governmental institutions — nor is there a voluntary practice of this.

Public participation

Implementation of public participation in decision making affecting climate change is inconsistent: on one hand the legislative project within the Parliament’s procedures is public; on the other hand the process of developing laws and strategies is not usually made public before it begins (though the legislation demands it), nor does the government initiate public consultations with affected or interested parties at the developmental stage of a law or strategy.

The degree of public access to participation by Romanian society was measured against the Law
Regarding the Efficient Use of Energy (199/2000), and the Law for the Ratification of the Kyoto Protocol to the United Nations Framework Convention on Climate Change (3/2001). The dissemination is ensured by their availability in electronic and printed versions, and weekly press conferences are held by the MWEP.

Scarce information on potential or anticipated climate change effect due to the application of a law or strategy is provided, and the government fails to initiate public consultations with affected or interested parties at its development stage.

Moreover, the Ministry of Industry and Resources (MIR) does not do a good job issuing press releases about legislation in the energy sector.

All/JI projects’ discussions are held among experts from different governmental institutions in order to develop criteria for selection. JI proposals are screened by the National Commission on Climate Change, which is comprised not only of governmental bodies, but also of non-governmental ones (such as universities and NGOs). However a comprehensive registry or record of active All/JI projects is still missing, and conditions of credit sharing are not published. No formal or informal consultation mechanism is in place to receive and to respond to affected parties’ concerns regarding All/JI operations.

Finally, the Romanian NGO partner could verify that little has been done in providing guidelines and/or training on climate change issues for staff of the MWEP responsible for disclosure of information and public participation, that no department or person was appointed to work on education on climate change, and there is a rather low coverage of climate change issues in the media.

Terra Mileniul III recognises in conclusion that the principles of “access to information” and “public participation” are not assimilated yet in the country, and that the general public is still quite unaware of these rights and the means with which to exercise them. At the same time, it is believed that the inquiry within the present project raised concern (among those interviewed) of implementation of the two principles.

Moreover, in Romania publicity about good practices in the region would spur authorities to implement de jure and de facto the two principles. It could also enhance the public’s confidence in the benefits of access to information and public participation in countries with economies in transition.

Slovakia

Access to information

Access to information in Slovakia is ensured through the public relations department of the Ministry of Environment. Energy Centre Bratislava, which conducted the national assessment, found that UNFCCC requirements for the three national communications and for the several inventories have been fully met. Periodicity and quality, timeliness and accuracy, diversity and credibility: all these indicators responded satisfactorily, although GHG data is generated with an almost two-year delay, and a moderate degree of uncertainty still exists in data generation for the inventories. A team of experts from various areas cooperated on the production of the third national communication and ensured the objectivity and completeness of the report.

Distribution and accessibility are far-reaching, with the communications translated and printed in the local language and made available through a number of different sources, not least through the Internet. Most of the data is posted on the website of the Ministry of Environment, along with a list of information available on request, although less than 20 percent of the country’s population — according to statistical data on Internet utilisation — has easy access to this information.

As for the diversity of products, the authors found that little effort was made to produce materials such as fact sheets, posters for schools and universities, teacher guides, etc. when the third communication was published. There is no legal mandate for facilities to disseminate their GHG related data and reports on fuel use, and only sectoral analyses and statistical data are available to the general public. There is no explicit policy on confidentiality used in facility reporting. No voluntary or regulatory programmes and no legal mandate for dissemination of company reports, including information on facility GHG emissions or fuel use, have been established in Slovakia.

No effort is made to disseminate information to the wider public, and awareness concerning climate change and its effects remains low.

Training programmes focusing on public rights to access to information for ministry staff, NGO representatives, and the general public are needed most. Low public awareness about environmental issues and limited public access to the Internet result in poor utilisation of specific websites.

Public participation

In Slovakia, the overall degree of public participation in the development of policies, plans, and strategies remains poor; public remarks do not have to be considered in final documents, and no discussion of public comment or input is envisaged. Although drafts and proposed documents are posted on the website, and space for public comments is provided, there is no legal mandate to take these into account with regard to the final decision, and no legal mandate is in place for timely notification of the public about a policy or piece of legislation.
Moreover, public feedback on these draft papers remains poor. The public is too rarely sufficiently aware of the topic to provide relevant remarks. Environmental education and training programmes are too weak to pique people’s interest to learn the basic background information on the issues of climate change and environmental protection.

The authors who applied the indicators to the National Environmental Action Plan II (1999) and the Energy Policy of the Slovak Republic (2000) trust that a public initiative to strengthen the competencies of the public in the decision-making process in general, including that related to climate change, will yield positive results.

Public participation in the AIJ/JI area has witnessed some significant progress. Pilot projects on fuel switch and combined heat and power (CHP) units’ installation have been successfully implemented, and the basic structure, conditions, and responsible institutions are published on the Internet.

Regulations and selection criteria are not published, nor are notifications published in the official gazette or journal. However, the scheme and criteria of the mechanism, credit-sharing conditions and comprehensive registry of AIJ/JI are accessible via Internet.

Finally, Energy Centre Bratislava points out the scarce promotion of education and training of the general public on access to information. Equally poor is the support to public participation through assistance to NGOs, educational institutions and the media.

Despite the significant progress Slovakia has made in recent years in ensuring access to information, public awareness concerning climate change and its consequences on the environment and national economy is still quite low. More attention should be paid to the promotion of education and training of the general public on access to information. Public participation should be bolstered through support to NGOs, educational institutions, and the media. Public access to information should be expanded so the public can improve its environmental behaviour and participate in decision making.
Section III
Public Participation in the Formulation of Energy Sector Policies and Strategies

Relevance of energy-related policies and measures

This study is a review of specific findings regarding public access to information and decision making in the formulation of national energy strategies, plans, policies or laws for each of the participant countries (Bulgaria, Estonia, Poland, Romania and Slovakia) as well as finding common national trends in the region. (Hungary is excluded from this analysis because its case study assessed public participation with regard to waste management regulation, not energy policy.)

NGO partners conducting the study concentrated specifically on the energy sector for the assessment of public access to information and decision making regarding national-level policy making as this relates to the implementation of the CEE countries’ commitments under the UNFCCC and the Kyoto Protocol to that convention.

Under the UNFCCC and the Kyoto Protocol, CEE countries have committed to implementing policies and taking corresponding measures to reduce their greenhouse gas emissions in an effort to mitigate the effects of climate change. The energy sector has thus become paramount in these efforts as it is the main contributor to the overall emissions of CEE countries. It also has targeted policies with the potential to reduce countries’ emissions and help them meet their Kyoto targets.

However, identifying the best policy or measure is not an easy task. So rather than defining the actual contents of these policies and measures, it is preferable to concentrate on the desired outcomes. The Kyoto Protocol and the Intergovernmental Panel on Climate Change (IPCC) list improved energy efficiency, a greater share of renewables, and instruments that can potentially lead to voluntary agreements or product bans. A recent report by the REC concludes that in the short term most of the opportunities to reduce emissions will come from energy efficiency gains in end-use sectors and from the conversion to oil and gas.11 By 2020, when it is expected that most of the power gen-

| Status of signature/ratifications of UN conventions and protocols |
|----------------------|----------------------|----------------------|
| **CLIMATE CHANGE**   | **PUBLIC PARTICIPATION** |
|                     | ratified | signed | ratified | signed | ratified |
| Bulgaria            | 1995     | 1998   | 2002     | 1998   | -        |
| Slovakia            | 1994     | 1999   | 2002     | —      | —        |

* United Nation Framework Convention on Climate Change
** Kyoto Protocol to the United Nations Framework Convention on Climate Change
**** Hungary acceded to the Kyoto Protocol

AARHUS MEETS KYOTO 21
eration plants will have been replaced in countries referred to as Annex I economies in transition (EITs), the expansion of renewable energy sources will be vital to enabling further GHG emission reductions.11

The public in each CEE country is more likely to provide political support to GHG mitigation measures if the measures also improve regional and local air pollution, which are much more visible and immediate concerns than those of global climate change.13 Public participation in formulating energy sector policies and strategies can ensure that GHG emission reductions and other environmental objectives are pursued.

This involvement becomes even more important considering that the economic and social outcomes of climate change mitigation measures are particularly important for CEE. Most of these countries have yet to return to their 1989 or 1990 gross domestic product levels, and their economies are still recovering from the transition, which has decimated the living standards for most of their populations. Political and social risks are still being weighed by CEE policy makers. For instance, the heavy burden that energy costs have imposed (and continue to impose) on socially disadvantaged groups in some countries, might have been the cause for delaying the phasing out of subsidies and liberalisation of energy prices.14

Effort and accessibility

The national studies examined public access to information and decision making in a range of cases, from a national energy efficiency law (Romania) to an action plan for industry restructuring (Estonia), and from a new national efficiency strategy (Bulgaria) to new polices for energy and renewables (Slovakia, Poland).15

Box 5 lists the specific cases examined by the pilot assessment teams.

The NGO partners measured public access to information and decision making according to two main criteria: effort and accessibility.

**Effort** was measured in terms of timeliness and inclusivity: how early or late participation occurs in a decision-making cycle, who can participate, and how proactive government is in encouraging such participation. An assessment was carried out with the help of indicators measuring:

- lead time and comprehensiveness of the public notification process before policy development begins;
- comprehensiveness of public consultation at the policy development stage; and
- lead time given for public comment on the draft policy, plan, programme or strategy.

Accessibility measured the relative ease or difficulty for individuals or groups to gain access to information, source documents, etc. regarding the manner and means in which they may participate. An assessment was performed using indicators that reviewed:

- the dissemination of decisions on policies, plans, programmes or strategies;
- the explicitness of documents in detailing means of public participation; and
- the variety of public consultations applied (hearings, workshops, focus groups, receipt of written comments, etc.).

For example, a strong effort by government would indicate that the intention to develop a policy was made public 12-24 weeks before the process began, that there were 1-2 consultations with the public during the development stage (which includes formulation, drafting, review, revision and final drafting), and that the public was given 31 or more days to provide written comments on the draft policy. Because public involvement is significantly more meaningful prior to and during the pol-

### BOX 5

**Overview of national energy policy cases**

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>ENVIRONMENTAL</th>
<th>SECTORAL</th>
<th>CASES</th>
</tr>
</thead>
</table>
icy development stage, the applied indicators were weighted to emphasise public notification and lead-time that was given early in the cycle.

**Main findings on the moulding of energy sector policies and strategies**

Slovakia’s New Energy Policy and Estonia’s Action Plan for Restructuring the Oil-Shale Energy Industry represent, respectively, the most and least successful incorporations of public participation into national-level energy policy formation. Yet while Slovakian and Estonian policy processes represent two extremes, there are a number of findings common to all five countries. These include the following:

- There is no legal mandate for public consultation on major policies or strategies, although there are formal requirements for public notice and comment on legislation. While public comment on legislation is important, it is much more important for the public to be able to discuss general policies and strategies, which ultimately set the stage for specific legislation and other decisions.

- Participation varies by sector and by lead agencies in all countries.

- Public demand is instrumental to more open and less-formal discussion and contribution by the public to policy decisions. In all cases where there was high public demand and organised and constructive input, policy makers noted. However it is unclear which public comments were incorporated in final decisions even if the decisions did differ from the initial proposals. In the absence of public demand, there is little to drive governments to opening policy making to the public. NGOs are critical for participation in decisions: their ability to mobilise resources and attract public attention determines how broad and effective the discussion will be and the extent to which public input will influence the final decisions. To participate, NGOs need to have access to resources — human and financial — and need to be able to allocate these resources as the opportunity or need arises.

- The Internet is very widely used by governments for notice and comment. In most cases, it is adopted as a tool to disclose information and solicit input from the public, thereby changing the pattern of participation and placing new requirements on all actors: governments, NGOs and individuals. The Internet therefore increases the ability of governments to engage all who are interested or affected, and the ability of NGOs and the public to use the very short time frame for comments, requiring them to be more active and to monitor the opportunities for participation as they emerge.

- The rise of the Internet as a tool for information dissemination, access to public participation and enhancement of public awareness has made access to this means of communication more important. Yet statistics show that in most of the surveyed countries only a small portion of the population has access to the Internet (e.g. only 20 percent of the population in Slovakia versus 50 percent in Poland). For many the Internet is unaffordable. This is especially true in Romania, where a monthly subscription costs 20 percent of the average monthly salary. (the figure for Estonia, which had the most affordable Internet service, was 4 percent).

- Energy policies were examined in order to assess the effectiveness and significance of participation in policies and strategies that affect national greenhouse gas emissions. However, none of the political documents in question included any reference to the relevance of these policies to such emissions or their impact on climate change. Thus participation and the opportunity for comment are more open to

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**BOX 6**

**Participation effort and accessibility by case type**

<table>
<thead>
<tr>
<th>SECTORAL CASES</th>
<th>ENVIRONMENTAL CASES</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSDEEE (BG)</td>
<td>REP (PL)</td>
</tr>
<tr>
<td>APROSEI (EE)</td>
<td>LREUE (RM)</td>
</tr>
<tr>
<td>NEPSR (SI)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Effort</th>
<th>Accessibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>L</td>
<td>M</td>
</tr>
</tbody>
</table>

L = low, M = medium, H = high
experts who can understand the implications of a proposed policy. Excluding such background information limits the scope of the discussion and vastly reduces public participation.

- In several cases, NGOs injected social and environmental concerns into (informal) discussions with governments regarding new sectoral policy. The ability to raise such issues highlights the crucial role NGOs can play by formally participating in national policy making.
UNECE is a regional organisation of the United Nations founded in 1947 to promote “economic dialogue and cooperation” among the countries of Western Europe, Central and Eastern Europe, the United States and Canada, Turkey, Israel, and the former Soviet Union (including the Central Asian Republics). It works in partnership with the European Union, which is also a signatory to the Aarhus Convention. (See <www.unece.org/oes/history.htm>.)


6 For example, a public authority has the unqualified right to deny a request for information where the public authority does not hold the requested information (art. 4.3(a)), or where the information request would adversely affect the confidentiality of commercial and industrial information (art 4.4(b)).

7 Elena Petkova and Peter Veit, Environmental Accountability Beyond the Nation-State: The Implications of the Aarhus Convention (World Resources Institute, April 2000).

8 Saladin, Van Dyke, op. cit.

9 See paragraph 3 “Public participation in the formulation of energy sector policies and strategies.”

10 The third Romanian national communication was reported to be under way at the time of the present report, and to be released in 2003.


13 Ibid.


15 Andrew Buchman, in Closing the Gap: Information, Participation and Justice in Decision Making for the Environment, Elena Petkova, Cresciencia Maurere, Norbert Henninger, Frances Irwin. (World Resources Institute, 2002).
THE REGIONAL ENVIRONMENTAL CENTER FOR CENTRAL AND EASTERN EUROPE (REC) is a non-partisan, non-advocacy, not-for-profit international organisation with a mission to assist in solving environmental problems in Central and Eastern Europe (CEE). The center fulfills this mission by promoting cooperation among non-governmental organisations, governments, businesses and other environmental stakeholders, and by supporting the free exchange of information and public participation in environmental decision-making.

The REC was established in 1990 by the United States, the European Commission and Hungary. Today, the REC is legally based on a charter signed by the governments of 28 countries and the European Commission, and on an international agreement with the government of Hungary. The REC has its head office in Szentendre, Hungary, and country offices and field offices in each of its 15 beneficiary countries which are: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, FYR Macedonia, Poland, Romania, Serbia and Montenegro, Slovakia and Slovenia.

Recent donors are the European Commission and the governments of Albania, Austria, Belgium, Bosnia and Herzegovina, Canada, Croatia, the Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Italy, Japan, Latvia, Lithuania, FYR Macedonia, the Netherlands, Norway, Poland, Serbia and Montenegro, Slovenia, Sweden, Switzerland, the United Kingdom, and the United States, as well as other inter-governmental and private institutions.

THE WORLD RESOURCES INSTITUTE (WRI) is an independent centre for policy research and technical assistance on global environmental and development issues. WRI’s mission is to move human society to live in ways that protect Earth’s environment and its capacity to provide for the needs and aspirations of current and future generations.

Because people are inspired by ideas, empowered by knowledge and moved to change by greater understanding, the Institute provides — and helps other institutions provide — objective information and practical proposals for policy and institutional change that will foster environmentally sound, socially equitable development. WRI’s particular concerns are with globally significant environmental problems and their interaction with economic development and social equity at all levels.

The Institute’s current areas of work include economics, forests, biodiversity, climate change, energy, sustainable agriculture, resource and environmental information, trade, technology, national strategies for environmental and resource management, business liaison, and human health.

In all of its policy research and work with institutions, WRI tries to build bridges between ideas and action, meshing the insights of scientific research, economic and institutional analyses and practical experience with the need for open and participatory decision-making.

WRI-REC PARTNERSHIP The Regional Environmental Center for Central and Eastern Europe and the World Resources Institute have formed a partnership to assist Central and Eastern Europe and the New Independent States in reforming their policies and institutions to comply with commitments and respond to opportunities for infrastructure development created by the Framework Convention on Climate Change and the Kyoto Protocol.