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THE AARHUS CONVENTION

Mayer Brown International LLP

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Introduction

The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the "**Aarhus Convention**") of the United Nations Economic Commission for Europe ("**UNECE**") was adopted on 25 June 1998 in the Danish city of Aarhus.

The Aarhus Convention is a significant environmental treaty. It places a strong emphasis on NGO involvement and will be a key tool for those seeking to promote environmental justice, access to environmental information and increased awareness of environmental concerns in decision-making by public

"Although regional in scope, the significance of the Aarhus Convention is global. It is by far the most impressive elaboration of principle 10 of the Rio Declaration, which stresses the need for citizens' participation in environmental issues and for access to information on the environment held by public authorities. As such it is the most ambitious venture in the area of "environmental democracy" so far undertaken under the auspices of the United Nations."

Kofi Annan, Forward to The Aarhus Convention Implementation Guide (UN, 2000)

bodies.

Parties to the Aarhus Convention

Currently there are 44 parties to the Aarhus Convention, including the United Kingdom and the European Union.

The Aarhus Convention is open to accession by states outside the UNECE region, subject to approval of a meeting of the parties.

The Three Pillars of the Aarhus Convention

The key principles of the Aarhus Convention are set out in provisions referred to as the Three Pillars.

Each Pillar establishes minimum standards to be achieved and gives considerable flexibility to the parties as to how its provisions are implemented in national law.

Pillar One – Access to Information

Under Pillar One, the parties must ensure that environmental information held by a public authority is provided when requested by a member of the public. The party requesting such information does not need to prove or state an interest or a reason for requesting the information.

Environmental information is defined quite broadly. In general terms, it includes information about:

- (i) the state of elements of the environment (e.g. air, water, soil) and their components;
- (ii) factors, activities or measures affecting (or likely to affect) the elements of the environment, as well as cost-benefit and other economic analyses and assumptions used in environmental decision-making; and
- (iii) the state of human health and safety, conditions of human life, cultural sites and built structures to the extent they may be affected by (i) or (ii) above.

The definition includes information in any form (including electronic).

The information requested by a party must generally be provided as soon as possible and, at the latest, within one month after submission of the request. This period may be extended in limited cases.

Public authorities may impose a charge for supplying information provided this is a reasonable amount.

Public authorities may only withhold information in certain (restricted) circumstances. These include where disclosure would adversely affect certain interests such as the confidentiality of proceedings of public authorities, commercial confidentiality, national defence or public security and personal data.

Where an information request is refused, this must be in writing (including reasons) if so requested.

Pillar Two – Public Participation in Decision-Making

These provisions require public authorities to make arrangements to ensure that:

- those affected (including environmental NGOs) can comment on proposals for certain activities listed in the Aarhus Convention. These include a wide range of industrial activities, such as installations in the energy, waste, minerals and minerals and chemicals sectors;
- the public can participate in the preparation of plans, programmes and policies concerning the environment; and
- the public has an opportunity to comment on legislation likely to have a significant impact on the environment.

Pillar Three – Access to Justice in Environmental Matters

Pillar Three seeks to ensure that members of the public (including environmental NGOs) have the ability to challenge environmental decision-making by public authorities through the courts or other independent bodies or through an effective judicial review procedure.

The relevant procedure should provide effective remedies (e.g. injunctions) and be fair, equitable, timely and not prohibitively expensive.

Meaning of Public Authorities

Many of the provisions of the Aarhus Convention are concerned with increasing openness and transparency within public authorities.

Public authorities are defined as governmental bodies at all levels (including national, regional and local). They include:

- bodies performing public administrative functions under national laws; and
- bodies having public responsibilities or functions, or providing public services, in relation to the environment and which are controlled by governmental bodies or bodies performing public administrative functions.

They do not include bodies or institutions acting in a judicial or legislative capacity.

Certain private sector bodies which have public responsibilities in relation to the environment may also be covered. There have been a number of court cases in the UK concerning the issue of whether or not certain bodies (e.g. privatised utility companies) fall within the definition of public authorities.

Non-compliance with the Aarhus Convention

The Aarhus Convention includes a compliance mechanism whereby members of the public (including NGOs) can make a communication (complaint) concerning a party's compliance with the Convention.

Follow the link at Section 7 below to read a number of complaints made by environmental organisations and other affected parties about aspects of the UK's implementation of the Aarhus Convention.

Implementation of the Aarhus Convention in the UK

A party seeking to make use of the Aarhus Convention will need to establish whether and how its own jurisdiction has implemented the relevant provisions.

In the UK, Pillar One has been implemented by means of the Environmental Information Regulations 2004.

Pillar Two has been implemented through a number of measures to facilitate public participation in environmental decision-making. These include regulations made under the Environmental Impact Assessment Directive and the Directive on Integrated Pollution Prevention and Control.

There is an ongoing debate in the UK concerning its implementation of Pillar Three concerning access to justice. The concerns raised by environmental organisations include:

- that the UK has failed to ensure that costs in environmental litigation are not prohibitively expensive; and
- that there needs to be a more clear and transparent procedure for bringing judicial review actions and certain other types of environmental litigation.

A number of NGOs have formed the Coalition on Access to Justice for the Environment to raise awareness of these issues. Members include the

Environmental Law Foundation, Friends of the Earth, Greenpeace, the Royal Society for the Protection of Birds, the Worldwide Fund for Nature and Capacity Global.

An independent review chaired by Lord Justice Sullivan published a report in May 2008 entitled "Ensuring access to environmental justice in England and Wales". It found the UK's implementation of the Aarhus Convention's provisions on access to justice to be unsatisfactory and made a number of recommendations for improvement.

In addition, the European Commission announced in April 2011 that it intended to take the UK to court over the high cost of challenges to environmental decisions.

Work is ongoing within the UK to address some of these issues. These include possible reforms to the costs regime in litigation.

Selected further reading concerning the Aarhus Convention and how it has been implemented in the UK is included below.

"Unless it is changed, our costs regime will perpetuate the inevitable inequality of arms between the publicly funded bodies that take decisions in the environmental field and the individuals and environmental groups who have to rely on their own resources if they wish to challenge those decisions"

Lord Justice Sullivan
Ensuring Access to Environmental Justice

Further Reading

UNECE information on the Aarhus Convention	http://live.unece.org/env/pp/welcome.html
Guidance on making requests for environmental information	http://archive.defra.gov.uk/corporate/policy/opegov/eir/ http://www.ico.gov.uk/
European Commission Press Release concerning costs of environmental litigation in the UK	http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/439&format=HTML&aged=0&language=EN&guiLanguage=en
Ensuring Access to Environmental Justice in England and Wales – Report of the Working Group on Access to Environmental	May 2008 report: http://www.lawcentres.org.uk/uploads/Access_to_Environmental_Justice.pdf

Justice	Update report of August 2010: http://adam1cor.files.wordpress.com/2010/09/access-to-environment6.pdf
UK's draft report on its implementation of the Aarhus Convention	http://archive.defra.gov.uk/corporate/consult/aarhus/index.htm
Communications by the public/NGOs to the Aarhus Convention Compliance Committee	http://live.unece.org/env/pp/pubcom.html
Findings of the Compliance Committee concerning significant complaints against the UK	Client Earth case: http://live.unece.org/fileadmin/DAM/env/pp/compliance/C2008-33/Findings/C33_Findings.pdf Hinton Organics case: http://live.unece.org/fileadmin/DAM/env/pp/compliance/C2008-23/findings/C23_Findings.pdf Belfast City airport case: http://live.unece.org/fileadmin/DAM/env/pp/compliance/C2008-27/Findings/C27_Findings.pdf
Selected case law from the English courts considering aspects of the Aarhus Convention	<i>R (on the application of The Bard Campaign and another) v Secretary of State for Communities and Local Government</i> [2009] EWHC 308 (Admin) <i>R (Greenpeace Ltd) v Secretary of State for Trade and Industry</i> [2007] EWHC 311 (Admin) <i>R (Edwards and another) v Environment Agency and others</i> [2010] UKSC 57 <i>R (Garner) v Elmbridge Borough Council and others</i> [2010] EWCA Civ 1006 <i>Morgan and Baker v Hinton Organics (Wessex) Ltd</i> [2009] EWCA Civ 107

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