

## AARHUS CONVENTION IMPLEMENTATION REPORT

The following report is submitted on behalf of MONTENEGRO in accordance with decision I/8 and II/10

<b>Name of officer responsible for submitting the national report:</b>	Ivana Vojinović, Assistant Minister, the Ministry of Sustainable Development and Tourism
<b>Signature:</b>	
<b>Date:</b>	21 July 2011

### IMPLEMENTATION REPORT

Please provide the following details on the origin of this report:

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#### I. PROCESS BY WHICH THE REPORT HAS BEEN PREPARED

**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:*

The Ministry of Sustainable Development and Tourism initiated a procedure for preparing the first national report on the implementation of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), in line with commitments that Montenegro assumed as a party to the Convention. The proposal of the first national report on the implementation of the Aarhus Convention was prepared by representatives of the Ministry of Sustainable Development and Tourism and representatives of the Environment Protection Agency in cooperation with competent authorities and organizations. The text of the proposal of the report was sent to all competent institutions for opinion, comments and suggestions. Most of competent authorities and organizations submitted their opinions in writing. The proposal of the report was also published on the web-site of the Ministry of Sustainable Development and Tourism ([www.mrt.gov.me](http://www.mrt.gov.me)) and of the Environment Protection Agency /Aarhus Centre ([www.arhuscg.me](http://www.arhuscg.me)), together with invitation to public to give their opinions and comments. Positions and opinions of individual competent authorities have been integrated directly into the report.

After that, the Aarhus Centre, with support of the Ministry of Sustainable Development and Tourism and OSCE Mission to Montenegro, organized a public hearing. The public hearing was attended by representatives of the Ministry of Sustainable Development and Tourism and the Environment Protection Agency, representatives of OSCE Mission to Montenegro, NGO sector and media. It was pointed out at the public hearing that the report presented an analysis of the overall national legislation in this field and a practical

overview of implementation of provisions of this Convention in Montenegro. Non-governmental organizations pointed out that it was necessary to prepare a new Manual for practical implementation of Aarhus Convention, intended to citizens and media, provide environmental education to citizens on the need to protect environment, inform citizens about how to obtain data on the status of environment to allow them to participate actively in making decisions before competent state authorities and judiciary authorities. The public hearing also pointed out the need to deliver training and seminars in order to inform representatives of target groups (citizens, NGOs, media) about the main provisions of the Aarhus Convention, models of accessing information and participation of public. Opinions and positions presented in the phase of public hearing were considered and taken into account.

Various materials were used to prepare the report, such as: applicable regulations of Montenegro, contributions and opinions of competent bodies and organizations (National Programme for Integration of Montenegro into the EU, National Programme of Judiciary Reform, Strategy of Cooperation of Montenegro and Non Governmental Organizations, etc.), progress reports of competent authorities and institutions, reports on the condition of environment in Montenegro.

## **II. PARTICULAR CIRCUMSTANCES RELEVANT FOR UNDERSTANDING THE REPORT**

**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:*

The report on the implementation of the Aarhus Convention has been prepared for the first time. Montenegro ratified the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters ("Official Journal of Montenegro – International Agreements", no. 03/09) and acceded to the Aarhus Convention on November 2<sup>nd</sup>, 2009. The Aarhus Convention entered into force on 02.02.2010.

Montenegro has not acceded to the Protocol on Pollutant Release and Transfer Registers (PRTR Protocol, Kiev, 2003) or the GMO amendment to the Convention (Almaty, 2005).

Provision of Article 9 of the Constitution of Montenegro ("Official Journal of MNE", no. 01/07) states that the ratified and published international agreements and generally accepted rules of international law shall make an integral part of the internal legal order, shall have the supremacy over the national legislation and shall apply directly when they regulate relations differently than the national legislation.

Article 51 of the Constitution defines that everyone shall have the right to obtain information held by the state authorities and organizations exercising public authority. The right to accessibility of information may be limited if this is in the interest of the

protection of life; morality and privacy; carrying of criminal proceedings; security and defence of Montenegro; foreign, monetary and economic policy.

Further, Article 113 of the Constitution states that in the local self-government the decisions shall be made directly and through the freely elected representatives. The right to local self-government shall incorporate the right of the citizens and local self-government authorities to regulate and manage specific public and other affairs on the basis of their own responsibility and in the interest of the local population. Also, provisions of Article 114 state that the basic form of the local self-government shall be the municipality and that it shall also be possible to establish other forms of local self-government.

The assessment is that current status of institutional and administrative capacities and certain financial problems may affect a complete and consistent implementation of the Aarhus Convention.

### **III. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE GENERAL PROVISIONS IN PARAGRAPHS 2, 3, 4, 7 AND 8 OF ARTICLE 3**

**List legislative, regulatory and other measures that implement the general provisions in paragraphs 2, 3, 4, 7 and 8 of Article 3.**

*Answer:*

The transposition of appropriate provisions of paragraph 3 of Aarhus Convention is ensured through a number of regulations in MNE:

- Constitution of Montenegro ("Official Journal of MNE", no. 01/07)
- Law on Free Access to Information ("Official Journal of RMNE", no. 68/05)
- Law on State Administration ("Official Journal of RMNE", no. 38/03, "Official Journal of MNE", no. 22/08)
- Law on General Administrative Procedure ("Official Journal of RMNE", 60/03),
- Law on Local Self-Government ("Official Journal of RMNE", no. 42/03, "Official Journal of MNE" 88/09)
- Law on Government Employees and Civil Servants ("Official Journal of RMNE", no. 50/08, "Official Journal of MNE", no. 49/10)
- Law on Environment ("Official Journal of MNE", no. 48/08, 40/10).
- Law on Nature Protection ("Official Journal of MNE", no. 51/08),
- Law on Preschool Upbringing and Education ("Official Journal of RMNE", no. 64/02, 49/07, 80/10)
- Law on Elementary Education and Upbringing ("Official Journal of RMNE", no. 64/02, 49/07, "Official Journal of Montenegro", no. 45/10)
- Decision on Establishment of Environmental Education Centre ("Official Journal of Montenegro", no. 28/08)
- Law on Non Governmental Organizations ("Official Journal of RMNE", no. 27/99, 09/02, 30/02, "Official Journal of Montenegro", no. 11/07).

**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**

*Answer:*

Article 4 of the Law on State Administration states that “the work of state administration authorities shall be public” and that “citizens shall have access to data, documents, reports and information of the state administration authorities”. As for relations between the state administration and citizens stipulated by provisions of Articles 51-58 – Section VIII of this Law stipulate that state administration authorities shall provide citizens with needed information and professional assistance in prescribed periods. According to Articles 95 – 98 of the Law on State Administration, state authorities shall inform regularly the public and media about their activities at press conferences, press releases, round tables, tribunes and by distribution information via web-site of the state administration authorities. Interested representatives of public (media, organizations, individuals) submit questions to state authorities in written and electronic forms, and the practice showed that they can agree with responsible individuals and have meetings in order to find solutions to some matters.

The Law on Free Access to Information, Articles 1 – 4, defines the main objective of this Law – to ensure access to all documents held by public authorities, which is based on the principles of: free information, equal conditions for practicing the right, open transparent work of government authority and emergency of the procedure. In these and any other terms, the Law does not allow any discrimination on the grounds of nationality, race, gender, ethnic or any other grounds. The term information denotes “any document in written, printed, video, audio, electronic or other form, including also a copy or a part thereof, regardless of its contents, source (author), time of its composing or the system of its classification”. Chapter II – Access to Information (Article 5 – 10) contains provisions which stipulate obligations of government authorities in terms of providing access to information, i.e. in terms of composing and publishing, in appropriate manner, a list of all types of information they hold, including public registers and public records, data and the procedure for accessing information, names of persons authorized to act upon any request for access to information. In addition, the manual for access to information must contain the name of the authority that performs supervision over the work of the government authority, in addition to overview of all types of information, in order to ensure the necessary efficiency in the procedure of protection of the right to access information. In addition, cases have been identified which are exceptions to the rule of free access to information when access to information is fully or partly limited to justified reasons. Therefore, the government authority must carefully prove that the higher – more general interest is to protect public order from the access right, but make sure that, regardless of how big the damage to the public interest is, it must published the so-called privileged informed referred to Article 10 of the Law relating to, for example, the data that indicate unauthorized use of public funds, dishonest conduct, etc. The main precondition for achieving access to information is that they are registered and

stored. Chapter III – Procedure for Access to Information (Article 11 – 25) contains provisions which, due to specific relevant matter, prescribe the necessary deflexions from the rule of general administrative procedure. This means that the Law on General Administrative Procedure is subsidiary applied to all matters which are not regulated in a special manner by this Law.

The planned special rules of the procedure relate to: starting the procedure, content of the request to access information, method of practicing the right, deadlines for making, submitting and executing the decision, content of the decision, costs of the procedure and legal protection. The procedure for practicing the right to access information is initiated by filing a request by a national or foreign legal or private entity to the government authority which holds the requested information. It is explicitly stated that fees are not paid for the request to access information. This means that filing requests is free of charge, and costs of the procedure relate only to real costs of copies, photocopies, translation and submission. Access to information held by the government authority may be practiced by: direct insight into public records, original or a copy of information in premises of the government authority; rewriting of information by the applicant in premises of the government authority; rewriting, photocopying or translation of information by the government authority and submitting a transcript, photocopy or translation to the applicant, directly or by mail or electronically.

Main principles defined by the Law on General Administrative Procedure include, *inter alia*, the principle of protection of rights of citizens and protection of public interest (Article 5) and the principle of providing assistance to foreigners (Article 14).

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

*Answer:*

Article 23 of the Constitution of Montenegro, as the supreme legal act of a country, states that “everyone shall have the right to a sound environment and to receive timely and full information about the status of the environment, to influence the decision-making regarding the issues of importance for the environment, and to legal protection of these rights, and that everyone, the state in particular, shall be bound to preserve and improve the environment”, while Article 51 prescribes, *inter alia*, that “everyone shall have the right to obtain information held by the state authorities and organizations exercising public authority”.

Article 4 of the Law on Pre-School Upbringing and Education defines that the aim of preschool education is, *inter alia*, the development of the positive attitude concerning the nature and environmental protection.

In addition, Article 2 of the Law on Elementary Education and Upbringing defines the aim of elementary education and upbringing is, *inter alia*, establishing and encouraging healthy lifestyle and a responsible attitude concerning environment.

The Decision on the establishment of Environment-Education Centre founded the Environment-Education Centre as the public institution with the status of a legal entity. Article 3 of this Decision defines that the activity of the Centre is related to education of pupils, students, employees in educational institutions and citizens in ecology and environmental protection and the development of modern and innovative methods of researches in these fields. In addition, it is prescribed that within its activities the Centre: organizes summer schools and workshops for pupils and students from the country and abroad, develops modern and innovative scientific research methods in ecology and environmental protection, organizes and implements national and international seminars for national and international experts, promotes natural beauties, flora and fauna of Montenegro, implements the "School in Nature" programme, etc. While implementing activities under its competence, the Centre works with the Ministry of Education and Science, the Ministry competent for environmental protection affairs, the Bureau for Educational Services, Vocational Education Centre, high education institutions in the country and abroad, non-governmental organizations and other related institutions (Article 4).

Article 110 of the Law on Nature Protection defines that the day of nature protection is celebrated every May 22<sup>nd</sup> on the International Biodiversity Day and that day educational, recreational, professional and other activities may be organized to encourage and improve nature protection appropriately.

**(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;**

*Answer:*

The role of associations, organizations and groups and the obligation to provide them with support has been stipulated in a variety of ways in a number of laws. The Law on Non Governmental Organizations stipulate that this Law regulates the procedure for establishing, registering, acting, networking and termination of work of non-governmental organizations. In terms of this Law, non-governmental organizations are considered to be non-governmental associations and non-governmental foundations (Article 1).

Article 116 of the Law on Local Self Government stipulates that, in order to promote an open and democratic society, local self-government authorities cooperate with non-governmental organizations, and this cooperation is particularly implemented by: information on all matters important for non-governmental sector; consulting the non-governmental sector about local self-government development programmes and draft general acts prepared by the Parliament; facilitating participation in the work of working groups for preparation of normative acts or formulation of projects and programmes; organizing joint public hearings, round tables, seminars, etc.; financing of projects of non-governmental organizations of interest for the local population, under conditions and in compliance with the procedure stipulated by the general act of the municipality; creating conditions for the work of non-governmental organizations in line with abilities of the local self-government, etc.

Article 7 of the Law on Environment defines that environmental protection, within their rights and obligations, is ensured by: state authorities, state administration authorities,

local self-government units, national and international legal and private entities, non-governmental organizations, citizens and associations of citizens. Further, Article 12 prescribes that non-governmental organizations shall contribute to environmental protection in line with their programmes and special regulations, and that the state shall encourage participation of non-governmental organizations in decision-making and implementation of decisions which are important for environmental protection.

Having in mind the previous role of non-governmental organizations in environmental protection and spatial planning and their contribution to promoting ecological ideas and values, and the role of the Ministry in implementing plans and programmes in this field; having recognized interest in establishing stronger forms of cooperation in the field of spatial planning and environmental protection; the need for a more regular and objective information to public and particularly non-governmental organizations about the work of the Government of Montenegro; the need to consult non-governmental organizations as a form of contribution to the quality of planning, preparing, adopting and implementing public policies, the Ministry of Spatial Planning and Environment signed in 2010 the Memorandum on Cooperation with Non Governmental Organizations. Beginning of 2010, Action Plan for cooperation between the Ministry and non-governmental organizations was prepared based on the Memorandum of Cooperation that was signed.

In January, the Working Team comprising representatives of the Ministry, Environment Protection Agency, Office for Sustainable Development and non-governmental sector met for the first time. The representatives are given mandates of six months in order to provide for participation of all representatives of the non-governmental sector in the Working Team.

During February 2010, the Working Team prepared Action Plan for cooperation of non-governmental organizations and the Ministry. The following activities planned by the Action Plan have been implemented:

A special group has been formed on Google "[zastitime@googlegroup.com](mailto:zastitime@googlegroup.com)" whose members are all signatories to the Memorandum of Cooperation with the Ministry of Spatial Planning and Environmental Protection, and representatives of institutions represented in the Working Team, and the group is open to all interested NGOs. The objective of establishing this group is to exchange information, documents, invitations and opinions.

A questionnaire was prepared for NGOs in terms of basic data on organizing training and other events which are necessary for their better functioning and assessment of capacities.

A tender was launched for allocation of funds for 2010. The amount of 99.000 EUR was allocated based on this tender.

The Day of the Planet Earth, April 22<sup>nd</sup>, was celebrated together with non-governmental organization "Ozon" within XVI Ecological Fair in Budva.



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

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

**(ii) Measures taken to provide access to information at the national level regarding international forums, including the stages at which the 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 NGO members to participate in the Party's delegations in international environmental negotiations or involving NGOs in forming the Party's official position for such negotiations) including the stages at which the 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;**

*Answer:*

Measures undertaken to promote the principles of the Convention internationally with the Secretariat of the Mediterranean Action Plan under UNEP (UNEP/MAP) and regional centres under UNEP/MAP; Mediterranean Commission of Sustainable Development (MCSD); Regional Environmental Centre (REC), and in the context of numerous regional initiatives include:

*- Adriatic-Ionian Initiative (All)*

Montenegro is presiding the Initiative in the period 2010/2011. A round table about the environment of the Adriatic-Ionian Initiative was held in Ancona, Italy, May 26, 2010.

Topics that were discussed related to adaptation to climate changes and sustainable development. In addition to these, topics that were discussed on this occasion related to the EU Marine Strategy Framework Directive, Integrated Coastal Management, Integrated Marine Policy and potential synergy between the Adriatic-Ionian Initiative and Trilateral Commission for environmental protection.

Emphasis was placed on the importance of work of the Trilateral Commission, particularly the sub-regional plan for emergency interventions, and the importance of including as many countries of the Adriatic-Ionian Initiative into the sub-regional plan for emergency interventions. The representative of the Ministry of Spatial Planning and Environment presented activities at national level relating to development of the National Plan of Emergency Interventions, Integrated Coastal Management, Strategy of

Sustainable Development of Montenegro, and activities related to climate changes and the establishment of the Regional Forum for Climate Changes.

- *Central European Initiative (CEI)*

Within Montenegrin presidency of CEI (January 1<sup>st</sup> – December 31<sup>st</sup> 2010), the Ministry of Spatial Planning and Environment organized the “Conference on climate changes and a regional forum on climate changes”, 9 – 11 May 2010 in Budva.

The Conference was attended by 14 of 18 delegations from CEI member countries-. In addition to CEI member states, it was also attended by international organizations: UNDP, WB, REC, UNIDO, UNESCO, UNEP, EBRD and the EU Delegation to MNE. The Regional Forum on Climate Changes was held within the Conference where regional projects of Albania, Bosnia and Herzegovina, Macedonia, Montenegro and Serbia were presented.

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

*Answer:*

Please consult Articles 23 and 51 of the Constitution of Montenegro.

#### **IV. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 3**

**Describe any obstacles encountered in the implementation of any of the paragraphs of Article listed below.**

*Answer:*

- The overall level of public awareness about the need for environmental protection and environmental culture in Montenegro is unsatisfactory.
- An obstacle to efficient implementation of paragraph 2 of Article 3 is insufficient number of staff having in mind that requests for environmental information increases every year thus increasing the scope of related work.

#### **V. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE GENERAL PROVISIONS OF ARTICLE 3**

**Provide further information on the practical application of the general provisions of Article 3.**

*Answer:*

The most important activities that have been implemented in regards to preparation and strengthening of capacities of Montenegro to implement the Aarhus Convention are: regional networking and exchange of experiences, delivering training to public

administration staff members, civil sector and media, developing a manual for implementation of the Aarhus Convention for representatives of public administration and non-governmental organizations, and the manual for access to judiciary in regards to environmental matters (2006). All of these activities have been implemented with the support of the Regional Environmental Centre (REC).

The establishment of Aarhus Centre is one of the most important activities for implementation of the Aarhus Convention. The project was initiated by this Ministry and the Environment Protection Agency in cooperation with OSCE Mission to Montenegro. The Aarhus Centre was opened on April 15<sup>th</sup> 2011 as an internal organizational unit of the Environment Protection Agency. Mission of the Aarhus Centre is to ensure implementation of the Aarhus Convention. The Aarhus Centre will help government authorities to fulfil their obligations and duties listed in the Aarhus Convention, promote introduction of regulations and methods aimed at providing access to information, participation of public and access to judiciary in environmental matters, represents a bridge between government authorities, civil society, economy and public, encourages implementation of the Convention by developing awareness and abilities of interested parties, promote a good and transparent environmental management, serve wider community by providing services under its competences.

The Ministry of Sustainable Development and Tourism has established contacts, cooperation and achieved results with numerous non-governmental organizations. The experience and the result of such involvement is improvement to the level of cooperation and a stronger contribution of the Ministry and non-governmental sector to environmental protection and spatial planning.

Action Plan for cooperation between the Ministry and non-governmental organizations was adopted in 2010 based on the Memorandum of Cooperation. A list of signatories with contacts is available at the web-site of the Ministry of Sustainable Development and Tourism [www.mrt.gov.me/rubrike/saradnja-sa-nvo](http://www.mrt.gov.me/rubrike/saradnja-sa-nvo).

The Ministry of Sustainable Development and Tourism, in cooperation with NGO sector in environmental protection and improvement in Montenegro, launched a broad eco campaign "Ecological Thread That Connects Us" ([www.ekonit.me](http://www.ekonit.me)) in April 2011. The main idea behind this campaign is raising the level of ecological awareness of citizens to have ecology become a way of our thinking, everyday behaviour, but personal culture as well.

This campaign has been significantly contributed by media because press, radio, television and internet provide primarily informal ecological education and training, since it is not enough that only family and/or formal education institutions address environmental issues, given its complexity.

## **VI. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 3**

**Give relevant web-site addresses, if available:**

Ministry of Sustainable Development and Tourism: <http://www.mrt.gov.me/>

Environment Protection Agency: <http://www.epa.org.me/>

Aarhus Centre Podgorica: <http://www.arhuscg.me/>

Government of Montenegro: <http://www.gov.me/>  
Parliament of Montenegro: <http://www.skupstina.me/>  
Ministry of Justice: <http://www.mpa.gov.me/>  
Ministry of Foreign Affairs and European Integrations: <http://www.mip.gov.me/>  
Ministry of Education and Sport: <http://www.mps.gov.me/>  
Ministry of Economy: <http://www.mek.gov.me>  
Ministry of Transportation and Maritime Affairs: <http://www.msp.gov.me/>  
Ministry of Agriculture and Rural Development: <http://www.gov.me/>  
Ministry of Health: <http://www.mzd.gov.me>  
Ministry of Interior: <http://www.mup.gov.me>  
Ministry of Culture: <http://www.mku.gov.me>  
Ministry of Transportation and Maritime Affairs: <http://www.msp.gov.me>  
Ministry for Information Society and Telecommunications: <http://www.mid.gov.me>  
Ministry of Labour and Social Welfare: <http://www.mrs.gov.me>  
Ministry for Human and Minority Rights: <http://www.mmp.gov.me>  
Hydrological and Meteorological Service of Montenegro: <http://www.meteo.co.me/>  
National Parks of Montenegro: <http://www.nparkovi.me/>  
PI Centre for Toxicological Research of Montenegro: <http://www.ceti.co.me/>  
Office for Sustainable Development: <http://www.kor.gov.me/kancelarija>  
Office of the Regional Environmental Centre in Montenegro: <http://www.rec.org.me>  
OSCE Montenegro: <http://www.osce.org/montenegro>  
Official Journal of Montenegro: <http://www.slistcg.me>

## **VII. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON ACCESS TO ENVIRONMENTAL INFORMATION IN ARTICLE 4**

**List legislative, regulatory and other measures that implement the provisions on access to environmental information in Article 4.**

*Answer:*

Transposition of provisions on access to environmental information referred to in Article 4 of Aarhus Convention is ensured through a number of regulations in Montenegro:

- Constitution of Montenegro (“Official Journal of MNE”, number 01/07)
- Law on Free Access to Information (“Official Journal of RMNE”, number 68/05)
- Law on State Administration (“Official Journal of RMNE”, no. 38/03, “Official Journal of MNE”, no. 22/08)
- Law on General Administrative Procedure (“Official Journal of RMNE”, no. 60/03)
- Law on Local Self Government (“Official Journal of RMNE”, no. 42/03... Official Journal of MNE 88/09)
- Law on Environment (“Official Journal of MNE”, number 48/08, 40/10)
- Law on Environmental Impact Assessment (“Official Journal of RMNE”, no. 80/05, 40/10)
- Law on Integrated Prevention and Control of Environmental Pollution (“Official Journal of RMNE”, no. 80/05 and “Official Journal of MNE”, no. 54/09)
- Law on Strategic Environmental Impact Assessment (“Official Journal of RMNE”, no. 80/05)

- Law on Nature Protection (“Official Journal of MNE”, no. 51/08)
- Law on Genetically Modified Organisms (“Official Journal of Montenegro”, no. 22/08)
- Law on Chemicals (“Official Journal of MNE”, no. 11/07)
- Law on Prohibition of Discrimination (“Official Journal of Montenegro”, no. 46/10)
- Law on Media (“Official Journal of RMNE”, no. 51/02, 62/02 and “Official Journal of MNE”, no. 46/10)
- Law on Secrecy of Data (“Official Journal of Montenegro”, no. 14/08, 76/09, 41/10)
- Regulation on reimbursement of costs in the procedure of accessing information (“Official Journal of Montenegro”, no. 02/07).

**Explain how each paragraph of Article 4 has been implemented. Describe the transposition of the relevant definitions in Article 2 and the non-discrimination requirements in Article 3, paragraph 9.**

*Answer:*

Please consult Articles 23 and 51 of the Constitution of Montenegro.

a) Article 4 of the Law on Free Access to Information provides, *inter alia*, the following definitions:

- 1) the right of access to information shall encompass the right to ask for, receive, use and disseminate the information filed with Government agencies;
- 2) information shall be any document in written, printed, video, audio, electronic or other form, including a copy or a part thereof, regardless of its contents and source (or author) or the time of its composing or the system of its classifying;
- 3) government agency shall be any: state authority (legislative, executive or judicial); local self-government authority; local government authority; public institution; public company or other business entity that has been granted to perform public powers, which is founded by the state or a local self-government authority or which is funded from public revenues and with which the information is filed.

Article 6 of the Law on Environment provides definitions of information on environment and public where:

- information on environment shall be any information in written, visual, audio, electronic or any other available form relating to environment;
- public shall be one or more private or legal entities, associations, organizations or groups thereof;

Article 7 of the Law on Environmental Impact Assessment provides definitions of: public, interested public and interested authorities and organizations. These definitions are also provided in the Law on Strategic Environmental Impact Assessment (Article 7) and the Law on Integrated Prevention and Control of Environmental Pollution (Article 2).

b) Article 8 of the Constitution of Montenegro prescribes prohibition of any direct or indirect discrimination on any grounds.

Also, the Law on Discrimination, which regulates matters of prohibition and protection against discrimination, prohibits any form of discrimination on any grounds (Article 1). It further defines that discrimination is any unjustified legal or physical, direct or indirect distinction or unequal treatment, or non-treatment of a person or a group of persons in comparison to other persons, based on race, colour of skin, national affiliation, social or ethnic origin, affiliation to minority nation or minority national community, language, confession, political or other opinion, sex, gender, sexual orientation, health conditions, disability, age, material status, marital or family status, membership in a group or assumed membership in a group, as well as other personal characteristics (Article 2).

Article 1 of the Law on Free Access to Information prescribes that any national or foreign legal and natural entity shall be entitled to access to the information filed with government agencies, and that the access to the information shall be guaranteed upon the principles and the standards contained in international documents dealing with the issues of human rights and freedoms.

Access to the information filed with government agencies shall be grounded in the following principles: freedom of informing, equal preconditions for exercising the right, straightforwardness and accessibility to public scrutiny and promptness of the procedure (Article 2). In this and any other terms, the Law does not allow any discrimination on the grounds of nationality, race, sex, ethnicity or any other grounds.

**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;**

*Answer:*

According to the provision of Article 12 of the Law on Free Access to Information it is prescribed that a request for access to the information shall contain the following:

- 1) basic data concerning any required information;
- 2) the method in which such information is desirable to be available;
- 3) data on applicant (first and family name, permanent or temporary residence, firm and registered office), and/or its agent, representative or attorney,
- 4) other data that make finding of the required information easier.

Therefore, this says that the applicant is not required to state reasons for requesting information.

**(ii) Copies of the actual documentation containing or comprising the requested information are supplied**

*Answer:*

Provision 13 of the Law on Free Access to Information prescribes that access to any information filed with a government agency may be exercised through:

- 1) direct inspection of public records or the original or a copy of such information, within the premises of the government agency;

- 2) transcribing such information by the person that submitted the request for such information, within the premises of the government agency;
- 3) transcribing, photocopying or translating such information by any government agency, whereupon such information shall be delivered in the form of a transcript or a photocopy or a translation to the applicant, directly or by mail or e-mail.

**(iii) The information is supplied in the form requested;**

*Answer:*

Provision of Article 12 paragraph 1 line of the Law on Free Access to Information prescribes that the request for access to information shall contain the method in which such information is desirable to be available. Starting from this provision, the government authority shall allow the applicant to access information in the requested manner, unless there are justified reasons for defining another form of access to information, but the decision must state these reasons and clarification of them.

Article 13 prescribes ways to practice access to information filed with a government authority.

**(b) Measures taken to ensure that the time limits provided for in paragraph 2 are respected;**

*Answer:*

Article 15 of the Law on Free Access to information prescribes that the government agencies shall act upon any request for the information in a summary procedure.

Further on, Article 16 paragraph 1 defines that Any government agency shall be in obligation, upon any request for the information, to promptly make a resolution and to deliver it to any applicant, whereas not later than eight days as of the day of the request for information being submitted. Except for paragraph 1 of this Article and in cases when it is required for the purposes of protecting lives or freedoms of persons, any government agency shall be in obligation to promptly make and to deliver a resolution to any applicant, whereas not later than 48 hours upon such request has been submitted (paragraph 2). If the range of the required information is big or if the searching for such information requires an extensive documentation inspection that would unreasonably disrupt regular operations of any government agency relevant therefore, the deadline for making and delivering a resolution, referred to in paragraph 1 of this Article, may be prolonged by 15 days at most (paragraph 3).

Article 17 paragraphs 1 and 3 prescribes that If any request for the information is incomplete or indistinct and, therefore, it cannot be acted upon, any government agency shall be in obligation to invite any applicant to eliminate deficiencies therein within eight day as of the day of delivering the notification thereof, whereby such government agency shall give necessary instructions for eliminating such deficiencies, and that the deadline for making resolution thereupon shall commence on the third day after submission date of any corrected request.

**(c) With respect to paragraphs 3 and 4, measures taken to:**

**(i) provide for exemptions from requests;**

*Answer:*

Article 9 of the Law on Free Access to Information prescribes that Access to information shall be restricted if their disclosure would significantly endanger: national security and defence or international relations; public security, commercial and other private or public economic benefits; economic, monetary and foreign exchange policy of the State; prevention and investigation of and proceedings upon criminal matters; privacy and other personal rights of individuals, except for the purposes of court or administrative procedures; the procedure of considering and passing certain official documents.

It is considered that these interests are substantially threatened if the disclosure of information would cause the damage which is significantly bigger than the public interest requesting their disclosure.

Article 95 of the Law on State Administration envisages that provision of data and reports may be restricted only in case of the obligation of keeping them secret.

The Law on Environmental Impact Assessment has a separate Chapter dedicated to information, keeping records and making the data publicly available (Chapter III). The Law defines the deadline to which a competent authority must make the entire documentation about implemented environmental impact assessment procedure available on the request filed in writing (15 days following the receipt of the request). Documents which represent business, official or state secret are exempt from the obligation of public availability.

Provisions on confidentiality (secrecy) of data are also contained in the following environmental laws: Article 107 of the Law on Nature Protection, Article 53 of the Law on Chemicals, Article 23 of the Law on Genetically Modified Organisms.

The Law on Media guarantees the right of free founding and undisturbed work of media based on: “the freedom of expression; freedom of investigation, collection, dissemination, publicising and receiving information; free access to all sources of information; protection of man’s person and dignity and free flow of information” (Article 2). The right to information is formulated as the general right (“Information at the disposal of legislative, executive and judicial authorities, companies and institutions empowered with public authority, shall be accessible to the public in accordance with special law on free access to information” – Article 4 paragraph 3). The provision which releases a journalist or media from accountability if, in the course of their work, they obtain or publicise the information that is considered to be state, military, official or business secret, if there is an overriding interest of the public to be informed (Article 21 paragraph 2).

The Law on Secrecy of Data regulates the procedure of access to secret data related to defence, public security and foreign affairs, whose disclosure could have consequences for the security of Montenegro or its political or economic interests.



Within the procedure before regular courts in relation to environment, whether civil, enforcement or criminal proceedings, the Human Rights and Freedoms Ombudsman may intervene in cases of stalling of court procedure, obvious abuse of procedural authorities and failure of enforce court decision. The Ombudsman, by default, acts upon individual complaints of citizens, but he/she may initiate a procedure independently. The initiating and the course of the procedure before the Ombudsman is very simple: the procedure is free of charge for the client, and the complaint is filed in writing, including electronic form. The complaint may be made verbally in the institution's premises as well. On the request of the person who files a complaint, the Ombudsman is obliged to keep his/her personal data confidential.

**(ii) Ensure that the public interest test at the end of paragraph 4 is applied;**

*Answer:*

Please consult provisions of Article 9 of the Law on Free Access to Information and Article 32 of the Law on Environmental Impact Assessment.

**(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;**

*Answer:*

Provision of Article 55 of the Law on General Administrative Procedure prescribes that if an authority is not competent for the receipt of a petition request, the officer within that authority shall notify the submitter thereof and refer him/her to the authority competent for reception. If the submitter nevertheless insists that his/her petition request be accepted, the officer shall accept such a petition request. If the authority finds not to be competent to act upon such a petition request, it shall bring a conclusion by which it will reject the petition request on account of non-competence (paragraph 3).

When an authority receives per post a petition request for the receipt of which it is not competent, and there is no doubt about which authority is competent for the receipt thereof, it shall send the petition request forthwith to the competent authority, respectively to the court and notify the party thereof (paragraph 4).

**(e) With respect to paragraph 6, measures taken to ensure that the requirement to separate out and make available information is implemented;**

*Answer:*

Article 13 of the Law on Free Access to Information prescribes that if any part of information is restricted, relevant government agency shall enable access to the information after deleting the part of such information that is restricted. Any part of

information that is restricted shall be marked by indication “deletion completed” whereas the notification of the extent of such deletion shall be indicated as well. The text of information must not be destroyed or scratched by any such deletion.

Access to information, a part of which was deleted, shall be exercised by transcription, photocopying or translation of the information by the government agency and submitting of the transcription, photocopy or translation to the submitter directly or by mail or electronically.

**(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)**

*Answer:*

Article 16 of the Law on Free Access to Information prescribes that Any government agency shall be in obligation, upon any request for the information, to promptly make a resolution and to deliver it to any applicant, whereas not later than eight days as of the day of the request for information being submitted. Except for paragraph 1 of this Article and in cases when it is required for the purposes of protecting lives or freedoms of persons, any government agency shall be in obligation to promptly make and to deliver a resolution to any applicant, whereas not later than 48 hours upon such request has been submitted.

Further on, Article 18 defines that any government agency shall decide upon a request for information by a resolution. Any government agency shall be in obligation to give the rationale for any document rejecting such request, and to state the reasons for restricting access to such information.

**(g) With respect to paragraph 8, measures taken to ensure that the requirements on charging are met.**

*Answer:*

Article 19 of the Law on Free Access to Information prescribes that any applicant shall bear the costs of the procedure for exercising the right of access to the information, in harmony with the separate regulation (Regulation on costs in the procedure of access to information). The costs of such procedure shall be in connection only to actual costs incurred by a government agency with respect to transcribing, photocopying, translating and delivering any required information (paragraph 3).

## **VIII. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 4**

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

*Answer:*

Based on the requests which have been submitted to relevant environmental protection institution for access to information in the field of environment, we hereby stress that there is high interest for this matter, which requires more staff to act upon the submitted requests. The reason for this is that, in addition to the above, one of the problems encountered in the implementation of this Article is searching of a number of documents which disturbs regular functioning of government agencies.

## **IX. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 4**

**Provide further information on the practical application of the provisions on access to information in Article 4, e.g., are there any statistics available on the number of requests made, the number of refusals and their reasons?**

*Answer:*

According to provisions of the Law on Free Access to Information ("Official Journal of RMNE", no. 68/05) and provisions of the Aarhus Convention, the Ministry of Spatial Planning and Environment received 257 requests for free access to information in 2010. The responsible person for acting upon requests made decision on the requests for access to information and furnished them to submitters within legally defined deadline. Out of the total number of requests filed from January 2010 to January 2011, NGO sector filed 245, and private entities 12 requests. Most requests are related to issuing copies of construction and exploitation permits, and copies of minutes of inspection supervision.

From 01.01.2011 to 01.07.2011, the Ministry of Sustainable Development and Tourism received 454 requests in total, where 323 requests have been decided upon, and the remaining requests are in the process of deciding due to the need to collect necessary documents from competent authorities and institutions.

During 2010, the Environment Protection Agency, as the administrative authority which performs professional and related administrative affairs in environmental protection, received 36 requests for free access to information. Out of the total number, non-governmental organizations filed 34 requests, and citizens filed 2. There were no rejected requests, and in four cases requests were submitted to the competent authority for deciding. Most of requests are related to thematic area of impact assessment and strategic environmental impact assessment.

## **X. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 4**

**Give relevant web-site addresses, if available:**

*Answer:*

Please see internet addresses listed in Article 3.

## **XI. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS OF THE COLLECTION AND DISSEMINATION OF ENVIRONMENTAL INFORMATION IN ARTICLE 5**

**List legislative, regulatory and other measures that implement the provisions on the collection and dissemination of environmental information in Article 5**

*Answer:*

Transposition of provisions on the collection and dissemination of environmental information referred to in Article 5 of the Aarhus Convention is provided for through a number of regulations in MNE:

- Constitution of Montenegro (“Official Journal of MNE”, no. 01/07)
- Law on Free Access to Information (“Official Journal of RMNE”, no. 68/05)
- Law on General Administrative Procedure (“Official Journal of RMNE”, no. 60/03)
- Law on State Administration (“Official Journal of RMNE”, no. 38/03, “Official Journal of MNE”, no. 22/08)
- Law on Local Self Government (“Official Journal of RMNE”, no. 42/03... Official Journal of MNE 88/09)
- Law on Civil Servants and Government Employees (“Official Journal of RMNE”, no. 50/08, “Official Journal of MNE”, no. 49/10)
- Law on Environment (“Official Journal of MNE”, number 48/08, 40/10)
- Law on Environmental Impact Assessment (“Official Journal of RMNE”, no. 80/05, 40/10)
- Law on Integrated Prevention and Control of Environmental Pollution (“Official Journal of RMNE”, no. 80/05 and “Official Journal of MNE”, no. 54/09)
- Law on Strategic Environmental Impact Assessment (“Official Journal of RMNE”, no. 80/05)
- Law on Nature Protection (“Official Journal of MNE”, no. 51/08)
- Law on Genetically Modified Organisms (“Official Journal of Montenegro”, no. 22/08)
- Law on Waste Management (“Official Journal of RMNE”, no. 80/05 and “Official Journal of MNE”, no. 73/08)
- Law on Air Protection (“Official Journal of MNE”, no. 25/10)
- Law on Chemicals (“Official Journal of MNE”, no. 11/07)
- Law on Forests (“Official Journal of Montenegro”, no. 74/10)
- Law on Waters (“Official Journal of RMNE”, no. 27/07)

- Law on Protection from Ionizing Radiation and Radiation Safety (“Official Journal of Montenegro”, no. 56/09, 58/09)
- Law on Protection and Rescue (“Official Journal of Montenegro”, no. 13/07, 05/08, 86/09)
- Law on Protection from Noise in Environment (“Official Journal of Montenegro”, no. 28/11)
- Law on Prohibition of Discrimination (“Official Journal of Montenegro”, no. 46/10)
- Regulation on detailed content and managing of register of environmental polluters (“Official Journal of Montenegro”, no. 43/10)
- Regulation on substances with damage ozone layer and alternative substances (“Official Journal of Montenegro”, no. 05/11)
- Regulation on the method and procedure of reporting marketing of packaging and packed products, establishing a system of taking, collecting and processing of waste packages and operation of this system (“Official Journal of Montenegro”, no. 09/10)

**Explain how each paragraph of Article 5 has been implemented. Describe the transposition of the relevant definitions in Article 2 and non-discrimination requirement in Article 3, paragraph 9.**

*Answer:*

As in Article 4.

**Also, and in particular, describe:**

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

**(i) Public authorities possess and update environmental information;**

*Answer:*

Article 32 of the Law on Environment prescribes that the state ensures continuous control and monitoring of the status of environment in accordance with this and separate laws. Monitoring is an integral part of a uniform environmental information system and includes monitoring programmes for individual segments of environment and areas defined based on separate laws. The Government adopts the monitoring programme on the proposal of the Agency, for a period of one year.

Further, Article 35 of this Law defines that legal entities and entrepreneurs who use plants that pollute environment shall organize monitoring of emissions and other sources of pollution in line with the Law.

The polluter submits the data collected by monitoring referred to in paragraph 1 of this Article to the competent authority of the local self-government unit on whose territory it is located and to the Agency.

The polluter plans and ensures funds for monitoring of emissions and for other measurements and monitoring of environmental impact of its activities.

Article 8 of the Regulation on detailed contents and the method of managing a register of environmental polluters prescribes that the polluter shall submit the data to the local register of polluters not later than March 31<sup>st</sup> of current year for the previous year. For the purpose of integral register of polluters, which is managed by the Environment Protection Agency, the competent local government authority submits the data referred to in paragraph 1 of this Article within 15 days from the day of receiving them, and not later than April 30<sup>th</sup> of current year for the previous year.

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

*Answer:*

Article 18 of the Law on Environment prescribes that the local government authority that is responsible for environmental matters shall submit to the Agency the local environment protection plan within one month following the date of its adoption. Also, provisions of Article 19 prescribes that the report on the status of environment shall be prepared by the Agency and submitted to the Ministry, and provisions of Article 20 prescribe that the report on the status of environment in the territory of the local self-government shall be submitted to the Agency by the local self-government authority within one month from the date of its adoption. Further, Article 32 of the Law defines that the data defined by monitoring shall be submitted to the Agency by the local self-government unit.

Article 35 prescribes that the data gathered by monitoring of emissions and other sources of pollution shall be submitted by polluter to the competent local self-government units on whose territory it is located and to the Agency as well. Article 39 defines that all environmental protection subjects (state authorities, state administration authorities, local self-government units, national and international legal and private entities, non-governmental organizations, citizens and associations of citizens) shall, on the Agency's request, submit the data and information for the purpose of managing of information system.

In addition, please refer to Article 8 of the Regulation on detailed content and the method of managing the register of environmental polluters.

Article 26 of the Law on Air Protection defines that the Agency shall be obliged to, in case when the warning threshold, ceiling values and/or target values, including limits of tolerance if prescribed, or long-term objective for ozone, are exceeded due to substantial cross-border transmission of polluting matters or their precursors, and inform the Ministry thereof. Further on, Article 40 prescribes that owners and/or users of sources of pollution shall keep prescribed records which are submitted to the local government authority on whose territory such sources of pollution are located.

The local government authority shall keep a register of air pollution with data on spatial location and capacities of sources of pollution, and all changes and reconstructions. The data from the register of sources of pollution shall be submitted to the Agency which manages integral register of environmental polluters. (Article 41)

The Agency shall submit to the Ministry the data on concentration of ozone every month for the previous month, from April to September (Article 43 paragraph 6). The data shall contain date, total number of hours of excess and maximum hourly value of the concentration for every day during which it was registered (paragraph 7).

Article 6 of the Law on Noise Protection prescribes that the competent local government authority shall perform acoustic zoning in order to identify acoustic zones in its territory to protect people from noise, and to submit to the Agency data on certain acoustic zones within one month from the day when acoustic zones were identified. The local self-government unit submits the data gathered by monitoring of noise to the Agency (Article 9). Article 13 of this Law further prescribes that strategic maps of noise, which shall be prepared by the local self-government unit or the concession holder, shall be submitted electronically to the Agency. In addition to the noise map, the Agency shall receive input data and meta data that have been used to allow entry of data into the environmental protection information system. The data on environmental noise and strategic noise maps shall be published on the web-site of the Agency (Article 15). Authorities which are responsible for preparation of Action Plans referred to in Article 16 of this Law shall use media to inform authorities, organizations and interested public about the method and deadlines for reviewing Draft Action Plan, give their opinions, time and place of public hearing (Article 18). Adopted Action Plans shall be published on the web-site of the authority responsible for adopting of the Action Plan and shall be submitted to the Agency for drafting reports on the noise level in environment. The report on the level of environmental noise shall be prepared by the Agency and submitted to the Ministry which furnishes it to the European Commission (Article 23).

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

*Answer:*

Article 26 of the Law on Environment prescribes that in case of an accident, depending on the severity of the accident and assessment of consequences which pose a risk to human health and environment, the Ministry or the authority of the local self-government unit shall announce the state of endangered environment and inform the public about measures that have been undertaken. For accidents with cross-border impacts, the state of endangered environment shall be announced by the Government.

If control and monitoring of the status of environment identify pollution exceeding permitted levels which may harm life and health of people or cause large-scale environmental pollution, the authorities who perform monitoring shall, without delay, inform the Agency (Article 36).

Provision of Article 46 prescribes that the Agency, or the state administration authority responsible for protection and rescue, in case of immediate risk of damage, may request from the polluter to furnish necessary data and undertake necessary activities and measures.

The Law on Protection from Ionizing Radiation and Radiation Safety, Article 34, prescribes that anyone who learns about the existence of danger caused by higher

exposure to ionizing radiation of population and environment, shall inform thereof, without delay, the Ministry responsible for emergencies and civil security, the Agency and other competent authorities. Article 35 defines that for the purpose of early detection of radiation accident which may lead to an emergency, and endangers or may endanger the life and health of people and the environment, the Ministry responsible for emergencies and civil security shall establish a system of early warning which provides for continuous measurement of the strength of ambient equivalent dose of gamma radiation in the air.

Also, please refer to provisions of Articles 10, 21, 22 of the Law on Protection and Rescue.

**(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;**

*Answer:*

Article 5 of the Law on Free Access to Information defines that the government authority shall be responsible for preparing and proper publishing of information it holds, including public registers and public records, data on the procedure to access information, names of people authorized to act upon requests for access to information and other data which are important for practicing the right to access information (guide for access to information).

Article 4 of the Law on Environment specifies one of the main environmental protection principles to be the principle of accessing information and public participation which defines that everyone shall have the right to be informed about the status of environment and to participate in the decision-making process whose implementation could impact environment. The data on the status of environment shall be public.

Article 38 defines that the Agency shall manage a single information system of data and information which are important for environmental condition and inform regularly national and international organizations thereof. Further on, Article 41 prescribes that the Agency shall collect and publish information which are particularly related to: texts of international agreements, conventions or agreements and legislation of the European Union; regulations, plans and programmes, reports related to environment; data gathered by environmental monitoring; environmental impact assessment and risk assessment relating to environmental segments.

Article 25 of the Law on Air Protection prescribes that short-term Action Plan and implementation of measures envisaged by the Plan shall be presented to the public, non-governmental organizations and associations which work on the protection of right of vulnerable population groups, health care institutions and relevant businesses. Article 43 further defines that the Agency shall ensure regular information to public about concentrations of polluting matters in the air, which are expressed in mean values in line with appropriate averaging period. The Agency shall ensure regular information of public



about concentrations and sediments of heavy metals and polycyclic aromatic hydrocarbon.

Article 9 of the Law on Environmental Impact Assessment prescribes that the competent authority and other authorities and organisations shall provide, at the request of the project developer, the necessary data, information and documentation of relevance for the identification and assessment of potential direct and indirect impact of the project on the environment. When the competent authority is obliged to inform the public pursuant to the provisions of this Law, such information shall be made public in at least one local or daily paper published in the territory to be affected by the intended project, as well as by means of electronic media (Article 29). For all projects which are planned and implemented, and which may have a significant environmental impact, provisions of the Law on Environmental Impact Assessment prescribe, *inter alia*, that the competent authority is obliged to provide access to the data relating to the environmental impact assessment procedure conducted to the authorities and organisations and public concerned within 15 days from the receipt of the written request for information (Article 32).

Article 13 of the Law on Strategic Environmental Impact Assessment prescribes that the Decision on whether there is a need or not for the strategic environmental impact assessment elaboration makes an integral part of the Decision on preparation of plans or programmes and it is published in the Official Journal of the Republic of Montenegro, or in the Journal of the local self-government. Article 24 defines availability of information, or that “the strategic environmental impact assessment report, results of participation of authorities and organisations and the public concerned and other states in case of transboundary impacts shall make integral parts of the documentation basis of plans or programmes. The competent authority responsible for preparation of plans and programmes shall also provide for the access to data referred to in paragraph 1 of this Article after the adoption of plans and programmes, under the conditions set forth by the Law.”

The Law on Integrated Prevention and Control of Environmental Pollution defines certain rights of the public which provide for public information and public access to documents adopted within the procedure of issuing of integrated permit. Therefore, Article 14 prescribes that the competent authority shall submit decision on issuing permits or refusal to issue permits to operators and inform other authorities and organisations and the public within eight days following the date of the decision. Also, Article 22 of the Law prescribes the method of informing of interested authorities and organisations and public: “The competent authority shall inform interested authorities and organisations, interested public and general public in cases referred to in Articles 10, 11 and 14 of this Law by means of media, in minimum one local or daily paper which is published in the territory to be affected by the activities and plants, and by means of internet in regards to costs borne by the submitter. If the operator’s request, draft permit or the permit contain business secrets or the data which would, as per the Law, require a limited public access, the competent authority may, on the operator’s request, decide to limit public

access to parts of the request or draft permit or the permit” (Article 22 paragraph 4), where the limitation referred to in paragraph 4 of this Article shall not apply to information on emissions, accident risks, monitoring and inspection supervision results” (Article 22 paragraph 6). Article 24 prescribes that the access to the register of issued permits shall be public as a part of the environmental information system.

Article 107 of the Law on Nature Protection regulates the matter of access to information on the status of nature and its protection and says that “the Ministry, administrative authority, legal entity, competent local government authority and managers shall, on the request of interested legal and private entities, furnish data on the status and protection of nature, except for the data which are considered to be secret as per the Law”, and Article 108 thereof regulates furnishing of data and says that “the information related to nature protection shall be furnished by the authority referred to in Article 107 of this Law to the submitter of the request in accordance with the Law”.

The Law on Genetically Modified Organisms regulates certain matters related to availability of information and conditions for limited use, introducing and marketing of GMOs and GMO products, and conditions and measures for preventing and eliminating unwanted consequences. Consequently, the principle of publicity was defined whereby the general public shall have the right to be informed about GMOs management and included in decision-making process in accordance with the Law (Article 9). The Law prescribes the obligation to inform public with the content of application and decision on the application to use GMO in closed systems, and to organize public hearings (Article 25), and that GMO registers shall be publicly available (Article 58). Article 35 prescribes that when administration body competent for environmental protection gains knowledge of the alternation or unintentional change to the introduced GMO which may affect the human health and the environment, it shall evaluate such information, make them accessible to the general public and order the applicant to adjust the conditions of intentional introduction of GMOs into the environment or cancel the intentional introduction of GMOs and products containing, consisting of or deriving from GMOs into the environment. Also, Article 42 prescribes that the approval for placing on the market GMO or product containing, consisting of or deriving from GMOs and risk assessment for biological diversity, human health and the environment, except for the data designated as confidential, must be made available to the public in accordance with this Law.

Administration body competent for health matters, veterinary matters, administration authority competent for phytosanitary matters and the administration authority competent for environmental protection shall publish in the “Official Journal of Montenegro the list of GMOs or products containing, consisting of or deriving from GMOs for which they have issued a decision approving intentional introduction into the environment for commercial purposes or placing on the market (Article 60).

Provisions of Article 16 of the Law on Waste Management prescribes that the National Waste Management Plan shall be published in the Official Journal of Montenegro, and

the competent authority shall inform the public about preparation of Local Waste Management Plans by means of public radio broadcasting service and printed media (Article 17). Provisions of Article 29 further defines that the competent authority shall inform the public about the request submitted for issuing permit for processing or disposing waste, and about the request submitted for issuing permit for collecting or transporting waste (Article 35). Article 44 prescribes that the register of data about production and management of waste and issued permits is an integral part of the environmental protection information system.

The Law on Chemicals prescribes that the following shall be published in the Official Journal of Montenegro: List of existing chemicals (Article 23), List of priority existing chemicals (Article 27), List of classified chemicals (Article 31), and the List of hazardous chemicals of Rotherham Convention and lists of prohibited and strictly restricted chemicals in the European Union (Article 40). It is also prescribed that the Ministry shall establish and manage information system for chemicals, which shall particularly contain data about chemicals produced, imported, exported and marketed, data on permits issued for importing, exporting and marketing, data on testing conducted, data on accredited laboratories and DLP certificates that have been issued (Article 67).

Article 10 of the Law on Waters defines that the data for protection against harmful impact of waters shall be public. The data of the register of water resources which contains data on surface and underground waters, water bearing land and exploitation of river sediments from river beds and shores shall also be public.

The Forest Law defines that the Ministry competent for forestry matters shall inform the public by means of media about the health status of forests identified by monitoring (Article 47).

**(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;**

*Answer:*

The Law on Environment, Chapter VI Environmental Protection Information System and Public Information, Article 37 thereof, prescribes that the environmental protection information system shall be established for efficient identification, classification, processing, monitoring and registering of natural resources and environmental management. The information system shall contain data and information on the status of environment, environmental burden and impacts (Article 38). The information system shall be managed by the Agency and it will ensure access to other information systems and harmonization of all relevant information and data at national and international levels.

It is also defined that the regulation of the Ministry competent for environmental protection matters shall regulate the contents, method of managing and maintenance of the information system, data entry and processing methodology, structure, common

grounds, categories and levels of data collection, and the contents of data which are regularly and obligatory communicated to the public (Article 38).

The Law on Air Protection, Article 42, prescribes that the Agency shall inform the public and interested organisations (non-governmental organisations and associations working on environmental protection, consumer protection agencies, agencies for protection of rights of vulnerable population groups, health care institutions and relevant businesses) in a timely and appropriate manner about the quality of air and preparation of plans, programmes and measures undertaken to protect and improve the quality of air. Information and data on the quality of air shall be free and accessible by means of public information and on web-sites of competent authorities. Article 44 further provides the contents of the information system of the quality of air, which is an integral part of the environmental protection information system. Article 46 further prescribes that based on the data gathered by implementation of annual programme of monitoring the quality of air and other data, the Agency shall prepare annual information about the quality of air. The information shall be publicly available and shall be published on the web-site of the Ministry.

The Law on Environmental Impact Assessment prescribes that pursuant to this Law the competent authority shall inform the public by means of minimum one local or daily paper which is published in the territory to be affected by the planned project and by means of electronic media as well (Article 29).

The Law on Noise Protection in the environment prescribes that the data on noise in the environment and strategic maps of noise shall be published on the web-site of the Agency (Article 15). Adopted Action Plans shall be published on the web-site of the authority competent for adopting of Action Plan and submitted to the Agency for preparing a report on the level of noise in the environment (Article 18).

Reports on the status of environment are available at the web-site of the Environment Protection Agency: <http://www.epa.org.me/index.php/me/sektor-za-monitoring-analizu-izvjetavanje>

Texts of regulations in environmental protection are available at the web-site of the Agency: <http://www.epa.org.me/index.php/me/regulativa>.

The web-site of the Agency offers other information as well which facilitate implementation of national legislation which implement the Aarhus Convention (reports on the work of ecological inspection, approvals issued for Environmental Impact Assessments <http://www.epa.org.me/index.php/me/component/content/article/152-dozvole-za-eia-procjena-uticaja-na-zivotnu-sredinu>)

Article 25 of the Forest Law defines that in order to ensure the necessary data and information about forests, forest land and barren land, information system for forests and forestry of Montenegro shall be established and managed electronically by the competent administration authority. The information system shall particularly contain data about the status of and changes to forest ecosystems, network of forest infrastructure, operations in forests and forest owners and users.

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

*Answer:*

Article 19 of the Law on Environment defines that for the purpose of monitoring of implementation of objectives of the document on sustainable development and environmental protection, i.e. the National Strategy of Sustainable Development and the National Environmental Protection Programme, strategic, planning and programme documents relating to individual environmental segments and burden and other documents related to environmental protection, and for the purpose of overall insight into the state of environment, a report on the state of environment in Montenegro shall be prepared. More detailed contents of the report shall be prescribed by the state administration authority responsible for environmental protection. The report on the state of environment for the territory of Montenegro shall be prepared based on the National List of Indicators for environmental protection and other data in compliance with the regulation referred to in paragraph 2 of this Article. The National List of Indicators for environmental protection referred to in paragraph 3 of this Article shall be established by the Government on the proposal of the Agency. The report on the state of environment shall be prepared by the Agency and submitted to the Ministry.

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

*Answer:*

Article 4 of the Law on State Administration specifies that “the work of state administration authorities shall be public” and “citizens shall have access to data, documents, reports and information of the state administration authorities”. As for the relation between the state administration and citizens as defined by provisions of Articles 51-58 – Chapter VIII of this Law specifies that state administration authorities shall furnish required information and professional assistance in prescribed deadlines. According to Articles 95 – 98 of the Law on State Administration, state authorities shall regularly inform the public and media about their activities by means of press conferences, press releases, round tables, tribunes, and by distributing information by means of web-sites of the state administration authorities. Interested public representatives (media, organisations, individuals) shall send questions to state authorities in writing and electronically, where the practice showed that in order to get answers; they can reach an agreement with responsible persons and have meetings in order to clarify certain issues.

Article 13 of the Law on Environment specifies documents of sustainable development and environmental protection: National Strategy of Sustainable Development; National Environmental Protection Programme; local environmental protection plans; strategies, plans and programmes which are adopted, or which have been adopted under separate regulations in individual fields for individual environmental segments and loads. Article 41 of this Law outlines information and documents that the Agency is obliged to collect and publish. In addition, Articles 55 and 56 prescribe that the

Government adopts National Plan of Climate Changes and the National Plan for fighting against desertification with the Action Plan.

The required information is available on the following web-sites:

Web-site of the Environment Protection Agency: <http://www.epa.org.me/index.php/me/ot-nama>

Web-site of the Ministry of Sustainable Development and Tourism: <http://www.mrt.gov.me/ministarstvo>

Official Journal of Montenegro: <http://www.slistcg.me>

**(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;**

*Answer:*

Article 29 of the Law on Environment defines that for the purpose of integration in the system of management and control of environmental protection and informing the public about environmental impact of individual activities, legal entities and entrepreneurs may engage in the system of the European Union for environmental management (EMAS system).

Further on, Article 63 stipulates that for legal entities and entrepreneurs that apply technologies, products and market products whose impact is more favourable than of other similar products, or use renewable sources of energy (sun, wind, biogas, etc.), equipment and devices which are directly used for environmental protection, custom, tax and other benefits may be defined, or exemption from the payment obligation, under conditions and as defined by separate regulations. Separate regulations may define benefits for services and products for which return of packaging is stipulated or otherwise reduced negative influence of their environmental impact and whose use contribute to avoiding and reducing waste. The Government may subsidize or otherwise help activities which provide significant contribution to reducing negative environmental impacts.

Also, Article 64 stipulates that the environmental sign shall be defined for products intended to general consumption, except food, beverages and pharmaceuticals which, compared to similar products, produce less pollution generated by production, marketing, trading, consumption and disposal, or waste recycling. Ecological sign is also defined for processes and services which pollute the environment to a lesser extent. For products, processes or services, a legal entity and an entrepreneur may get the right to use ecological sign if their production, or process, or provision reduces: consumption of energy resources, emission of harmful and dangerous matter; production of waste; consumption of natural resources, etc.

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

*Answer:*

Please refer to provisions of Articles 37 and 38 of the Law on Environment; provisions of Articles 42, 44 and 46 of the Law on Protection of Air; provisions of Article 29 of the Law on Environmental Impact Assessment; provisions of Article 15 and 18 of the Proposal of Law on Protection from Noise in Environment.

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

*Answer:*

Article 23 of the Law on Environment stipulates that separate regulations define technical environmental protection standards for certain products, facilities, plants or devices, equipment and production procedures which may cause environmental risk or hazard.

Technical standards also stipulate, *inter alia*: method of manufacturing, production, labelling, handling and using the product. Please also refer to provisions of Article 64 of this Law.

Article 21 of the Law on Chemicals stipulates that the chemical must be packed and labelled as defined by this Law and regulations adopted under this Law and, in addition to data on the results of surveys that have been conducted on the packaging, should also contain: "Attention – the chemical not entirely tested yet". Further on, Article 35 stipulates that the chemical that is imported and marketed must be packed and labelled in compliance with this Law and regulations adopted under this Law. The packaging must comply with characteristics of the chemical, its purpose and the method of its use. Dangerous chemicals must be packed in the packaging which has a special closure which prevent their opening by children and must not be misleading in terms of the contents. Dangerous chemicals must be labelled so as to allow noticing of hazard by people with special needs. Guidelines for using hazardous chemicals which are classified into groups referred in Article 32, paragraphs f) to o) of this Law, and which are intended for general use, must contain warning for safe handling of the chemical and first aid procedures in case of accidents or failures. In addition, Article 36 stipulates that it is prohibited to label or state that the chemical, which is classified as hazardous, is less dangerous or not dangerous for human life and health and the environment. Chemicals must be labelled with clearly visible and readable headline in the language officially used in Montenegro.

The Regulation on substances which damage ozone layer and alternative substances, Article 20, stipulates that a legal entity, or an entrepreneur, who is entitled to maintain and/or repair and eliminate from use products which contain controlled and alternative substances, shall be in obligation to temporarily store collected controlled and alternative substances in cylinders for collecting substances until such substances are used again,

permanently removed or stored. Cylinders which contain regenerated controlled substances, prior to marketing, must be marked with a label which contains data stating that the substance has been regenerated, inventory code of the substance, name and address of the plant that performed regeneration.

Article 23 of this Regulation further stipulates that products and cylinders which contain alternative substances and their mixtures cannot be marketed if they are not labelled in compliance with this Regulation. Labelling of products and cylinders is performed with the label which contains a chemical formula, quantity of alternative substance expressed in kilograms and the headline: "contains fluored gas regulated by the Kyoto Protocol". If alternative substances are added to products outside the place of production, whose total quantity cannot be identified by the producer, the label must contain data about filling performed by the producer, a place for entering data on the quantity of substances which will be added outside the place of production and the place for entering data on total quantity of substances. The label on these products must be easily visible, readable and permanent. If this label is added to the existing label on the product, it must not be written in smaller letters and shall be placed on the part of the product or equipment which contains alternative substances or on the part of the product or equipment where they are filled or collected. Cooling devices, equipment and heating pumps whose insulation has been executed by foam, and where pumping out of foam is performed by alternative substances, cannot be marketed if not labelled by "removal of foam executed by fluored gases". Hermetically sealed systems are labelled by signs and they contain the label "hermetically sealed".

The Law on Waste Management, Article 42 stipulates that the producer or importer of the product which contains dangerous matters and which is used in households, is obliged to label such product with a label containing warning that the product contains hazardous matters and instructions which contain contents of hazardous matters, method of disposal of waste of this product, recycling opportunities, etc. Article 47 further defines that the producer of or importer of batteries and accumulators, and producer and importer of equipment with installed batteries and accumulators shall label batteries and accumulators with labels which contain instructions and warnings for separate collection, contents of heavy metals, recycling opportunities or disposal options, etc.

The Regulation on the method and procedure of registering placement of packaging and packed products on the market, establishing a system of taking, collecting and processing of waste packaging and operation of such system which regulates the system and procedure of registering placement of packaging and packed products on the market, establishing a system of taking, collecting and processing of waste packaging and operation of such system, Article 3 line 29 stipulates that hazardous goods are the good packed in the packaging labelled with "T", "T+" or "E".

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

*Answer:*

Article 40 of the Law on Environment stipulates that the register of environmental polluters shall contain on sources, types, quantities, method and place of discharge, transmission and disposal of polluting matters and waste into the environment. Integral



register of polluters is managed by the Agency based on local registers of environmental polluters managed by local self-government units.

The Regulation on detailed content and the method of managing the register stipulates detailed content and method of managing the register of polluters, obligation, method and deadlines for collecting and furnishing data on emissions or discharge and other data which are important for managing the register. Article 9 of the Regulation stipulates that the data contained in the register of polluters shall be publicly available, and provisions of Article 10 stipulate that management of the register of polluters shall use electronic programme equipment (application), which provides for network entry, processing and display of data. The data contained in the register of polluters shall be stored 10 years following the day of receiving them.

## **XII. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 5**

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

*Answer:*

The Law on Environment stipulates that the Environment Protection Agency shall establish and manage information system at national level. The Environment Protection Agency applied with the Project Fiche - IPA 2011 to get assistance for developing software design for the establishment of environmental protection information system. Implementation of this Project is expected end of 2014.

The environmental protection information system will improve and facilitate making decisions related to environmental management (improvement of the quality of strategic and planning documents, improvement of the process of making decisions on issuing approvals to reports of strategic impact assessment and environmental impact assessment, improvement of the work of inspection authorities, etc.), and improve environmental reporting to national and international institutions and public.

## **XIII. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 5**

**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:*

- A list of valid environmental legislation can be found on the following website of the Environment Protection Agency: <http://www.epa.org.me/index.php/me/regulativa>
- A list of licences (permits for import/export of substances which damage the ozone layer and products which contain these substances or produced from them, permits for EIA – Environmental Impact Assessment, CITES permits – Convention on International Trade in Endangered Species, permits for import of waste, permits for

transit of waste, permits for export of waste, permits for import of chemicals, permits for collecting, buying and trading in plants and animals, approval of reports on strategic environmental impact assessment (SEA), permits for collecting and transporting hazardous waste can be found on the following web-site of the Agency: <http://www.epa.org.me/index.php/me/dozvole>

- Aarhus Centre in Podgorica ([www.arhuscg.me](http://www.arhuscg.me)) allows interested public to access information and participation of citizens in making environmental decisions. The Aarhus Centre Podgorica, as a part of the Environmental Protection Agency, deals with implementation of principles of Aarhus Convention.

#### **XIV. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 5**

**Give relevant web-site addresses if available:**

*Answer:*

See internet addresses listed under Article 3.

#### **XV. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON PUBLIC PARTICIPATION IN DISCUSSIONS ON SPECIFIC ACTIVITIES IN ARTICLE 6**

**List legislative, regulatory and other measures that implement the provisions on public participation in decisions on specific activities in article 6**

**Explain how each paragraph of Article 6 is implemented.**

*Answer:*

Transposition of public participation in making decisions on specific activities referred to in Article 6 of Aarhus Convention shall be ensured through a number of regulations in MNE:

- Constitution of Montenegro (Official Journal of MNE, no. 01/07)
- Law on Environment ("Official Journal of MNE", number 48/08, 40/10)
- Law on Environmental Impact Assessment ("Official Journal of RMNE", no. 80/05, 40/10)
- Law on Integrated Prevention and Control of Environmental Pollution ("Official Journal of RMNE", no. 80/05 and "Official Journal of MNE", no. 54/09)
- Law on Genetically Modified Organisms ("Official Journal of Montenegro", no. 22/08)
- Law on Spatial Planning and Construction of Buildings ("Official Journal of Montenegro", no. 51/08, 40/10)
- Regulation on projects subject to environmental impact assessment ("Official Journal of RMNE", no. 20/07)

- Regulation on types of activities and plants for which integrated permit is issued (“Official Journal of Montenegro”, no. 07/08)

**Describe the transposition of the relevant definitions in Article 2 and the non-discrimination requirement in Article 3, paragraph 9.**

*Answer:*

As in Article 4

**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;**

*Answer:*

The Law on Environmental Impact Assessment, Article 5 paragraph 1, stipulates that the Government’s Regulation defines: projects which require impact assessment and projects which may require impact assessment. The competent authority decides on the need for impact assessment in each individual case for projects which request impact assessment.

In the Regulation on the projects which require environmental impact assessment, projects for which environmental impact assessment must be conducted are defined in List I of this Regulation, and projects which may require environmental impact assessment are defined in List II of this Regulation.

The Law on Integrated Prevention and Control of Environmental Pollution, Article 3, stipulates that types of activities, plants and limit capacities within every type of activity for which permits are issued shall be defined by the Government’s regulation.

The Regulation on types of activities and plants, for which integrated permit is issued, defines types of activities, plants and limit capacities within every type of activities for which integrated permits are issued.

**(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;**

*Answer:*

Please refer to provisions of Article 5 paragraph 1 of the Law on Environmental Impact Assessment. In the Regulation on the projects which require environmental impact assessment, projects for which environmental impact assessment must be conducted are defined in List I of this Regulation, and projects which may require environmental impact assessment are defined in List II of this Regulation.

**(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;**

*Answer:*

Article 4 of the Law on Environment defines the principle of access to information and participation of public according to which everyone shall have the right to be informed about environmental status and to participate in the process of decision-making whose implementation could affect the environment. The data on the status of environment shall be public.

For all projects which are planned and executed, and which may have substantial environmental impact, provisions of the Law on Environmental Impact Assessment prescribe, *inter alia*, that the competent authority shall inform interested public in regards to giving opinion within the procedure of deciding on the environmental impact assessment for the project, Article 12 paragraph 1; deciding on the requirement for defining the scope and contents of the elaborate (Article 16 paragraph 4 and paragraph 8 ); deciding on the requirement for issuing approval for the elaborate (Article 20 paragraph 1 and Article 24 paragraph 3).

The Law on Integrated Prevention and Control of Environmental Pollution prescribes that the competent authority shall inform interested authorities, organizations and public about the contents of the request for issuing integrated permits; on draft permit and opportunities to review supporting documents; on the decision on issuing permits, i.e. about denying the request for issuing permits (Article 10, 11, 14).

The Law on Environmental Impact Assessment, Article 30, regulates the matter of informing other states about trans-boundary impact, i.e. if a project can have a substantial environmental impact in another country or if requested by the country whose environment may be significantly affected, the authority responsible for environmental protection matters shall notify another country as soon as possible, and not later than the deadline stipulated for informing its public.

The Law on Integrated Prevention and Control of Environmental Pollution, Article 23, stipulates that if operations of a plant may have a significant environmental impact on another state, or if requested by the state whose environment may be significantly affected, the authority responsible for environmental protection matters shall furnish information to another state for consideration.

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

*Answer:*

Requirements related to public participation prior to making administrative decisions which allow activities which will likely have a significant environmental impact are

defined by provisions of the Law on Environmental Impact Assessment. Article 12 of the Law stipulates that the authority responsible for implementation of impact assessment shall inform interested public about the request that has been filed for deciding about the need for impact assessment, within five days following the day when the orderly request was received.

Article 16 of the Law stipulates that the competent authority for implementation of the impact assessment procedure shall, within seven days following the day of receiving of proposal of the Commission for defining the scope and contents of elaborate of the project's environmental impact assessment, which is established by the competent authority, as per Article 21 of the Law, inform interested public thereof. Within fifteen days following the date of information on the Commission's proposal, interested public may submit opinion to the competent authority, which shall consider the opinion of the interested public when making final Decision. Once the final Decision has been made in regards to the scope and content, the competent authority shall inform interested public within five days following the date of the Decision.

Article 20 of the Law stipulates that the competent authority shall, within five days following the date of receiving approval for the Project Environmental Impact Assessment, inform interested public about deadlines and place of public review of the respective Elaborate, method and deadlines for submitting comments and opinions, and address of the competent authority as well. In addition to this, the respective notification shall contain information about the place and time of public hearing. As per provisions of this Article, the public hearing may take place not earlier than ten days following the date of notification to interested public. Comments and opinions of interested public given during the review of the Elaborate and public hearing thereon shall be submitted to the Commission for environmental impact assessment, established by the competent authority, as per Article 21 of the Law, which shall take them into consideration when evaluating impact assessment Elaborate.

Article 24 of the Law stipulates obligation of the competent authority to inform, within five days following the date of reception of the report and proposal of decision of the Impact Assessment Commission, interested authorities and organisations about the decision to give approval of the assessment elaborate or refusal of the request for approval of the elaborate.

Article 10 of the Law on Integrated Prevention and Control of Environmental Pollution stipulates that the competent authority shall inform interested authorities and organisations and public about reception of the request within five days following the date of receiving orderly request for issuing of permission, i.e. additional data, documents and information. Interested authorities and organisations and representatives of interested public may submit their opinions to the competent authority within 15 days following the date of reception of the notification. Article 11 further defines that the competent authority shall prepare draft permission within 45 days following the date of reception of orderly request for issuing permit, taking into account opinions of other authorities and organisations and interested public. The competent authority shall inform interested authorities and organisations and public about draft permission and opportunity to review supporting documents within five days following the date of draft permission, and submit a copy of the draft on their request within five days following the day of reception of this request. Interested authorities and organisations and interested public may submit their opinions on draft permission to the competent authority within 15

days following the date of reception of the notification. The competent authority shall submit draft permission, together with the operator's request and supporting documents, opinions of interested authorities and organisations and interested public given on draft permission to the technical commission established by the competent authority, within 10 days.

Article 14 stipulates that the competent authority shall submit the decision on issuing permission, or refusal of the request for issuing the permission to the operator and inform other authorities and public within eight days following the date of the decision.

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

*Answer:*

Please refer to Articles 12 and 13 of the Law on Environmental Impact Assessment and Article 10 of the Law on Integrated Prevention and Control of Environmental Pollution.

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

*Answer:*

Measures taken to encourage potential submitters to identify interested public participate in discussions and to provide information about objectives of such request prior to submitting the request for obtaining permission, are not envisaged.

**(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;**

*Answer:*

Please refer to provisions of Article 20 paragraph 1, Article 23, Article 24 paragraph 3, Article 32 of the Law on Environmental Impact Assessment.

Also refer to provisions of Articles 10, 11, 14, 22 and 24 of the Law on Integrated Prevention and Control of Environmental Pollution.

**(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;**

*Answer:*

The Law on Environmental Impact Assessment stipulates, inter alia, that the competent authority shall inform interested public about giving opinions in the procedure of deciding upon the request for defining scope and contents of the elaborate (Article 16 paragraph 4 and paragraph 8); deciding upon the request for approval of the elaborate (Article 20 paragraph 1 and Article 24 paragraph 3).

The Law on Integrated Prevention and Control of Environmental Pollution stipulates that the competent authority shall inform interested authorities, organisations and public to give opinions on contents of the request for issuing integrated permission; about draft permission and opportunities to review supporting documents; (Article 10, 11).

**(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;**

*Answer:*

Please refer to Article 24 of the Law on Environmental Impact Assessment and Article 14 of the Law on Integrated Prevention and Control of Environmental Pollution.

**(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;**

*Answer:*

Please refer to Article 24 of the Law on Environmental Impact Assessment and Articles 14 and 22 of the Law on Integrated Prevention and Control of Environmental Pollution.

**(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;**

*Answer:*

Article 26 of the Law on Environmental Impact Assessment stipulates that approval of the elaborate ceases to be valid if the project implementing party fails to obtain permit or approval for the project implementation within two years following the date of submission of decision on approval.

Article 17 of the Law on Integrated Prevention and Control of Environmental Pollution stipulates that auditing of the permission must be performed every five years following its issuing. Article 19 further defines that in case of ex officio auditing of the permission and planned changes to the plant or its operation which does not constitute a significant change in terms of this Law, the competent authority may alter conditions specified by the permission. If a large number of changes to the permission make efficient control of activities difficult, the competent authority may request the operator to submit a new request for issuing the permit.

**(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 Law on Genetically Modified Organisms, Chapter VI, regulates the matter of intentional introduction of GMO into the environment. Also, Article 32 defines that before the intentional introduction of GMOs, products containing, consisting of or deriving from GMOs into the environment, the applicant shall obtain the approval of the administration body competent for environment protection (Environment Protection Agency). Before issuing an approval, the Agency may request the applicant to submit additional data. The applicant may in the application refer to the data or results of intentional introduction of GMOs into the environment from other application that has been submitted to the administration body competent for environmental protection if such data are not designated as a secret or if it has obtained written consent of the applicant in question. Provision of Article 33 stipulates that the administration body competent for environmental protection shall decide on the application within 90 days from the day the complete application was received. The administration body shall enter the applicant that has been approved for intentional introduction of GMOs, products containing, consisting of or deriving from GMOs into the environment, in the register of issued approvals for intentional introduction into the environment and shall issue a decision on entry in the register to the applicant within eight days from the day of such entry. Article 34 prohibits introduction of GMOs into the environment in the protected areas, in the areas intended for organic production of agricultural products, and in the areas for development of ecotourism. Also, provision of Article 35 stipulates that the applicant shall, in the course of the procedures for approving introduction of GMOs into the environment, without delay notify the competent body of any change in the requirements that are relevant for risk assessment, unintentional change or new information and it shall provide for more strict measures with the purpose of protecting human health and the environment, which are indicated in the application. When administration body competent for environmental protection gains knowledge of the information which may have significant effect on the assessment of risk to human health and the environment, it shall evaluate such information, make them accessible to the general public, and order the applicant to adjust the conditions of intentional introduction of GMOs into the environment or cancel the intentional introduction of GMOs and products containing, consisting of or deriving from GMOs into the environment. If, in the course of the procedure of introducing GMOs into the environment, the GMO business operator suspects that the level of risk is higher than the one that was estimated, it shall without delay cancel the introduction of GMOs into the environment and notify the administration body (Agency). Article 36 stipulates



that the GMO business operator shall submit to the administration body competent for environmental protection the report on the progress of intentional introduction of the GMOs into the environment within 60 days from the day of introduction and, within the deadlines specified in the approval, submit interim reports in written or electronic form.

## **XVI. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 6**

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

*Answer:*

- Existing institutional and other capacities of local self-government competent authorities are not satisfactory and thus measures need to be taken to build them.
- Non-governmental organisations used this specific example to highlight violation of provisions of the Aarhus Convention by local self-government authorities since interested public is not given an opportunity to review on the web-site of the local self-government the documents needed for adequate participation in the public hearing.

## **XVII. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 6**

**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:*

In 2010, the Environment Protection Agency completed 59 environmental impact assessment procedures in total. Out of this number, 37 projects obtained approvals for impact assessment elaborates, 18 projects were defined as not needing impact assessments, and 4 projects did not get approvals for impact assessment elaborates.

In 2010, local governments completed 99 environmental impact assessments in total, of which the largest number related to Podgorica (33), Kotor (14), Nikšić (8), Bijelo Polje (6), Herceg Novi (4), Danilovgrad (5), Tivat, Rožaje and Kolašin (3), etc. Of the total number of cases in all local governments (99), 35 projects were defined as projects not needing impact assessment, and 64 projects got approvals of impact assessments.

As per Article 3 paragraph 3 of the Law on Environmental Impact Assessment, projects intended for defence are not subject to impact assessment procedure.

## **XVIII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 6**

**Give relevant web-site addresses if available**

*Answer:*

Ministry of Sustainable Development and Tourism: <http://www.mrt.gov.me/>

Environment Protection Agency: <http://www.epa.org.me/>

Aarhus Centre Podgorica: <http://www.aarhus.cg.me/>

## **XIX. PRACTICAL AND/OR OTHER PROVISIONS MADE FOR THE PUBLIC TO PARTICIPATE DURING THE PREPARATION OF PLANS AND PROGRAMMES RELATING TO THE ENVIRONMENT PURSUANT TO ARTICLE 7**

**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, pursuant to Article 7. Describe the transposition of the relevant definitions in Article 2 and the non-discrimination requirement in Article 3, paragraph 9.**

*Answer:*

Transposition of provisions on public participation in the course of preparation of plans and programmes relating to environment referred to in Article 7 of the Aarhus Convention is ensured through a number of regulations in MNE:

- Constitution of Montenegro ("Official Journal of MNE", no. 01/07)
- Law on Environment ("Official Journal of MNE", number 48/08, 40/10)
- Law on Environmental Impact Assessment ("Official Journal of RMNE", no. 80/05, 40/10)
- Law on Integrated Prevention and Control of Environmental Pollution ("Official Journal of RMNE", no. 80/05 and "Official Journal of MNE", no. 54/09)
- Law on Strategic Environmental Impact Assessment ("Official Journal of RMNE", no. 80/05),
- Law on Environmental protection ("Official Journal of MNE", no. 51/08)
- Forest Law ("Official Journal of Montenegro", no. 74/10)
- Law on Waters ("Official Journal of RMNE", no. 27/07)
- Law on Protection from Noise in Environment ("Official Journal of Montenegro", no. 28/11)
- Law on Genetically Modified Organisms ("Official Journal of Montenegro", no. 22/08)
- Law on Waste Management ("Official Journal of RMNE", no. 80/05 and "Official Journal of MNE", no. 73/08)
- Law on Air Protection ("Official Journal of MNE", no. 25/10)
- Law on Spatial Planning and Construction of Buildings ("Official Journal of Montenegro", no. 51/08, 40/10)
- Law on Prohibition of Discrimination ("Official Journal of Montenegro", no. 46/10)

Article 7 of the Law on Strategic Environmental Impact Assessment provides the following definitions: plans or programmes; strategic environmental impact assessment of plans or programmes; strategic assessment report; public; interested public, interested authorities and organisations.

b) Please refer to provisions of Article 8 of the Constitution of Montenegro and Articles 1 and 2 of the Law on Prohibition of Discrimination.

## **XX. OPPORTUNITIES FOR PUBLIC PARTICIPATION IN THE PREPARATION OF POLICIES RELATING TO THE ENVIRONMENT PROVIDED PURSUANT TO ARTICLE 7**

**Explain what opportunities are provided for public participation in the preparation of policies relating to the environment, pursuant to Article 7.**

*Answer:*

Article 5 of the Law on Strategic Environmental Impact Assessment stipulates that the strategic assessment shall be carried out for plans or programmes when there is a possibility that their implementation shall cause significant impacts on the environment. The strategic assessment elaboration is mandatory for all plans and programmes in the area of agriculture, forestry, fishery, hunting, energy, industry, including mining, transport, tourism, regional development, telecommunications, waste management water management, coastal zone management, urban and spatial planning or land use planning, laying down the framework for future development of projects that are subject to environmental impact assessment elaboration in accordance with the special act, as well as for plans and programmes which, considering the area within which they are carried out, could affect the protected areas, natural habitats and preservation of wildlife. The decision on the need for strategic impact assessment for plans or programmes which envisage the use of smaller areas at local level or in case of minor changes to plans or programmes which do not require the prescribed process of adoption, and for plans or programmes not stated, shall be made by the authority competent for preparation of the plan or programme in compliance with criteria stipulated by this Law in order to establish whether substantial environmental impacts are likely to take place. Strategic assessment shall not be performed for plans and programmes intended for the country's defence, for plans of mitigation and removal of consequences of natural disasters and for financial and budgetary plans.

Article 10 of the Law prescribes that the competent authority responsible for preparation of plans or programmes shall make the decision on the elaboration of SEA based on the previously obtained opinion of the competent environmental protection authority, competent health care authority and other authorities and organisations concerned. The competent authority responsible for preparation of plans or programmes shall make the decision on the elaboration of SEA simultaneously with the decision on preparation of plans or programmes. We would also like to point out that the Law on Spatial Planning and Construction of Buildings defines that if the strategic environmental impact assessment is to be prepared for a planning document, in compliance with separate regulations, decision on this shall be made simultaneously with making the decision on drafting of the planning document (Article 31), and Article 42 stipulates that the report on

strategic environmental impact assessment shall be placed for public hearing along with the placement of the planning document for public debate.

The Law on Strategic Environmental Impact Assessment regulates participation of the public in the phase of deciding upon approval to the Strategic Impact Assessment Report. Article 19 of this Law defines that the competent authority for preparation of plans or programmes (and implementation of strategic assessment) shall inform the public and the public concerned about the methods and deadlines for public inspection into the contents of the SEA Report and method of submission of opinions, as well as about the time and venue of public debate holding. The public debate cannot be held sooner than 30 days from the date of announcement to the public and the public concerned, and shall be carried out by the competent authority responsible for preparation of plans or programmes. As per provisions of Article 20, the competent authority responsible for preparation of plans or programmes shall compile the report on participation of authorities and organisations concerned and about the public debate within 30 days from the date of the public debate completion, and it shall include opinions submitted during the public debate in regards to the Strategic Impact Assessment Report and it shall include the rationale for all the accepted or rejected opinions. Further on, pursuant to Article 21 of the Law, the competent authority responsible for preparation of plans or programmes shall submit the Strategic Environmental Impact Assessment Report to the competent environmental protection authority for approval, along with the report on participation of authorities and organisations concerned. If implementation of a plan or a programme may have a negative impact on the environment of another country, or if another country whose environment may be significantly endangered requests so, the competent state administration authority responsible for environmental protection shall submit, in the shortest period and not later than the date its own public is informed, information about the plan or the programme to the other country for consideration within the procedure of participation of stakeholders and organisations and public.

The Law on Spatial Development and Construction of Structures, Articles 6 and 10, stipulates that every person shall have the right to be informed on affairs pertaining to spatial development and construction of structures, to propose initiatives, give opinions or otherwise participate in affairs related to spatial development and construction of structures and that the planning document shall have a character of a public document. Article 16 further stipulates that the Government or parliament of the local self-government shall adopt one-year spatial development programme, and that public participation shall be realized in preparation and adoption of the programme. A programme for organization of public debate shall be submitted to the Government along with the planning document (Article 41). The Government or local self-government executive authority shall place draft planning document for public debate, which shall be announced in one daily printed media being distributed on the territory of Montenegro, on the web-site of the responsible party and shall last from 15 to 30 days from the day of publication. The party responsible for preparatory tasks shall be obliged to compile a report on public debate and to submit to the drafted that will embed remarks and suggestions in the planning document in an appropriate manner. The Report on Strategic Environmental Impact Assessment shall be placed for public debate along with

the placement of the planning document for public debate (Article 42). Article 43 further stipulates that a repeated public debate may be carried out provided that upon conducted public debate the planning document differs significantly from the original draft planning document. The repeated public debate shall be carried out in the manner prescribed under Article 42 of this Law provided that its duration shall be 15 days from the day of publication.

The party responsible for preparatory tasks shall be obliged to enable insight into the report on public debate, which is published on the web-site, to all interested parties, and to submit to the Government or to the local self-government executive authority a proposal of the planning document with the report on public debate (Articles 44 and 45).

Article 42 of the Law on Air Protection stipulates that the Agency shall provide timely and appropriate information to public and interested organisations (non-governmental organisations and associations dealing with environmental protection, consumer protection associations, associations for protection of rights of vulnerable population groups, healthcare institutions and relevant businesses) about the quality of air and adopting of plans, programmes and measures for protection and improvement of the quality of air. Information and data on the quality of air are free of charge and available via means of public information and on web-sites of competent authorities.

Article 109 of the Law on Nature Protection stipulates that competent authorities are obliged to provide for participation of public and interested entities in the procedure of preparation of documents relating to announcement and management plan for protected natural resources by publishing information in minimum one printed medium distributed in the territory of Montenegro. Interested authorities and organisations shall be informed by mail, telefax or electronically. The notification shall contain data on the method, deadline and place of public insight, and the method and deadline for submitting comments and opinions.

Article 16 of the Law on Protection from Noise in Environment stipulates that Action Plans shall be prepared based on strategic noise maps for main roads, main railway, main airport and agglomerations, while Article 18 stipulates that authorities competent for preparing Actions Plans shall inform authorities, organisations and interested public about the method and deadlines for reviewing draft Action Plans, submitting opinions, time and place of public hearing, through media. Adopted Action Plans shall be published on the web-site of the authority competent for preparing the Action Plan and submitted to the Agency for preparing a report on the noise level in the environment.

The Forest Law provides for participation of public in the procedure of preparing planning documents in forestry (Articles 16 and 17). This Law also stipulates that protection forests are defined by the Government document based on the elaborate on the establishment and maintenance of protection forests which shall be prepared by the competent administrative authority. The competent administrative authority shall publish draft elaborate on its internet site and inform the public about the method for submitting opinions and suggestions relating to the elaborate, obtaining opinions of local self-government units on whose territory the protection forest is planned and the government administration authority responsible for natural and environmental protection (Article 30).

Article 3 of the Law on Waters stipulates the main principle of water and water resources management which is practiced so as to ensure conditions for public participation in the decision-making process relating to waters. Consequently, Article 30 stipulates that the competent administrative authority is obliged to provide for active participation of public and interested entities in the procedure of preparing and adopting water management plan, or changes thereto once the procedure of review has been completed and make all documents important for its preparation available (Articles 30 and 31).

## **XXI. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 7**

**Describe any obstacle encountered in the implementation of Article 7**

*Answer:*

Within the procedure of drafting of the planning document, interested users of space are given opportunities to submit initiatives for planning of certain segments on individual locations by submitting a request to the Ministry through the survey of users of space or during public debate.

Participation of public in drafting of planning documents contributes to the quality of documents and, at the same time, to raising awareness of importance of spatial planning.

Increasingly strong emphasis is placed on the public participation. Citizens are becoming aware that by participating actively in public debates, by giving comments and opinions, they become active partners in the process of drafting of planning documents and thus contribute to addressing matters of personal and public interest as well.

Public debates for national planning documents which last for 30 days are published in printed media; the draft plan with strategic assessment is reviewed; electronic version of the plan is put on the web-site of the Ministry; round tables take place.

One of the problems in including the public is that in addition to a number of opportunities for participating in the public debate process, the participation of interested parties is insufficient. Individuals mostly participate in the process of public debate in order to achieve only personal and individual interests, which largely divert from general interests.

## **XXII. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 7**

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

*Answer:*

- At the level of the Environment Protection Agency, 14 approvals for Reports on Strategic Environmental Impact Assessment were issued in 2010.

- The Ministry of Sustainable Development and Tourism, with support of the World Bank, is implementing the Project – Land Administration and Management / LAMP, whose part is related to the development of Spatial Urban Plans (SUP) for six municipalities. Workshops on participative approach to spatial planning were held under this project in the period between April 26<sup>th</sup> and May 7<sup>th</sup>. The topic of the workshop was addressed from three aspects: planning – “Participative approach in the planning process”, sociological – “Importance of participation of social groups in spatial planning” and legal – “Legal aspects of participation of citizens in spatial planning”. Each of the workshops was attended by around 30 participants from the local self-government, public enterprises, NGO sector, and citizens, economy representatives and authors of plans as well.

These workshops were aimed at informing and educating all parties about the citizens having the right, obligation and responsibility as well to participate in drafting of spatial planning documents, and every spatial plan will be much easier to implement if citizens participate in its adoption. Conclusions of these workshops are: everybody’s awareness needs to be changed and developed in regards to importance of participation of citizens in making decisions, it is necessary to inform and educate all parties that citizens have the right, obligation and responsibility as well to participate in drafting of Spatial Plans. It was also concluded that, in addition to public debates, other methods of inclusion of citizens, such as workshops in the first place, surveys and interviews, focus groups, etc., need to be used as well. Also, media, as transmitters of messages and elements of constructive criticism as well, need to be included. Workshops will continue to take place.

### **XXIII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 7**

**Give relevant web-site addresses if available:**

*Answer:*

See internet addresses under Article 3.

**XXIV. EFFORTS MADE TO PROMOTE PUBLIC PARTICIPATION DURING THE PREPARATION OF REGULATIONS AND RULES THAT MAY HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT PURSUANT TO ARTICLE 8**

**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, pursuant to Article 8. 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:*

Article 80 of the Law on State Administration stipulates that ministries and other administrative authorities shall be obliged to provide for cooperation with non-governmental organisations, which shall specifically be implemented by: consulting the non-governmental sector about legal and other projects and regulations governing the realization of rights and freedoms of citizens; enabling the participation in the work of working groups for the consideration of issues of common interest, or for the normative regulation of specific issues; organizing joint public discussions, round tables, seminars and other forms of joint activities and in other appropriate forms; informing about the content of the work programme and of reports on activities of state administration authorities.

Article 97 further defines that in preparing laws that shall regulate rights, obligations and legal interests of citizens, a minister shall have the draft law published in media and invite all stakeholders to present their comments, proposals and suggestions. A minister may as well decide to implement the procedure of public debate when preparing other laws. When organizing consultations or other forms of professional treatment of issues under their competence, ministries and administrative authorities shall announce it in public means of information and enable the media to follow the work, consultations or other form of professional treatment of an issue (Article 98).

The Code of Conduct of the Government of Montenegro, Article 33, stipulates that when the Government deems necessary to organize a public debate in the procedure of adoption of individual laws or other acts, it shall draft a law or other act, establish a programme of the debate, nominate an authority to implement the debate and set timings of public debates which may not be shorter than 15 days.

**XXV. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 8**

**Describe any obstacles encountered in the implementation of Article 8.**

*Answer:*

Article 8 of the Aarhus Convention envisages that each party shall “strive” to promote effective public participation in the procedure of adopting regulations that may have a



significant effect on the environment. While the provision does not use imperative in terms of obligations of public authorities, it should be interpreted for the benefit of public participation. The term “regulations” should be interpreted broadly and it includes both laws and by-laws which may have a significant effect on the environment. Measures that should be taken in order to provide for public participation include: setting reasonable timeframes for various phases of deciding, publishing and otherwise presenting publicly draft documents and including public in the decision-making process through public debates, whether directly or through consultative representation bodies.

## **XXVI. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 8**

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

*Answer:*

- In relation to the Action Plan for implementation of the Strategy of Cooperation of the Government of Montenegro and non-governmental organisations 2010-2011, the Ministry of Sustainable Development and Tourism adopted end of March 2011 the Guidelines on criteria and procedure of selecting NGOs for this Ministry’s working bodies. Based on these Guidelines the Ministry of Sustainable Development and Tourism sends open invitations to non-governmental organisations to nominate candidates for working groups for drafting proposals of laws or some other documents.
- Proposal of the text of the “*Criteria and procedures for selecting representatives of environmental non-governmental organisations for authorities and bodies established by the Government of Montenegro*” was prepared by 32 non-governmental organisations and it was adopted in September 2008. This document enables public and transparent election of representatives of non-governmental sector for Councils, Boards, etc. Based on this document a tender was launched and representatives of the non-governmental sector were selected for the Council of the Environment Protection Agency in December 2008.
- Office for cooperation with NGOs

The Government of Montenegro, at the session of April 15<sup>th</sup> 2010, made a Decision on the establishment of the Council for cooperation between the Government of Montenegro and non-governmental organisations. Pursuant to Article 2, the Council shall monitor implementation of the Strategy of Cooperation between the Government of Montenegro and non-governmental organisations and results of activities specified by the Action Plan for implementation of the Strategy for the period 2009-2011; encourage development of relations and cooperation between the Government of Montenegro and non-governmental organisations in order to improve the quality of life and work of citizens; give opinions to the Government in regards to draft regulations which affect institutional and normative frameworks for the work of non-governmental organisations in Montenegro in order to create enabling environment for their development and work; initiate adoption of new or changes and

amendments to existing regulations in order to create a better normative and institutional frameworks for the work of non-governmental organisations and achieving of other objectives stipulated by the Strategy; provide support to inclusion of relevant non-governmental organisations in the process of establishing and implementing public policies, or participation of non-governmental organisations in debates on regulations, strategies and programmes; encourage cooperation between the Government and state administration authorities and non-governmental organisations in the country and abroad, and with relevant entities in the international community in the process of international and inter-sectoral cooperation; review periodical and annual reports prepared by state administration authorities on the cooperation with non-governmental organisations in individual areas and funds allocated for projects of non-governmental organisations and report to the Government on the level of implementation of the cooperation; review other matters and documents related to implementation of the Strategy and activities defined by the Action Plan.

## **XXVII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 8**

**Give relevant web-site addresses if available:**

*Answer:*

Ministry of Sustainable Development and Tourism: <http://www.mrt.gov.me/>

Environment Protection Agency: <http://www.epa.org.me/>

Aarhus Centre Podgorica: <http://www.arhuscg.me/>

Parliament of Montenegro: <http://www.skupstina.me/>

Ministry of Justice: <http://www.mpa.gov.me/>

Official Journal of Montenegro: <http://www.slistcg.me>

## **XXVIII. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON ACCESS TO JUSTICE IN ARTICLE 9**

**List legislative, regulatory and other measures that implement the provisions on access to justice in Article 9.**

*Answer:*

Transposition of provisions on access to justice referred to in Article 9 of Aarhus Convention is ensured through a number of regulations in MNE:

- Constitution of Montenegro (“Official Journal of MNE”, no. 01/07)
- Law on State prosecution (“Official Journal of RMNE”, no. 69/03, “Official Journal of MNE”, no. 40/08)
- Criminal Code (“Official Journal of RMNE”, no. 70/03, 7/04, 47/06)
- Criminal Procedure Code (“Official Journal of MNE”, no. 57 /09, 49/10)

- Law on Liability of Legal Entities for Criminal Offences (“Official Journal of RMNE”, no. 2/07, 13/07)
- Law on Criminal Offences (“Official Journal of Montenegro”, no. 01/11, 06/11)
- Civil Procedure Act (“Official Journal of RMNE”, no. 22/04, 28/05, 76/06)
- Law on Constitutional Court (“Official Journal of MNE”, no. 64/08)
- Law on Courts (“Official Journal of RMNE”, no. 5/02, 49/04 and “Official Journal of MNE”, no. 22/08)
- Law on Inspection Supervision (“Official Journal of RMNE”, no. 39/03)
- Law on Free Access to Information (“Official Journal of RMNE”, no. 68/05)
- Law on General Administrative Procedure (“Official Journal of RMNE”, no. 60/03)
- Law on Administrative Dispute (“Official Journal of RMNE”, no. 60/03)
- Law on State Administration (“Official Journal of RMNE”, no. 38/03, “Official Journal of MNE”, no. 22/08)
- Law on Local Self Government (“Official Journal of RMNE”, no. 42/03... Official Journal of MNE 88/09)
- Law on Civil Servants and Government Employees (“Official Journal of RMNE”, no. 50/08, “Official Journal of MNE”, no. 49/10)
- Law on Prohibition of Discrimination (“Official Journal of Montenegro”, no. 46/10)
- Law on Environment (“Official Journal of MNE”, number 48/08)
- Law on Environmental Impact Assessment (“Official Journal of RMNE”, no. 80/05)
- Law on Integrated Prevention and Control of Environmental Pollution (“Official Journal of RMNE”, no. 80/05 and “Official Journal of MNE”, no. 54/09)
- Law on Strategic Environmental Impact Assessment (“Official Journal of RMNE”, no. 80/05)
- Law on Nature Protection (“Official Journal of MNE”, no. 51/08)
- Law on Genetically Modified Organisms (“Official Journal of Montenegro”, no. 22/08)
- Law on Waste Management (“Official Journal of RMNE”, no. 80/05 and “Official Journal of MNE”, no. 73/08)
- Law on Protection of Air (“Official Journal of MNE”, no. 25/10)
- Law on Spatial Planning and Construction of Buildings (“Official Journal of Montenegro”, no. 51/08, 40/10)
- Law on Free Legal Aid (“Official Journal of MNE”, no. 20/11).

**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.**

*Answer:*

Please refer to provisions of Articles 8, 20 and 23 of the Constitution of Montenegro; Articles 1 and 2 of the Law on Prohibition of Discrimination; Article 42 of the Law on Environment; Articles 20 and 24 of the Law on Free Access to Information.

**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;**

*Answer:*

Article 20 of the Law on Free Access to Information stipulates that a complaint may be presented against any document of a first instance government agency deciding upon any request for the information before the authority performing supervision of such first instance agency's work, and if such authority does not exist, an administrative dispute may be instituted against such document before the Administrative Court of Montenegro.

A complaint to the decision of an authority in regards to the request for access to information may be submitted to the government authority which supervises the work of the first instance authority. Consequently, a complaint may be submitted to the government authority if:

- the request has been rejected fully or partly;
- it fails to act upon the request immediately, and not later than eight days following the day of submission of the request for access to information (Article 16 paragraph 1 of this Law);
- fails to provide direct insight into public records, original or a copy of information in premises of the government authority (Article 13 paragraph 1 line 1 of this Law);
- fails to allow transcription, photocopying or translation of information, etc. (Article 13 paragraph 1 lines 2 and 3 of this Law);
- fails to provide information about the scope of deletion on the part of the information with restricted access or fails to provide access once a part of the information has been deleted (Article 13 paragraphs 2 and 3 of this Law).

Further on, Article 22 stipulates that any government agency relevant for making decision upon any complaint shall be in obligation to decide thereupon, and to deliver such decision to a complainant concerned, whereas within 15 days as of the day such complaint has been submitted.

Article 24 stipulates that any applicant presenting a request for access to the information or any other person interested therein shall be entitled to the court protection during any administrative dispute procedure, and that the procedure upon a suit instituted in relation to access to the information shall be urgent. Therefore, administrative procedure may be instituted by a complaint against the final decision upon the request for access to information, and procedure based on the complaint shall be urgent. This Article provides for further protection of fundamental rights and freedoms and such protection at the same time implies the protection of public interest, protection of citizens' rights and protection of the principle of truth.

As for the opportunity to use complaints in a legal procedure, Article 219 of the Law on General Administrative Procedure stipulates that any individual or an organisation, whose right has been violated by the decision made by the first instance authority, may submit a complaint to the second instance authority. The complaint is a regular legal instrument which initiates a second instance administrative procedure as a procedure that controls the work of the first instance authority. This form of control does not exist without a complaint, since the second instance procedure cannot be instituted or implemented ex officio.

This is the Law that regulates general administrative procedure and unless all matters are regulated by separate environmental regulations, provisions of this Law shall apply to the decision-making procedure.

The Law on Administrative Dispute stipulates that any individual or an organisation may file a complaint with the Administrative Court of Montenegro against an administrative or other act made in the second instance and with whose decisions it is not satisfied (Article 7 and Article 15).

The Law on State Administration stipulates, inter alia, that Ministries and other administrative authorities shall be obliged to provide for the cooperation with non-governmental organizations, which shall specifically be implemented by consulting the non governmental sector about legal and other projects and regulations governing the realization of rights and freedoms of citizens. (Article 80)

**(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;**

*Answer:*

Article 15 of the Law on Free Access to Information prescribes that Government agencies shall act upon any request for the information in a summary procedure. Article 16 further stipulates that any government agency shall be in obligation, upon any request for the information, to promptly make a resolution and to deliver it to any applicant, whereas not later than eight days as of the day of the request for information being submitted. Exceptionally, in cases when it is required for the purposes of protecting lives or freedoms of persons, any government agency shall be in obligation to promptly make and to deliver a resolution to any applicant, whereas not later than 48 hours upon such request has been submitted. If the range of the required information is big or if the searching for such information requires an extensive documentation inspection that would unreasonably disrupt regular operations of any government agency relevant therefore, the deadline for making and delivering a resolution, referred to in paragraph 1 of this Article, may be prolonged by 15 days at most. Article 19 stipulates that any applicant shall bear the costs of the procedure for exercising the right of access to the information, in harmony with the Regulation on reimbursement of costs in the procedure for access to information ("Official Journal of Montenegro", no. 02/07), and In case when a disabled person is actual applicant, any government agency shall bear the related procedure costs. Provision of Article 21 stipulates that any first instance agency shall be in obligation to conduct all necessary activities upon any complaint within three days as of its submission, all within the framework of powers granted by the

Law. Any government agency relevant for making decision upon any complaint shall be in obligation to decide thereupon, and to deliver such decision to a complainant concerned, whereas within 15 days as of the day such complaint has been submitted (Article 22), a complaint submitted against any resolution allowing access to the information shall not adjourn such resolution execution (Article 23). Article 24 stipulates that any applicant presenting a request for access to the information or any other person interested therein shall be entitled to the court protection during any administrative dispute procedure, and that the procedure upon a suit instituted in relation to access to the information shall be urgent.

Article 13 of the Law on General Administrative Procedure stipulates that the procedure shall be conducted without delay and at the lowest possible costs for the party and other participants in the procedure, yet in the way that all evidence essential for an accurate and complete establishment of the facts and for making a lawful and correct decision be ensured. Article 103 paragraph 3 stipulates that when an administrative procedure initiated ex officio is completed in favour of a party, the procedural costs shall be borne by the authority that has instituted the procedure. Provisions of Article 110 stipulate that the authority managing the process may relieve a party from paying costs, completely or partly, if established that such costs cannot be covered without damaging survival, or necessary support to its family. Foreign citizens shall be relieved from paying costs when stipulated so by international agreement, and if such agreement is not in place, based on the condition of reciprocity.

Article 212 of the Law on General Administrative Procedure stipulates that in cases where the procedure is instituted on party's request, i.e. ex officio if that proves to be in party's interest, and where there is no need to conduct a separate examining procedure and there are no reasons whatsoever that prevent issuing of a decision without delay (deciding on prior issue or other), the authority shall issue a decision and deliver it to the party as soon as possible and not later than one month after the submission of proper request. In rest of the cases where the procedure is instituted on party's request, i.e. when it is instituted ex officio if that proves to be in party's interest, the competent authority shall issue a decision and deliver it to the party within two months unless a shorter deadline is stipulated by the law. In case that the authority whose decisions are subject to appeal fails to issue a decision and deliver it to the party within determined deadline, the party shall have the right to lodge an appeal on the presumption that its request has been refused. In case that the party is not permitted to lodge an appeal, the party may institute an administrative dispute before a competent court in accordance with Law that regulates administrative dispute.

**(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;**

*Answer:*

Please refer to provisions of Articles 20, 22 and 24 of the Law on Free Access to Information.

**(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;**

*Answer:*

The Law on Civil Procedure, Article 186, also stipulates that the civil procedure starts by filing the complaint, and every individual or an organisation may file a complaint for compensation of damage suffered by endangering of his/her environmental rights, and a complaint in order to prevent environmental damage, and for that purpose it may be requested that the court takes temporary safety measures during the hearing on the complaint.

As for opportunities to use complaints in the legal procedure, Article 219 of the Law on General Administrative Procedure stipulates that every individual or an organisation, whose right has been violated by the decision made by the first instance authority, may file a complaint to the second instance authority. The complaint is a regular legal instrument which initiates the second instance procedure as the procedure of controlling work of the first-instance authority. This form of control does not exist without a complaint, since the second instance procedure cannot be instituted or implemented *ex officio*.

The Law on General Administrative Procedure stipulates that every individual or organisation may file a complaint to the Administrative Court of Montenegro against an administrative or other act adopted in the second instance, and with whose decision it is not satisfied (Article 7 and Article 15).

Article 10 of the Law on Inspection Supervision stipulates that anyone may launch an initiative for starting inspection supervision procedure, that inspector decides on measures, actions and deadlines for rectifying irregularities (Article 39); that an individual or a legal entity, who thinks that its right was violated by the decision made, may file a complaint within eight days from the date of reception of written decision and that the complaint shall be decided upon by the Minister or the head of the administrative authority. (Article 40)

Article 107 of the Law on Offences, which will come into force on 1.09.2011, prescribes that the criminal procedure in the first instance shall be managed by an individual judge, and in the second instance the court shall rule in a panel of judges comprising three judges.

This Law further stipulates the range or a certain amount of financial penalty for an offence. Pursuant to this Law, the offence penalty shall be stipulated by separate laws which define individual offences within the general framework of legal minimum and maximum. In addition to the penalty, which may be financial and prison sentences, one or more protection measures may be ordered to the offender as well. A request for initiating a criminal

procedure may be filed by an authorized entity or the indemnified party. Citizens, if indemnified, may also file requests for initiating criminal procedure.

Legal entities shall be held responsible for criminal offences based on the principle of objective accountability, and the responsible entity in a legal entity, entrepreneur and a private entity shall be held responsible based on the principle of subjective accountability.

The Law on State Administration stipulates, inter alia, that Ministries and other administrative authorities shall be obliged to provide for the cooperation with non-governmental organizations, which shall specifically be implemented by consulting the non governmental sector about legal and other projects and regulations governing the realization of rights and freedoms of citizens. (Article 80)

The Law on Environment stipulates that non-governmental organisations shall contribute to environmental protection in accordance with their programmes and in a way defined by separate regulations and that the state shall encourage participation of non-governmental sector in making and implementing decisions which are important for environmental protection (Article 12). The Law stipulates protection of all segments of the environment, including the right to legal protection in this field. Consequently, provisions of Article 42 of this Law stipulates, inter alia, that “any legal or private entity who thinks that its rights to healthy environment was violated due to the nature, location and impact of activities, or because of actions of other legal entity and entrepreneur, shall be entitled to legal protection in accordance with the Law”.

Provisions of Articles 14 and 25 of the Law on Environmental Impact Assessment regulate the right to complain.

Provisions of Article 14 and Article 21 of the Law on Integrated Prevention and Control of Environmental Pollution regulate the right to complain.

Provisions of Article 36 of the Law on Waste Management regulate the right to complain.

Provisions of Article 5 of the Law on Genetically Modified Organisms regulate the right to complain. Namely, a complaint against the first-instance decision of the administrative authority responsible for environmental protection in the field of GMOs, may be filed with the Ministry competent for environmental protection (Article 5 paragraph 3 in relation to Article 10 paragraph 1 line 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 challenges acts and omissions by private persons and public authorities which contravene provisions of national law relating to the environment;**

*Answer:*

In the legal system of Montenegro, every individual or legal entity is provided with court



or administrative protection within which decisions are taken on their rights and obligations. Procedures before courts are regulated by a number of regulations in the field of court protection. Consequently, Article 19 of the Law on Constitutional Court stipulates that anyone may file an initiative for the procedure before the Constitutional Court for reviewing constitutionality and legality, so it may be the court, another state administration authority, local self-government body and five members of the Parliament, and provisions of Article 24 stipulate that the procedure shall be instituted by the following remedies: a proposal, initiative for institution of the proceedings for review of constitutionality and legality, constitutional complaint and appeal. Obligation of courts is also stipulated in terms of acting legally, objectively and timely when deciding upon legal matters under their competence, which is stipulated by provisions of Article 4 of the Law on Courts, which prescribe that everyone shall have the right to address the court for the purpose of practicing their rights and that they are all equal before the court (Article 5); that the work of the court shall be public, except in cases stipulated by the Law (Article 6); that everyone shall be entitled to unbiased trials within reasonable periods (Article 7).

In addition to responsibilities of legal entities, the Montenegrin national legislation stipulates responsibilities of legal entities for committed criminal offences based on the principle of objective responsibility. Consequently, the Law on Liability of Legal Entities for Criminal Offences, Article 3, stipulates that legal entities may be held liable for criminal offences from the special section of the Criminal Code and for other criminal offences prescribed by special Law, (Article 3); that the legal entity shall be liable for a criminal offence even if the responsible person who committed the criminal offence has not been convicted for that criminal offence (Article 6); that a fine and termination of a legal entity may be imposed on a legal entity (Article 13).

Since a special issue that occurs in the procedure of deciding upon the rights and legal interests of individual and legal entities is compensation of the damage caused by violation of environmental protection rights, Article 186 of the Code of Civil Procedure stipulates that a civil action shall be initiated by filing a complaint, so that every individual or organisation may file a complaint for claiming damage compensation that is suffered by violation of his/her rights in the field of environment, and a complaint in order to prevent environmental damage and for that purpose request from the court to order temporary measures during the hearing of the complaint.

In terms of opportunities to file complaints in the administrative procedure, Article 219 of the General Administrative Procedure stipulates that every individual or organisation, whose right has been violated by the decision made by the first-instance authority, may file a complaint to the second-instance authority. The complaint is a regular instrument which initiates the second-instance procedure as the procedure of controlling of the work of the first-instance authority. This type of control cannot happen without a complaint, since the second-instance procedure may not be instituted or managed ex officio.

Consequently, within the competence of this Ministry, it has been established that complaints filed against a decision made in the first-instance administrative procedure by the Environment Protection Agency shall be decided upon by this Ministry. Namely, the

Environment Protection Agency, pursuant to Article 10 of the Law on Environment and Article 44c of the Regulation on Changes and Amendments to the Regulation on Organisation and the Method of Work of State Administration (“Official Journal of MNE”, number 68/08), shall be responsible for the first-instance administrative procedures that fall under affairs entrusted to it by this Regulation.

It is only the Law that may prescribe that complaints are not permitted in individual administrative matters if the protection of rights and legal interests of clients, or protection of legality, has otherwise been ensured. Complaints are not permitted against a decision made in the second-instance.

The Law on Administrative Dispute prescribes that every individual or organisation may file a complaint to the Administrative Court of Montenegro against an administrative or other act which had been made in the second instance, and with which decision it is not satisfied (Article 7 and Article 15). This means that this Law introduces, in addition to administrative matters, other legal matters as well into the system of administrative and court protection, and thus fully strengthens the system of general court protection against all administration acts.

A criminal procedure is instituted before the competent court in line with provisions of the Code on Criminal Procedure. The criminal procedure is instituted and managed based on the complaint of accredited prosecutor. Accredited prosecutor for criminal offences acted upon ex officio shall be the state prosecutor, and for criminal offences based on private actions, it is the private prosecutor. The Law prescribes that everyone should report every ex officio offence, and only exceptionally offences based on private complaints, when stipulates so by the Law.

**(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;**

*Answer:*

Article 32 of the Constitution of Montenegro stipulates that everyone shall have the right to fair and public trial within reasonable and independent, impartial court established by the Law. Provisions of Article 120 stipulate that the hearing before the court shall be public and the ruling shall be pronounced publicly and that the court may exclude the public from the hearing or one part of the hearing.

Article 12 of the Law on General Administrative Procedure stipulates that the party shall be entitled to appeal against a decision made in the first instance. It may only statutorily be prescribed that in certain administrative matters appeal is not allowed but only if the protection of rights and legal interests of the party, i.e. the protection of legality, is provided in another way. An appeal against a decision made in the second instance shall not be permitted. Provision of Article 242 stipulates that a decision on an appeal

shall be issued and submitted to the party as soon as possible and at the latest two months from the day it was lodged, unless a special law stipulates shorter deadline.

Article 375 of the Criminal Procedure Code stipulates that once the court makes a decision, it shall be announced immediately by the President of the Chamber. If the court is not in a position to make a decision on the same day after the completion of the main hearing, the announcement of the ruling shall be postponed for maximum three days and time and place of the announcement of the ruling shall be set. If the ruling is not announced within three days following the completion of the main hearing, the President of the Chamber shall inform the President of the court thereof immediately after expiry of the deadline and provide reasons for that. Article 378 further stipulates that the ruling announced must be made in writing and sent within a month after its announcement, and in complex matters, exceptionally within two months. If the ruling is not made within these deadlines, the President of the Chamber shall inform in writing the President of the court why it had not been done. The President of the court shall take measures to make sure that the ruling is made as soon as possible.

Article 47 of the Law on Offences stipulates that the protection measure of public announcement of the ruling shall be ordered if deemed useful for the public to be informed about the ruling, especially if its announcement would contribute to eliminating risk for people's life or health or protection of safety of trade in goods and services or the economy. Depending on importance of offences, the court shall decide whether the ruling shall be announced in press, radio or television, or in a number of these media, and whether its rationale shall be published entirely or in summary, where attention shall be paid to the method of announcement to ensure awareness of everyone in whose interest it should be announced. Public announcement of the ruling shall take place not later than 30 days following the date of its coming into force. The Law stipulating offences may stipulate mandatory ordering of protection measure of public announcement of the ruling.

**(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:*

Article 21 of the Constitution of Montenegro stipulates that everyone shall have the right to legal aid, and that legal aid shall be provided by the bar, as an independent and autonomous profession, and by other services. Legal aid may be provided free of charge, in accordance with the Law.

In April 2011, the Parliament of Montenegro adopted the Law on Free Legal Aid and defined that the establishment of a system of free legal aid would contribute to further strengthening of access to justice and provision of legal equality, which is the main principle of a legal state. Article 1 of this Law stipulates that free legal aid, in accordance with this Law, shall be provided for the purpose of practicing the right to a fair trial to a private entity whose financial situation does not allow practicing of the right to court protection without damaging necessary support of such entity or its family. The free legal aid implies ensuring necessary means for full or partly coverage of costs of legal counselling, making of notifications, representation in the procedure before the court,

State Prosecution and the Constitutional Court of Montenegro, and in the procedure of out of court settlement of disputes, and the relieving from payment of costs of the court procedure (Article 2).

Provisions of legal aid are contained in a number of laws which regulate only individual forms of legal aid. Therefore, provisions of Article 33 of the Law on Local Self Government stipulate that the municipality, inter alia, shall organise and provide legal aid to citizens.

Article 103 of the Law on Offences stipulates that if the defendant or some other person who participates in the procedure could omit an action because of the lack of information, and thus fails to use his/her rights, shall be advised by the court about the rights he/she is entitled to pursuant to this Law, and about the consequences of omitting such action.

Article 14 of the Law on General Administrative Procedure stipulates that the competent authority conducting the procedure shall ensure that ignorance and illiteracy of the party and other participants in the procedure shall not be to the detriment of right they are statutorily entitled to.

## **XXIX. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 9**

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

*Answer:*

In the implementation of efficient penal policy in the field of environment, Montenegro shares problems faced by countries in the region, and similar problems occur, in a lower extent, in a lot less developed countries, and in the European Union Member States as well. These findings came to light under the CARDS regional project for the Western Balkan dedicated to problems in the work of inspection services competent for environmental protection and cooperation with state authorities.

Problems related to relations between competent authorities include: difficulties faced by inspection services for environmental protection in gathering evidence and providing information to prosecution; unsatisfactory cooperation and lack of dialogue between inspection services competent for environmental protection and judiciary, and thus a clear legal framework and guidelines for the work of authorities; the need for inspection services competent for environmental protection to be informed about the status of their minor offence and criminal offence charges.

Problems that affect the work of judiciary include: inadequate or insufficient knowledge of environmental protection regulations; lack of specialized staff, and this problem could be overcome by establishing independent specialized departments within courts for conducting detailed analyses of the number of cases and efficiency of acting upon them,

in order to identify a real need for establishing such a department; lack of a relevant court and other practices in these cases; in specific cases, judges face significant difficulties in identifying the contents of damages and the link between consequences and the offence.

We hereby point out that the pre-trial procedure has been implemented legally in the procedure of penal policy implementation in the field of environment. Namely, all authorities acting in the pre-trial procedure should inform directly the standby prosecutor about their actions pursuant to Articles 254 and 256 of the Criminal Procedure Code, and after that the standby prosecutor will guide the further course of the pre-trial procedure and make a decision in terms of filing of criminal charges and legal classification of the offence. Case which occur in practice when an authority, for instance Ministry, files independently a criminal charge for a criminal offence without prior consultations with the police or the State Prosecutor should be avoided since such criminal charges usually result in rejection or acquittal, mostly due to poorly implemented pre-trial procedure, as one of the most important phases of the proceeding when evidence are collected.

Having this in mind, a several recommendations may be given, which would contribute to higher efficiency in minor criminal and criminal proceedings for environmental protection in relation to:

- closer cooperation between competent inspection authorities, State Prosecution, Police Directorate and the court, based on a signed Memorandum of Cooperation;
- organizing of seminars and round tables to provide training to both inspection authorities and prosecutors and judiciary in the field of environment and for their better awareness of material regulations in this field, with inclusion of experts from the region;
- providing better information to inspection services responsible for environmental protection with measures that need to be taken for criminal prosecution of offenders, which would be provided for by mandatory participation of experienced lawyers;
- preventive actions of inspection authorities and raising awareness of citizens about importance of environmental protection in order to prevent criminal offences and minor criminal offences;
- developing guidelines for actions of inspection authorities responsible for environmental protection;
- developing manuals on legal protection of the environment, which would contain comparative legal and court practice as well;
- establishing databases on criminal offences in the field of environmental protection.

### **XXX. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 9**

**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?**

The reform of criminal system in Montenegro is implemented in line with the Strategy adopted by the Government of Montenegro in December 2008. The adoption of the Strategy was preceded by the Analysis of the work of authorities responsible for criminal procedures, which was conducted by the Ministry of Justice based on annual reports of regional authorities dealing with offences, ministries, administration authorities and local governments, with important suggestions and comments received from professional audience. It was stated back then that, inter alia, implementation of criminal procedure was very complex which results in its inefficiency. In addition, one of the reasons for the reform of criminal system is the obligation of Montenegro to harmonize legislation in this field with the European Convention on Human Rights and Fundamental Freedoms, Article 6 thereof, because they do not have attributes of independent and objective court due to the method of appointing of misdemeanour judges. While there are no regulations and directives of the European Union in the field of criminal offences, which are related only to minor offences, during the process of drafting the text of the proposal of the new Law on Minor Offences, attention was paid to positive solutions from the practice of other countries, and recommendations of the Council of Europe primarily related to provisions on misdemeanour report.

In 2010, the project "Criminal procedures in environmental protection of Montenegro" was implemented in Montenegro in order to review efficiency of sanctioning of ecological offences and highlight potential directions of the reform. The project also analyzed applicable legal norms which envisage criminal and minor offences responsibility of ecological offenders, problems which occur in actions taken by competent authorities in this field and recommendations are given in order to ensure higher efficiency in punishing of those who commit these offences. In addition, the level of harmonization of applicable legal regulations in this field with the Directive 2008/99 EC on environmental protection through criminal legislation is analyzed as well. The work on this project was contributed by: representatives of the Ministry of Spatial Planning and Environment, Environment Protection Agency, Ministry of Justice, Police Administration, Customs Administration, Councils for Offences, Basic State Prosecution, Basic Court and experts in this field.

## **XXXI. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 9**

**Give relevant web-site addresses if available:**

*Answer:*

Ministry of Sustainable Development and Tourism: <http://www.mrt.gov.me/>

Environment Protection Agency: <http://www.epa.org.me/>

Aarhus Centre Podgorica: <http://www.aarhus.cg.me/>

Government of Montenegro: <http://www.gov.me/>

Parliament of Montenegro: <http://www.skupstina.me/>

Ministry of Justice: <http://www.mpa.gov.me/>

Ministry of Interior: [http://www.mup.gov.me](http://www.mup.gov.me/)

Official Journal of Montenegro: <http://www.sllistcg.me>

Human Rights and Freedoms Ombudsman of Montenegro

<http://www.ombudsman.co.me>

Constitutional Court of Montenegro: <http://www.ustavisudcg.co.me>

Supreme Court of Montenegro: <http://www.vrhsudcg.gov.me>

Administrative Court of Montenegro [www.upravnisud.org](http://www.upravnisud.org)

Supreme State Prosecutor of Montenegro: [www.tuzilastvocg.co.me](http://www.tuzilastvocg.co.me)

State Auditing Institution of Montenegro: [www.dri.co.me](http://www.dri.co.me)

**Articles 10-22 are not for national implementation.**

## **XXXII. GENERAL COMMENTS ON THE CONVENTION'S OBJECTIVE**

**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.**

When it comes to environmental protection, non-governmental organisations and the entire public gain great rights, because practically Aarhus Convention and its implementation in our country allows citizens to have a strong impact on all activities which affect environmental quality and thus provide for quality environmental protection as per European principles.

## **XXXIII. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON GENETICALLY MODIFIED ORGANISMS PURSUANT TO ARTICLE 6bis AND ANNEX I bis**

**NOTE:** Montenegro has not verified GMO amendment, i.e. it is not GMO amendment signatory.