

Compliance with the Aarhus Convention

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Introduction

In this article we will describe the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) in relation to the question of compliance.¹ The Convention was signed at the city of Aarhus, Denmark on 25 June 1998. It is expected to enter into force in 2001.² (See *Environmental Policy and Law*, Vol. 28, No. 2 (1998) at page 69; Vol. 28, Nos. 3 & 4 at page 171; and Vol. 28, No. 5 at page 220).

We will describe compliance with the Aarhus Convention in two countries – Denmark and Estonia. The barriers to effective compliance with the Convention for the two countries are very different. These barriers will be described and discussed.

The background for this article is our interest in the subject of compliance with international environmental accords. Compliance problems are increasingly overshadowing successes in the adoption of new instruments.³ Although a theory of compliance has been developed in literature and practice in recent years there is still a need to focus on specific barriers of compliance both nationally

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and internationally for each international accord, and to develop instruments specifically designed for each accord and country to improve compliance. It is not our aim to develop national instruments for complying with the Aarhus Convention – just to reveal some of the barriers to compliance.

Implementation and compliance in Denmark

The Kingdom of Denmark has a population of 5.3 million and is a small country. The population is homogeneous with no indigenous minorities, and the number of foreigners living in the country is relatively small.⁴

The power in Denmark is theoretically divided into three independent organs: the legislature, the executive, and the judiciary. In practice there are overlaps between these. The legislative power rests with Folketinget (the Parliament); the executive power with the government (the Ministers); and the juridical power rests with the courts of justice. Local government is made up of 14 County Councils and 275 Municipal Councils. The institutional structure is decentralised, bestowing on the counties and municipalities considerable powers.

The Danish economy is one of the strongest in Europe, having a diversified economic structure with high-tech industry and advanced business services. The system is specialised and there is a well-developed network of educational and research facilities countrywide.

Political and public interest in the environment is strong. Environmental policy in Denmark is characterised by participatory approaches and democratic traditions of initiating dialogue among interest groups in order to achieve consensus in environmental understanding and provide counselling for the governmental authorities.

Denmark has been a Member of the European Community since 1973.

Danish interest in implementation and compliance

The Danes have a general perception of Denmark as a very democratic and environmentally friendly nation. Internationally Danish delegates and politicians like to consider themselves as “frontline soldiers” for promoting democracy and environmental sustainability. Denmark played an active role throughout the negotiations of the Aarhus Convention, which was signed in Denmark’s second largest city, Aarhus.

There is no doubt that Denmark strives to hold a prominent role in promoting the Convention and wishes to hasten its enforcement. Denmark is very interested in effectively complying with the Convention.

It could be argued that originally the Danish government believed that compliance with the Convention could be easily obtained. Denmark considered itself as being already in compliance with the Convention. Therefore, the Convention could be considered a convenient tool for

promoting the country’s environmental as well as general participatory principles and the principles laid down in the Convention. However, even a country like Denmark, which considers itself as very democratic, has had problems in complying fully with the Convention.

The Danish implementation and compliance strategy

The Danish Ministry of Environment and Energy is in charge of the implementation of the Aarhus Convention.

The Ministry’s approach towards implementation and compliance has been based largely on the assumption that it would be an asset for society and democracy if ordinary citizens participate as much as possible in the making of political decisions. To be able to do this it is important to know one’s rights. The implementation of the Convention is therefore linked with an information campaign on citizens’ environmental rights to be launched in 2001, parallel to the ratification of the Convention and the adoption of the Danish regulation implementing the Convention. Furthermore, considerable economic support to environmental organisations has been granted in order to promote the Convention.

At an early stage, the Ministry earmarked resources to prepare a thorough institutional and legal analysis upon which a proposal on the implementation of the Convention in national law should be based.

The basic assumption of the Ministry is that in accordance with the “spirit” of the Convention implementation and compliance should be based upon an open dialogue between all stakeholders. On 8 September 1999, the Ministry held a conference on the implementation where the press, authorities, environmental organisations, etc. were invited to hold presentations and to give suggestions on the implementation of and compliance with the Convention.

These contributions have formed part of the material used in preparing a draft bill to implement the Convention – the “Bill on Amendments of Certain Environmental Acts”.⁵ The Bill was circulated to a large number of authorities, organisations, etc., in order to solicit comments and recommendations before the final version was presented to Parliament. Parliament passed the Bill – Act on Amendment of Certain Environmental Acts – in May 2000.⁶ It entered into force on 15 September 2000.

Danish environmental legislation is already characterised by relatively developed access to information, public participation and access to justice. However, several amendments to existing Danish acts were still needed in order to implement the Convention.

The following key amendments were needed:

- Some definitions have been expanded, including the definition of “environmental information” and of “authorities”. The Danish definition of environmental information was not as broad as the definition in the Convention, since the Danish definition did not include



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natural or legal persons with public responsibilities or functions or providing public services in relation to the environment cf. Convention Art. 2(c).

- Existing Danish legislation on access to information was similar to the provisions under the Convention. However, there was the need for a few adjustments, including information on emissions and the need to state that discretion should be exercised in accordance with the Aarhus Convention Art. 4.

Furthermore, time limits, rules concerning the grounds for the decision and rules on re-forwarding requirements for information had to be adjusted.

- Existing Danish legislation on public participation was similar to the provisions under the Convention. However, there was a need for a few adjustments: public participation is, for example, introduced when re-assessing activities covered by the Convention, Annex 1, and before adopting an overview of the public investigation and prevention initiatives concerning soil pollution.
- Some amendments to the administrative appeal system were needed (see the following paragraph on access to justice).

Access to justice

The Danish system of judicial or administrative recourse is based on the assumption that, in the case of no legislative basis for delimitation, it is presumed that everyone who has an individual and material interest in the decision has the right of complaint. Furthermore, legislation can lay down rules on whether associations of citizens have the right of complaint.

Danish law does not acknowledge an *actio popularis*. The plaintiff may only bring an action before the courts of law if he or she has a material and individual interest in the decision of the action. This means that the person in question must be protected by the rules according to which the matter has been settled, and that the person in question must have been affected by the decision in a manner which is significant, as compared to other citizens. The law may, however, waive the requirement of a legal interest, but such regulation is rare in Denmark.

The Danish authorities found that pillar III of the Convention, access to justice, did not require adjustment of the principles of the Danish court and appeal system.

However, some adjustments were needed:

- The right to administrative complaint was extended to cover a larger number of national and local environmental organisations, nature organisations and associations, and organisations and associations covering recreational interests.

Organisations and associations cannot always be considered as having a material and individual interest which is the requirement for bringing an action before a court of law. In the comments to Bill No. L 170 on amendment of certain environmental acts nothing is mentioned about the right of these organisations and associations to bring an action before a court of law. In Annex 33 of Bill No. L 170, the Minister of Envi-

ronment and Energy provides an answer to question 10. He states that the Ministry of Justice sees it as quite problematic if organisations can bring an action to court without having a material and individual interest. The question will be further analysed by the Committee on Administration of Justice (Retsplejeraadet) in the analysis of the need for a reform of the public administration of justice.⁷

It could be argued that organisations and associations which have a recognised right to administrative complaint should also be permitted to bring these questions before a court of law. It would be impractical if an organisation has the right to administrative complaint but could not take the matter further and obtain a definitive, enforceable decision before a court of law.

- Some decisions concerning Article 6 activities could not be subject to administrative appeal, e.g. decisions on whether a certain activity is subject to environmental approval or not. These decisions can now be appealed against.⁸
- Decisions under Article 6 of the Convention and made by municipalities or counties under the Environmental Protection Act could be appealed to the Environmental Protection Agency (EPA), which is part of the Ministry of Environment and Energy. Only appeal decisions on matters of principle could be appealed to the Environmental Protection Appeals Board. In the analysis it was suggested that it could be questioned whether the EPA fulfils the requirements for an independent and impartial body. Therefore, it was suggested that it should be made possible to appeal EPA decisions (listed under Article 6 of the Convention) to the Environmental Protection Appeals Board, which is considered as fulfilling the requirement of an independent and impartial body.

The EPA cannot be considered to be an impartial and independent body. There is a risk that political considerations might influence decisions. The area of soil pollution is a good example of an area where such considerations seem to have influenced decision-making. In the past the courts have overruled again and again the use of discretion and the interpretation of the Act on Environmental Protection on the area of soil pollution. The area is now regulated by the Act on Soil Pollution of 1999. However, there are advantages: EPA prepares the regulatory framework: draft act, orders and guidelines. By working as an appeal board the EPA gains experience of the administration of the regulatory framework and is in contact with the citizens, the industry and the authorities all over the country. The experience gained as an appeal board is clearly an advantage when preparing the regulatory framework.

As of today, most county and municipality decisions made on order of the Danish Environmental Protection Act can only be appealed to the Environmental Protection Agency. Also, a number of other environmental decisions, including complaints about access to information, can only be appealed to agencies under the Ministry. Taking into consideration that the next step is the court system – which

is expensive and can often stretch over a long period of time, sometimes years – it is interesting that the EPA has not found it relevant to discuss the administrative appeal system in general.

The Danish implementation of the access to justice pillar (pillar III) of the Convention has been criticised by one of the two Danish professors of Environmental Law, Peter Pagh.⁹

His arguments are based on Art. 9, subsection 3, which states:

In addition and without prejudice to the review procedures in paragraphs 1 and 2 above, each Party shall ensure that where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.

Peter Pagh argues that Art. 9, subsection 3 promotes citizens' right to directly enforce environmental law – meaning that citizens are given sufficient standing to go to court or to other review bodies to enforce the law. Peter Pagh does not see this requirement being fulfilled in the Danish juridical and administrative system.

The Minister of Environment and Energy, however, does not see any problems. He concludes that there is considerable freedom to implement pillar III under the present national legal system. In his view, the Aarhus Convention Art. 9, subsection 3 does not give citizens the right to enforce environmental law directly as understood by Peter Pagh. The requirements of Article 9, subsection 3 are, among other things, fulfilled by the citizens' right to report unlawful actions to the police or the supervision authorities.¹⁰

According to, for example, the Danish Environmental Protection Act, Article 68, the supervision authority shall see to it that illegal activities are corrected, unless the matter is quite insignificant. The decision of the supervision authority to take action or not to take action against the polluter upon request of a citizen must be considered as an administrative decision covered by the rules of the Danish Public Administration Act (Forvaltningsloven). According to Articles 22 and 23 of the Act the authority is obliged to state the reasons upon which the written decision is based.

Citizens have the right to complaint about the supervision authority and its compliance with law. Complaints against the municipality as the supervision authority, for example, for not taking action when unlawful activities are reported, can be lodged before the County Supervision Board (Tilsynsraadet). Complaints against the county as supervision authority can be lodged before the Ministry of Interior (Indenrigsministeriet).¹¹

Reading the Convention and the Implementation Guide, the authors cannot find much support for Peter Pagh's arguments concerning Article 9, subsection 3. See for example the Implementation Guide, page 187:

Paragraph 3 creates a further class of cases where citizens can appeal to administrative or judicial bodies. It follows on from the eighteenth preambular paragraph and the Sofia Guidelines to provide standing to certain members of the public to enforce environmental law directly or indirectly. In direct citizen enforcement, citizens are given standing to go to court or other review bodies to enforce the law rather than simply to redress personal harm. Indirect citizen enforcement means that citizens can participate in the enforcement process through, for example, citizen complaints. However, for indirect enforcement to sat-

isfy the provision of the Convention, it must provide for clear administrative or judicial procedures in which the particular member of the public has official status.

Although it is the experience of the authors that many citizens have difficulties in understanding their rights concerning the rules on indirect enforcement of environmental law, we find that the possibilities to report unlawful activities to the police and to the supervising authorities, including the possibility to complain about the supervision authority, fulfil the requirements of Article 9, subsection 3.

However, the different points of view between the Minister and Peter Pagh indicate that the implementation of pillar III needs to be clarified.

The Danish institutional structure might be a barrier

The decentralised institutional structure in Denmark can in certain aspects be regarded as a barrier to efficient public participation. The municipalities have organised themselves into a private organisation called the National Association of Local Authorities in Denmark (NALAD).¹² The municipalities have placed their negotiating power in the organisation. NALAD can therefore politically and financially commit the municipalities through negotiations with, for example, the Ministry of Environment. A similar system exists for the counties through their organisation, the Association of County Councils (ACC).

Since NALAD and ACC are private organisations, environmental information available in the organisations has not been subject to the same degree of public access as that in public authorities. Historically limited public access to information and thereby a stronger and more "uncomplicated" bargaining position in relation to the state was one of the reasons for making NALAD and ACC private organisations. This, however, means that core policy issues within the organisation which can have a great influence on environmental administration in Denmark are kept at arm's length from public participation.

Implementation and compliance in Estonia

Estonia has a population of about 1.5 million and is roughly the same size as Denmark (45,000 km²). The population is comprised of approximately 70 per cent Estonians and a large minority group of 30 per cent Russians.

Estonia regained its independence in 1991, and is today a republic, with parliamentary democracy and a President elected by the Riigikogu (the Parliament) as head of state.

Power is shared between the Parliament (legislative power), the Government (the executing power) and the courts (judicial power). Estonia consists of 15 counties and 245 municipalities. The county governments and the municipalities do not hold any significant power regarding environmental administration, as they do in Denmark. Environmental management (permitting, enforcement and control) is carried out through the Ministry of Environment and its 15 subordinate regional offices (one in each county) and the centralised environmental inspectorate.

The Estonian economy was influenced by the Russian financial crisis in the second half of 1998. At the same

time this influence was mitigated by the fast reorientation of economic relations to Western countries in recent years, and the association agreement concluded with the European Union. The EU accession process gives evidence of the developments that have taken place in Estonia which have increased its level of foreign investments and promoted foreign trade.

Even though the Estonian economy has stabilised, it is still relatively small and weak compared to most Western European countries.

Estonian interest in implementation and compliance

Estonia is in the first group of accession countries with the political aim of joining the European Union in 2003.¹³ It has, as an applicant country to the European Union, strong incentives to harmonise national legislation with environmental *acquis*, of which the EU Access to Information Directive is a part.¹⁴

Furthermore, Estonia signed the Aarhus Convention on 25 June 1998, and has thereby shown its intention to implement the rules of the Convention in national legislation.

The Aarhus Convention contains the basic requirements and exceptions found in the EU Access to Information Directive. In addition, it expands the right to information in several ways. As a result, Estonia is currently making considerable efforts to implement the Access to information Directive and the Aarhus Convention.

Assistance to Estonia in implementing the Aarhus Convention

The Estonian efforts are supported by Denmark¹⁵ in conducting the *Project to Assist Estonia in the Implementation of the EU Access to Information Directive and the Aarhus Convention*. The project (which will last one year) is managed through the Danish company COWI Consulting Engineers and Planners AS, and began in January 2000.

Purpose of the support

The main purpose of the Danish support is to assist the Estonian Ministry of Environment (MoE) in building the framework of regulations and administrative systems necessary to implement the EU Access to Information Directive and the first two pillars of the Aarhus Convention (access to information and public participation in decision-making).¹⁶

The Estonian implementation and compliance strategy

According to the National Environmental Action Plan (NEAP) adopted by the government of the Republic of Estonia on 26 May 1998, the Aarhus Convention was expected to be ratified by the Riigikogu (Parliament) by the end of 1999.

The Estonian NEAP also states that "*The significance of public awareness in environmental matters, as well as making environmental data publicly accessible, is constantly increasing. Therefore, the inclusion of the requirements, obligations and principles of EU directives and the Aarhus Convention into Estonian legal acts and strategies is one of the crucial exercises.*"

On 12 March 1997, the Riigikogu (Parliament) approved the National Environmental Strategy for Estonia (NES). The NES has set out ten priority goals for environmental policy and identified short-, medium- and long-term objectives/targets to be achieved by 2000, 2005 and 2010 respectively.

The first of the ten priority goals set was "*to stimulate environmental awareness and environment-friendly consumption patterns.*"

Implementing the Aarhus Convention and the EU Access to Information Directive will be among the main legislative tools to ensure access to information and to stimulate public participation, thereby contributing significantly to kindling environmental awareness.

On the basis of the above there is little doubt that it is the intention of Estonia to implement and comply with the Aarhus Convention, even though ongoing and complicated considerations regarding implementation of the third pillar (access to justice) have until now postponed the ratification. It is likely that the ratification can be achieved during 2002 even though the first two pillars will be transposed and implemented by the end of 2000.

Barriers to compliance

It is evident that Estonia faces a larger number of challenges and barriers towards effective compliance than Denmark.

From a critical point of view, it could be argued that Estonia would mainly be interested in implementing the Convention in order to join the EU. It could also be critically argued that Estonia, from a political and ideological point of view, might not appear interested in implementing full participatory democracy. The transformation from a former communist state to a democracy is a giant leap.

The first priority in this process seems to be in line with the thoughts behind implementing a representatory democracy, and building the structures and institutions to support this.

If these arguments prevail they could have a negative influence on the level of *de facto* compliance.

The following statements and conclusions are based on the experience of the authors while assisting the Estonian authorities in the implementation of and in complying with the Aarhus Convention.

As we see it, the barriers towards achieving compliance fall within the following sections:

- Historical, societal and economic barriers
- Participatory barriers

Historical, societal and economic barriers

It is our understanding that recent Estonian history, in which the country has been subject to changing and oppressive occupation, has created a strong national awareness and understandable urge for a lasting and stable independence. This is reflected as a dilemma in the current domestic political agenda in Estonia. Seeking membership of the EU and NATO will, on the one hand, guarantee lasting independence, but may, on the other hand, create a national feeling of limiting its newly won and highly cherished sovereignty. ■

While complying with international conventions may therefore give political bonus points in the international arena, it does not necessarily create a stronger national position, unless the provisions of the Convention are in line with the political programme of the government and that of the critical, strong and nationalistic opposition.

Estonia is focusing on further developing its economic stability and on achieving substantial economic growth. The participatory elements contained in the Aarhus Convention could (in the short term) lead to the limitation of some economic initiatives due, for example, to longer and more complicated application procedures, including public hearing periods and the possibilities of resulting objections from the public.

In fact, it can be argued that some provisions of the Aarhus Convention could limit free entrepreneurship, which is protected by the Estonian constitution. Any limitations of these rights – even minor ones – can, pursuant to the constitution in Articles 29¹⁷ and 31,¹⁸ only be laid down on the basis of law, and shall therefore pass through the Parliament.

The Riigikogu (Parliament) has, on more than one occasion, been reluctant to limit the sphere of commercial operation. This was, for example, the case when passing the new Waste Act. The old Waste Act¹⁹ contained provisions regarding the administrative liability of legal persons.²⁰ The present Waste Act²¹ cancels these important liability provisions (now only private persons can be held liable).

According to the Estonian Administrative Code, legal persons carry liability only on the basis of special acts. These special acts are, for example, the Waste Act, the Ambient Air Protection Act, the Water Act etc., in which the liability of legal persons can be fixed.

When the Estonian government introduced the Waste Act in Parliament, the proposals contained provisions regarding the liability of legal persons. Before adopting the rules the Parliament's Environmental Commission removed these provisions. Adopting provisions concerning liability needs a majority of votes, but at that time the Estonian coalition did not hold enough votes and the Environmental Commission wanted to have the important Waste Act adopted without delay.

In Estonia the environmental authorities have less impact than they do in, for example, Denmark. This is due mainly to a lack of financial and human resources and weak legal sanctions within the environmental area, and not to a lack of competence or intellectual capital.

This situation is, among other things, contributing to the fact that environmental legislation can be violated with less fear of subsequent legal proceedings than in Western Europe.

This may call for a change in working procedure by the environmental authorities in order to fulfil the obligations of sharing environmental information while at the same time limiting any possible criminal misuse of the data.

For example, an environmental authority may have been reluctant to give access to information contained in logging permits which have been issued by the relevant

authority (showing time and location of logging wood in the forests). If the information is made public there is a risk that the logging company could be robbed, since illegal logging and stealing logged wood is a significant problem in Estonia. As a practical solution, the authorities have concealed the information until the logging has been completed and the logs moved to a safe location. After this has occurred full access to environmental information will be granted.

Participatory barriers

Access to information, and especially public participation, is a controversial issue as it goes directly to the heart of one of the main controversies within political philosophy: the state–citizen relationship. It should therefore come as no surprise if some stakeholders in Estonia find the implementation of the Aarhus Convention somewhat radical.

First, the Aarhus Convention is not only an environmental policy document; it is also an instrument to emphasise certain participatory democratic values. Therefore, an effective implementation of the Convention not only requires that it be in accordance with environmental objectives but also that it shows compliance between the “democratic spirit” it embodies and the prevailing political culture in Estonia.

Second, assuming that a healthy democracy requires a relatively high degree of public participation, the Convention may eventually assist Estonia in its efforts to move away from the legacy of its communist past; a past characterised by citizens being subjects of the government rather than as participants in the political process. The use of the Convention in everyday practice should be seen as a tool to build trust within the citizen–state relationship. Please note that this is essentially a viewpoint of the authors, rather than a proven fact.

Third, the attitudes of the Estonians towards participation do not seem to be fully in accordance with the values of the Aarhus Convention insofar as many Estonians do not attach a high value to political rights.

Fourth, Estonians do not participate massively in policy-making. Studies show that few Estonian nationals (34 per cent) think it is an obligation to take an interest in politics.²²

Even though there are about 70 environmental organisations in Estonia, most have very few members (under 10). Studies show that only 2 per cent of the Estonian population are either members of a political party or belong to an environmental NGO.²³ In comparison, the largest Danish NGO²⁴ has about 200,000 members – about 4 per cent of the Danish population.

This leaves one with the impression that many Estonians do not take political rights, including the right to participate, for granted.²⁵

This could be interpreted in the following ways: the prevailing political culture still contains elements of a subject *orientation system*; meaning that many citizens still see themselves as subjects of a government rather than as participants in the political process.

The findings indicate that Estonians should not be ex-

pected to be generally familiar with the spirit of the Aarhus Convention. In the light of this, it becomes obvious that the Estonian authorities are faced with the task not only of implementing the Convention, but also of informing the public of their rights to participate, and how they can utilise these rights.

This should, again, be related to the Convention, which is essentially a political rights document and an instrument to facilitate participation. This may imply the following:

- Direct participation is new to many people and they need to be acquainted with their rights herewith. Many tend to think of government as being closed. The history of communist occupation and the former surveillance society has created a perception that the authorities cannot be trusted. The public therefore sees it as pointless to try and participate.
- The authorities, therefore, have to be very outspoken on citizens' rights in order to diminish whatever reservations may exist within the population.
- A higher degree of public participation may also impose significant challenges on civil servants not used to handling this type of relationship.

In short, the implementation of, and compliance with, the Aarhus Convention is a much more demanding challenge than it appears on the surface. It has partly to do with a new relationship between the public and the public administration/the government; one characterised by dialogue and interaction.

Access to justice

Implementation of the third pillar (access to justice) in Estonia may prove to be the greatest challenge. There is at present no administrative complaint system in place to handle complaints within the environmental area, but there is the possibility of using the court system. Whether or not the present system is in compliance with the Aarhus Convention needs to be analysed. At the second meeting of the Signatories, Estonia took the lead in a task force established to investigate compliance with the third pillar of the Convention. It is expected that this work will be the start of a thorough analysis of the Estonian system regarding access to justice. The fact that Estonia has taken the lead in the access to justice task force also shows its commitment to work with all aspects of the Convention in order to achieve full compliance.

Conclusion

The Aarhus Convention is based on participatory democratic principles. Going to the heart of the state–citizen relationship, the Aarhus Convention underlines the values of a strong and stable participatory democracy. This implies:

- an open and transparent public administration;
- a positive attitude in the public administration towards servicing the citizens;
- that politicians and the public administration see it as an advantage to have public participation in the decision-making process;

- that citizens believe and experience that public participation in the decision-making process does matter; and
- that citizens have a fundamental trust and confidence in politicians and the public authorities.

The Party to the Convention that aims to achieve full compliance in letter and spirit has to embrace the values of participatory democracy.

Full compliance in *Denmark* can be achieved within the current political and democratic framework. This should however not be a pretext for doing nothing in the future. The current possibilities of participation must be nurtured and further developed without compromising the possibilities of the public sectors to make unpopular decisions.

There are aspects concerning the institutional set-up of the municipalities and the counties, which are represented through NALAD and ACC,²⁶ which could be criticised. The two organisations are private organisations and are not subject to provisions on access to information. This means that core policy issues within the organisations, which can have great influence on environmental administration in Denmark, are kept at arm's length from public participation.

It seems there is a need to analyse certain elements of the implementation of pillar III – access to justice. This should, however, be done in a broad discussion among the Parties to the Convention, not only in a national discussion. The difference of opinion between the Danish Minister of Environment and Energy and Peter Pagh basically reflects a lack of explicit definition of what constitutes effective compliance with pillar III.

Achieving full compliance in *Estonia* is possible but poses challenges to the political and administrative system as well as to the public.

It can be expected that, in many aspects, it will be controversial to implement and fully comply with the Aarhus Convention in Estonia. The Estonian public has to learn to operate within this new sphere of rights, and politicians and those in public administration have to figure out how to handle the participation and to operate within, and guarantee, the new sphere of rights.²⁷

To mitigate any possible compliance problems for Estonia, it is important to train civil servants intensively in order to familiarise them with the national legal framework in implementing the Convention; to develop practical toolkits and guidelines; and to provide the public with information on successful examples of public participation.

It is important that future interactions between the Estonian citizens and the authorities are successful from the day the new rights are introduced. Bad experiences may further contribute to the public perception that the authorities cannot be trusted and that participation has no effect.

High-ranking political commitment and adequate training of public officials is thus paramount in order to achieve Estonian compliance. Exchange of experiences on all political levels regarding the participatory aspects of the

modern democracy could be an important aspect in creating the best possible foundation for achieving compliance with the Aarhus Convention.

Equally important is the provision of support towards the development of a basic culture of forming associations, organisations, clubs, societies, owners associations and common interest groups in order to strengthen the development of participatory democracy in Estonian daily life.

Whether or not and how the present Estonian system is in compliance/non-compliance with pillar III still needs to be analysed.

Effective participatory democracy and effective compliance with the Aarhus Convention are very closely linked. The Aarhus Convention can hardly become effective in a country that is not democratic. Some of the Parties to the Convention, such as Estonia, do not have democratic traditions. They might face problems in adopting their national regimes into democratic ones. It is important that the Parties to the Convention develop a common understanding of the fundamental values and actions needed to develop a strong and sustainable participatory democracy at all levels of society. It is recommended that emphasis be placed on promoting such a common understanding among the Parties, and among the officials who carry out the work in committees and task forces.

Finally, it is recommended that focus be specifically placed on the implementation of and compliance with pillar III – access to justice – as it seems to be the most controversial pillar to implement, not only for Denmark and Estonia, but also for other Signatories. The authors agree with the conclusion reached at the second meeting of the Signatories: that without pillar III, effective implementation of the other two pillars will not be successful.²⁸ The future task force on access to justice, the establishment of which was agreed at the second meeting,²⁹ should be given full support to develop suggestions for effective implementation of and compliance with pillar III.³⁰



Notes

¹ The following definitions are used (Weiss and Jacobson p. 4-5):

Implementation refers to measures that states take in order to make international accords effective within their countries' domestic law. Some accords are self-executing; that is, they do not require national legislation to become effective. Some accords require the adoption of national legislation or regulations to become effective. Countries adopt different implementation approaches.

Compliance goes beyond implementation. It refers to whether the country does in fact adhere to the provisions of the accord and to the implementing measures that have been instituted. The answer cannot be taken for granted, even if laws and regulations are in place. Measuring compliance is more difficult than measuring implementation. It involves assessing the extent to which governments follow through on the steps that they have taken to implement international accords. In the end, assessing the extent of compliance is a matter of judgement.

Effectiveness is related, but not identical to, compliance. Effectiveness refers to the effectiveness in achieving the stated objectives of the international accord and in addressing the problems that led to the accord.

² According to document CEP/WG.5/2000/2 – report on the second meeting – dated 19 July 2000, section 11, eight countries have ratified the Convention. Ten countries expect to ratify or accede before the end of 2000. Six countries expect to ratify before the end of 2001. The Convention enters into force on the ninetieth day after the date of deposit of the sixteenth instrument of ratification, cf. Art. 20 of the Convention.

³ *The Global Environment*, p. 138.

⁴ Immigrants or their descendants made up 6.8 per cent of the population in 1998 (www.dst.dk).

⁵ Bill No. L 170 on amendment of certain environmental acts, dated 20 Jan. 2000.

⁶ Act No. 447 of 31 May 2000 on amendment of certain environmental acts.

⁷ In the case of *Greenpeace v. the Ministry of Traffic* (U1994.780) the Court accepted *Greenpeace* as plaintiff.

⁸ A minor number of administrative environmental decisions, not covered by Article 6 of the Convention, are still not subject to administrative appeal.

⁹ Professor in Environmental Law Peter Pagh, Faculty of Law, University of Copenhagen. See his letter to the Parliament Committee of Environment and Planning dated 15 March 1999, annex 16 to L 170.

¹⁰ See annex 33 to L 170 – answer to question no. 10, dated 13 April 2000.

¹¹ See Act on the governing of the municipalities (lov om kommunernes styrelse), consolidated Act no. 810 of 29 October 1999.

¹² NALAD and its sister organisation (Association of County Councils), which has the same kind of organisational structure, have significant bargaining power and influence on the decentralised environmental policy decisions in Denmark.

¹³ The process of enlargement of the European Union was launched on 30 March 1998. Negotiations are currently being held with the following twelve applicants: Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia. The basic principle of the negotiations is that all the applicant countries must accept existing EU law.

¹⁴ Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment, *Official Journal L 158*, 23/06/1990 p. 0056-0058.

¹⁵ The project is funded under the DANCEE (Danish Co-operation for Environment in Eastern Europe) programme. DANCEE is an assistance programme administered by the Danish Environmental Protection Agency. The purpose of DANCEE is to help safeguard environmental and natural resources in Eastern Europe to the greatest possible extent.

¹⁶ Further information about the content, development and status of the project can be seen on the project's home page <http://www.envir.ee/arhus>.

¹⁷ "An Estonian citizen has the right to freely choose his or her sphere of activity, profession and place of work. Conditions and procedure for the exercise of this right may be provided by law..."

¹⁸ "Estonian citizens have the right to engage in enterprise and to form commercial undertakings and unions. Conditions and procedure for the exercise of this right may be provided by law..."

¹⁹ Waste Act (RT 1992, 21, 296; RTI 1994; 74, 1323).

²⁰ Up to 20,000 EEK for violating rules for mishandling hazardous waste and up to 10,000 EEK for violating other rules in Waste Law (§ 19).

²¹ Waste Act (RT I 1998, 57, 861).

²² Richard Rose, 1997, "Baltic Trends: Studies in Co-operation, Conflict, Rights and Obligations", Centre for the Study of Public Policy, University of Strathclyde, Glasgow, UK.

²³ Marc Morjé Howard, "Free Not to Participate: The Weakness of Civil Society in Post-Communist Europe", Centre for the Study of Public Policy, University of Strathclyde, Glasgow, 2000.

²⁴ The Danish Society for the Conservation of Nature.

²⁵ For further details see the discussion paper on Attitudes and Barriers to Public Participation in Environmental Decision-Making in Estonia, COWI, May 2000 (available on the project's home page <http://www.envir.ee/arhus>).

²⁶ A set-up that reflects the legal and economic independence of the municipalities and counties from the state and the government.

²⁷ On the other hand, democracy is not introduced in Estonia simply by complying with the Aarhus Convention. There are far more aspects of democracy than reflected in the Convention.

²⁸ CEP/WG.5/2000/2, 45.

²⁹ CEP/WG.5/2000/2, 45.

³⁰ Sources of information: *The Global Environment, Institutions, Law and Policy* by Norman J. Vig and Regina S. Axelrod, 1999; *Engaging Countries – Strengthening Compliance with International Environmental Law* by Weiss and Jacobson, 1998; *The Notion of Public Participation in International Environmental Law* by Jonas Ebbeson, Yearbook of International Environmental Law, 1997; Aarhus-konventionen om "borgerlige rettigheder" på miljøområdet – isaer i et menneskerettighedsperspektiv by Veit Koestner, Juristen nr. 3, 1999; *Environmental Law – From International to National Law*, edited by Ellen Margrethe Basse, 1995; *International Environmental Law and Policy* by Hunter, Salzman and Zaelke, 1998; *EC Environmental Law*, fourth edition, by Ludwig Krämer, 1999; paper on Attitudes and Barriers to Public Participation in Environmental Decision-Making in Estonia, prepared by Arne Kvist Rønne, COWI; An Implementation Guide by Stephen Stec and Susan Casey-Lefkowitz for the Regional Environmental Centre for Central and Eastern Europe, 2000; Bill No. L 170 on amendment of certain environmental acts dated 20 January 2000; Documents concerning Bill No. L 170 on the Internet (www.ft.dk); Act No. 447 of 31 May 2000 on the amendment of certain environmental acts; COM(222) 402, final proposal for a Directive on Public Access to Environmental Information; CEP/WG.5/2000/4 – Report on the first meeting of the task force on compliance; CEP/WG.5/1999/2 – Report of the first meeting of the Signatories; CEP/WG.5/2000/2 – Report on the second meeting of the Signatories; CEP/WG.5/2000/8 – Proposal to create an access-to-justice task force; Internet links, documents and Acts as referred to in footnotes.

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