Access to information in EECCA region (the Aarhus Convention and its GMO amendment)

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EU and EECCA parties to the Aarhus Convention
The Aarhus Convention

**Article 2** Environmental information includes information on GMOs therefore all the provisions of the AC with regard to A2I apply.

**Article 4**
- Public has the right to environmental information upon request
- Without interest having to be stated
- In form requested
- As soon as possible or at latest within one month
- Reasonable charges published beforehand
- Limited grounds for refusal to be interpreted in a restrictive way

**Article 5**
Obligation on Parties to collect and disseminate environmental information, including on GMOs

**Article 6**
Information based on which the decisions are made and the decisions itself are publicly available
The Lucca Guidelines on GMOs

Collection and dissemination of information on GMOs

- Mandatory system to insure a flow of information about proposed and existing activities with GMOs,
- maintain and update information on activities with GMOs via publicly accessible lists, registers and databases,
- Provide the public with Meta information on GMOs and the ways to obtain it (via Internet or regular publications),
- In case of any imminent threat, disseminate immediately all information to mitigate harm,
- Mechanisms insuring that sufficient information on products with GMOs is available to the public to allow them to make informed choice (labeling).
Flexible check-list on GMOs information to be actively disseminated by authorities (Lucca Guidelines, Annex V)

- Legislation and policy documents on GMOs activities, A2I and PP in these activities
- International treaties, conventions
- A non-technical explanation of the types of activities with GMOs
- A list of GMOs which have gained approval
- Notifications of and/or applications for contained uses, deliberate releases, risk assessments, decisions on GMOs
- Information on methods of protection if any risk arises
- Information on the advance informed agreement on LMOs imported into the country (Cartagena Protocol)
- Contact points to obtain further information
General trends of implementation of the A2I provisions in the EECCA

• Active dissemination is problematic, web-pages are poor
• National laws on public appeals and/or public information provide for a general mechanism of getting the information upon request
• No special mechanisms for handling requests on environmental information
• Requests are satisfied within 1 month
• As a rule free of charge regardless of volume
• Absence of guidelines for authorities as to what information can be regarded as commercial secret or confidential
• Low level of awareness, obedience and enforcement

A2I cases brought by the public to the ACCC: Kazakhstan, Ukraine, Turkmenistan, Armenia, Moldova, Belarus
Case-study 1: Ukraine
Bystroe canal
Violations of A2I

• The requests for information were either ignored completely, or we received denials.

• During decision-making process on whether to allow canal construction public informing was neither adequate, nor timely

• The final decision on canal construction was not made publicly available, and was not given upon public requests
Case-study 1: Ukraine

- The Law of Ukraine On Information of 1992
- Declared to be in the state of non-compliance with Article 4 of the AC in 2005, 2008, 2011
- To develop the legislation properly introducing the A2I provisions into the domestic legal framework – recommendation of the ACCC mirrored in the MOP decisions
- New Law of Ukraine On Public Information (since May 2011) finally brings Ukraine in compliance with Article 4
Public Info Law

- Any physical or legal person, or a group can submit a request (citizens, foreigners, so on)

- Covers all information possessed by the authorities

- All public information is open unless the law provides otherwise

- Much clearer on the types of information with limited access secret
  - state secret, professional secrets (attorneys, doctors, judges, so on)
  - For official use only – internal communications, draft decisions
  - Private information (commercial secret, personal data)

- Domestic “Environmental information” covers the definition of the Convention. Similarly to the AC specifically mentions GMOs
PI Law (Business)

Also covers the information held by
+ persons performing administrative functions, having public responsibilities or functions, or providing public services (Convention)
+ business that possesses environmental information (precedential)

- In Nov 2011 EPL v. Sorensen and Haar (a private company started by a Dutch citizen in Ukraine)
- We asked for the emissions’ inventory (quality and quantity of emissions) and the emission permit itself
- Local court – denied EPL’s right to get this information from the company. The court of appeal upheld the decision.
- In May 2012 the High Economic court of Ukraine reversed the decision as erroneous and directed a retrial
- In Aug 2012 the local court in retrial met all EPL’s claims
PI Law (Article 4)

- Very easy to submit a request, minimal requisites, no established form (name, address, description of what information one seeks)

- Request shall be satisfied in 5 working days (can be extended to 20 days)

- Actual copies of documents shall be provided, if requested

- If a document contains a portion of information with limited access it shall be extracted from the document, but the rest of it shall be provided

- If the request is for more than 10 pages the actual costs of copying/printing should be reimbursed

- Very limited grounds for refusal
PI Law (Article 5)

- Apart from dealing with requests the authorities are obliged –
  - 1) publish information about their activities and decisions;
  - 2) maintain and regularly update **publicly accessible** registers of documents in their possession - all their documents (all pieces of information they have in writing, all images, maps, photos, audio and video files) an a data-base
- The register shall include (title of document, date of development or submission, source of information (author, respective department), information access category, reasons for classifying the information, reasons and terms of information access restriction, sector, keywords, type of medium (text document; tape; video recordings, audio recordings, etc.), type of document (regulatory acts, treaties, resolutions, minutes, reports, press releases, draft resolutions, memorandums, statements, requests, proposals, letters, etc.), form and location of document.
• ACCC said that having failed to provide the public with the decision on canal construction Ukraine violated AC Article 6

• In 2011 EPL v. The Ministry of Environmental protection of Ukraine – court ordered the Ministry to publish 1293 environmental decisions issued in 2009-2011

• By PI Law authorities are obliged to publish actual texts of all their decisions (including all environmental permitting decisions and such on GMOs) on their web-pages or in press

• Not later than in 5 days
Case study 2: Moldova

• Biosafety clearing-house at http://biosafety.md run by the Ministry of Ecology and Natural Resources
• Maintained and regularly updated
• The interoperability and data exchange with BCH Central Portal is ensured
• Includes: international and domestic legal framework for biosafety, institutional framework, publications, capacity-building activities, roster of national experts
• No information on decisions under Article 6 para 11 since none was issued so far, but will be there