

Hungary's Implementation of the Aarhus convention



Marie-Louise Strijbos

Student number: 308267

Master thesis

Erasmus University Rotterdam

Hungary's Implementation of the Aarhus convention

Marie-Louise Strijbos

Student number: 308267

Master thesis

Erasmus University Rotterdam

14 November 2007

Summary

The international treaty that is under investigation here is the Aarhus Convention, which deals with the access to information, public participation in decision-making and access to justice. Here the case of Hungary is investigated into considering the implementation of this treaty. Hungary is an interesting case, because it is a former East-block country and relatively new member state of the European Union.

The aim is to create an understanding of the implementation process of the treaty of Aarhus in Hungary. The reaction of Hungary to the treaty of Aarhus will be compared to several theoretical approaches on the implementation of treaties. This is done to determine how successful the implementation is and what factors contributed to this success. The central question that is answered in this research is: *What can be learned from the implementation of the Aarhus treaty in Hungary with respect to improving the implementation of treaties?*

Three theories are used to achieve the aim of this study. The theories reflect different aspects of implementation and in this way complement each other. Conventional theories have found the influence of the degree of misfit and the number of veto-players of importance. Next to conventional theories, two contemporary theories are used. The worlds of compliance is a theory developed by Falkner to close the gaps in conventional theories. The second contemporary theory is that of adaptational pressure developed by Knill. Additionally, there are other influential factors. These factors are the general characteristics of a country, the characteristics of the activity involved, the characteristics of the accord and the international environment. In the analysis the implementation of the Aarhus Convention is analysed with the help of these theories.

From the theories used in this study, several success criteria can be extracted. The number of participants is one factor that did not inhibit successful implementation of the Aarhus treaty in Hungary. Economic incentives however did prove to be an inhibiting factor for successful implementation. The three aspects that make up the characteristics of the accord are also success criteria. A low degree of adaptational pressure can cause smooth and timely implementation which are also indicators for success. The flexibility or adaptation competence of the state or administrative aspect of the state is another criteria. If states adapt easily, implementation is much more successful. However if they do not have to adapt much, it is even better, so states with contemporary legislation implement treaties more successful. This makes the extent to which domestic legislation is contemporary another criterion for success. The last success criterion which can exerted from the theories is the implementation path. From the interviews one criterion is extracted as well, this is the presence and organisation (network) of NGOs. A network of NGOs can have a positive effect on implementation and thus make implementation of the Aarhus Convention more successful.

Given the answers to sub-questions the following answer to the central research question has to be given. There are several lessons that can be learned from the implementation of the Aarhus Convention in Hungary. First, the Regional Environmental Centre can learn from the analysis of the implementation process. The valuable lesson for them is that their support to NGO's in Central and Eastern European countries can benefit the implementation of the Aarhus Convention in these countries.

Several lessons can be learned from the implementation of the Aarhus Convention in Hungary. First, Hungary should learn to appreciate its active NGO community. Second, internationally there valuable learning points for other countries. Thirdly, treaty-makers and treaty-drafters can also learn from this research.

Word count: 27.693

Acknowledgements

Hereby I would like to present my thesis for the Master International Public Management and Policy. In order for this thesis to materialise I applied all the knowledge and skills picked up in my studies.

A large part of my research was conducted in cooperation with the Regional Environmental Centre in Hungary. I worked as an intern at the Public Participation Programme department of the REC. I would like to thank Magdolna Toth Nagy, head of the Public Participation programme. She was a source of inspiration and knowledge for me and she was always prepared to help me. I admire her for everything she does for the environment and the devotion with which she works. I would also like to thank my two tutors, Kaidi Tingas and Orsolya Szálasi. They helped me with my thesis, practical issues and gave feedback when I needed it. I learned a lot from the sometimes heated discussions we had in our office. The same goes for the discussions during lunch with other REC staff members. It is magnificent to work in an international environment where you learn from every single conversation you have. Here I would also like to thank Nathalie Olijslager from the Royal Netherlands Embassy. After reading my research proposal, she recommended me and brought me in contact with the REC.

I never could have finished this thesis without all the people who were prepared to share their knowledge in the interviews. All interviewees were interested in my research and answered my questions in an open and honest manner. Hereby I would like to thank all interviewees: Alexios Antypas, Csaba Kiss, Eszter Fábián, Eva Csobod, Gábor Baranyai, József Gayer, Magdolna Toth Nagy, Peter Lenkei and Stephen Stec. Thank you very much!

Additionally I would like to thank my mother, Hélène Koolen and my boyfriend Ulrich Rinner. They provided me with a stimulating writing environment at home and supported me during my two months stay in Hungary. I also thank them for bearing with me during stressful times and my sometimes bad temper. I would also like to thank my father, Jan Strijbos who enabled me to study and pursue my ambitions.

Last but not least, I would like to thank Jacko van Ast. He has always provided me with valuable comments on my plans, research and thesis. His enthusiasm was contagious and it was always a pleasure to deliberate with him.

All that is left is wishing you a pleasurable time reading!

Yours truly,

Marie-Louise Strijbos

Content

1. Introduction	3
1.1 Aim	3
1.2 Relevance	3
1.3 Hungary	5
2. Theory	8
2.1 Misfit	8
2.2 Veto-players	9
2.3 Worlds of compliance	9
2.4 Adaptational pressure	11
2.5 Other influential aspects	13
2.6 Summary of the theories	15
2.7 Success criteria	15
3. Methodology	16
3.1 Problem analysis	16
3.2 Variables	16
3.3 Research choices	16
3.4 Descriptive analyses	17
3.5 Data collection	18
3.6 Operationalisation	18
3.7 Reliability and validity	19
4. The treaty of Aarhus	23
4.1 Drafting the treaty of Aarhus	23
4.2 Treaty characteristics	23
4.3 The international environment	24
5. Hungary	26
5.1 History	26
5.2 EU accession and EU membership	28
5.3 Connection of environmental organisations to the political change	28
5.4 Characteristics of Hungary	29
6. Analysis	31
6.1 Characteristics of the activity involved	31
6.2 Characteristics of the accord	32
6.3 Misfit	33
6.4 Veto-players	36
6.5 Worlds of compliance	36

6.6 Adaptational pressure	37
6.7 Implementation and compliance strategy	42
6.8 Summary of the analysis	42
7. Success criteria	44
7.1 Successful implementation	44
7.2 Interviews	45
7.3 Key learning-points	46
8. Conclusion	48
9. Literature	52
Annex 1 List of Interviewees	54
Annex 2 The Aarhus Convention	55

1. Introduction

The implementation of international treaties is a very important field of research within Public Policy and Administration. International treaties are widely used instruments to reach a variety of goals. The goal can be stopping a certain activity, standardise policy, etcetera. The treaty that is under investigation here is the treaty of Aarhus, also called the Aarhus Convention (1998). This treaty deals with access to information, participation of citizens and access to justice in environmental issues. The Aarhus Convention is a combination of a human rights treaty and a treaty on the environment.

During my bachelor thesis I investigated the meaning of the treaty of Aarhus for a single city in the Netherlands, namely Arnhem. At the end of my study I was left with many interesting questions about the treaty of Aarhus. One of which was: What influence does the treaty of Aarhus have in other countries? This question was of my interest because the consequences the treaty of Aarhus has for Dutch local governments (in the Netherlands most of the treaty applies to this level of government) were not extensive. Interesting was that in some interviews civil servants said, that the impact of the treaty must be much larger in other countries, especially Central and Eastern European (CEE) Countries. They thought so, because in the Netherlands local governments already applied many of the rules and only adaptation was needed in some cases. They imagined that CEE countries did not have these prior rules, which makes it more difficult for them to implement the treaty.

Under investigation here is the reaction of Hungary towards the treaty of Aarhus. Hungary makes an interesting case because of its recent accession to the EU and its background as a former East-block country. Hungary's harmonization to the Aarhus Convention was parallel to the preparations of EU accession. The two processes have touched each other and in this way influenced the implementation process of the Aarhus Convention. The East-block background is interesting because of the specific stumbling blocks experienced by these countries.

In this introduction firstly the aim of the study and central research question are discussed. Afterwards, the relevance of the research within the existing theoretical framework is outlined. Finally, the choice for Hungary as a case will be explained.

1.1 Aim

The aim of this research is to create an understanding of the implementation process of the treaty of Aarhus. In order to do this the reaction of Hungary to the treaty of Aarhus will be described. Does Hungary comply with the treaty of Aarhus and what did it have to do to comply? Did the treaty demand structural changes in their public administration and were these changes finished in time? The reaction of Hungary to the treaty of Aarhus will be studied using several theoretical approaches to the implementation of treaties. This is done to determine how successful the implementation is and what factors contributed to this success.

The understanding of the implementation process of the treaty of Aarhus in Hungary can ultimately lead to suggesting improvements for future implementation of treaties. These suggestions will be based on failure and success factors determined in the implementation process of the Aarhus Convention in Hungary. The central question within this research is: *What can be learned from the implementation of the Aarhus treaty in Hungary with respect to improving the implementation of treaties?* This question and the sub questions that will lead to its answer are discussed more in-depth in the methodology.

1.2 Relevance

Theoretical relevance

This study focuses on the implementation of the Aarhus Convention at the national level. This is done with the aim to detect administrative changes following the implementation of the Aarhus Convention. The study thus focuses on the implementation stage of the policy cycle. The policy cycle is used to analytically distinguish different stages in the policy

process; this is called a 'stagist approach'. This 'stagist approach' has its critics, who call into question the benefits of analytically distinguishing stages which are not clearly present in the empirical practice (Lindblom and Woodhouse, 1993; Sabatier and Jenkins-Smith, 1993). The 'stagist approach' is used here to clearly define the focus of this research. In consideration of the arguments of the critics there will be a focus on the implementation stage, however other stages will not be excluded. Especially policy formulation will be considered as Héritier et al. (1996) says this stage is strongly linked to the implementation stage. Policy formulation might have a direct effect on the implementation of policies, because supranational policy-making is characterised by 'regulatory competition'. (Héritier, Knill and Mingers, 1996) In this research the patterns of administrative change in Hungary (implementation stage) are studied. The way in which the supranational legislation came into being (policy formulation stage) is less relevant in this matter, the focus is thus mainly on the implementation stage.

Implementation, compliance, effectiveness and efficiency are four concepts which have broadly been explored by scholars of Public Administration. Implementation is defined by Knill and Lenschow (2001) as: "*the degree to which the formal transposition and the practical application of supranational measures at the national level correspond with the objectives defined in European legislation*". Whereas compliance goes beyond implementation, according to Weiss (1999) "*compliance refers to whether countries in fact adhere to the agreement's provisions and to the implementing measures that they have instituted*". These obligations might be procedural, for example annual national reports on the state of the environment. Obligations might also be substantive, such as creating databases of information which are accessible for the public. However as Weiss (1999) says: "*even if the formal obligations are complied with, there may be a question of compliance with the spirit of the convention*". This remark is aimed at the situation where a country fully complies with a convention but in practice still works against its goals or prevents its use. Effectiveness is a concept which is related to compliance, but not the same. "*A country may comply with an agreement but the agreement may nonetheless be ineffective at achieving the objectives.*" (Weiss, 1999) Efficiency is a concept closely related to effectiveness. Effectiveness is whether a policy attains its goal. Efficiency is whether the goal is obtained with the best use of resources. (Coun, 2001)

This research is different from the huge body of knowledge on implementation, because of the restrictions applied. There is more research done with these same restrictions, but this is less than the body of knowledge that exists on implementation in general. These restrictions are similar to those in the research of Knill (2001). Knill takes European legislation as a starting-point, which is supranational legislation, just as the international treaty that is taken here as a starting-point. The aim is to look at how the national administration of Hungary has changed because of the pressure to comply with the Aarhus Convention. This means that the research solely considers the 'top-down' approaches to implementation. The 'bottom-up' perspective of implementation, which stresses the importance of street-level bureaucrats, is not taken into account. (Hill, 2003; Lipsky, 1980) The second restriction, also similar to the research of Knill (2001) is that European policies or in this case international treaties "*are taken for granted, regardless of the doubts on their quality*". The Aarhus Convention is taken as an independent factor and the focus is restricted to the implementation stage of the policy cycle. In this study it is determined whether the institutional implications of the Aarhus Convention have been implemented or not.

This study differs from the research of Knill in the fact that it focuses on environmental legislation in the form of the Aarhus Convention and that it studies Hungary. Hungary is a former East-block country which results in having a different administrative system from countries with a non-communist background. This is not always the case some administrative systems in former East-block countries are similar to those of Western European. For example the Water administration in France and Romania are very similar and Forest management systems in Estonia and Finland are identical. An eventual difference in administrative systems becomes apparent in the culture, style and structure of this system.

Societal relevance

Next to the theoretical relevance which is discussed above the societal relevance is also of importance. The main societal relevance is the contribution of this research to improving implementation processes. Society gains a lot if implementations processes are effective, smooth and timely. Secondly, bias of Western Europeans can be removed, by showing how a post-socialist country, which recently entered the European Union, is dealing with international legislation and its requirements. People in Western Europe are still biased towards Eastern Europe in all kinds of areas. This was for example very clear when I did my research on the Aarhus Convention in Arnhem. Many officials said that Eastern European countries (Poland, Hungary) must have more problems with implementing the treaty of Aarhus and they were quite convinced of this. Here the situation in a former East-block country is shown and these biases might dissolve in case empirical evidence proves that they are found not to be true.

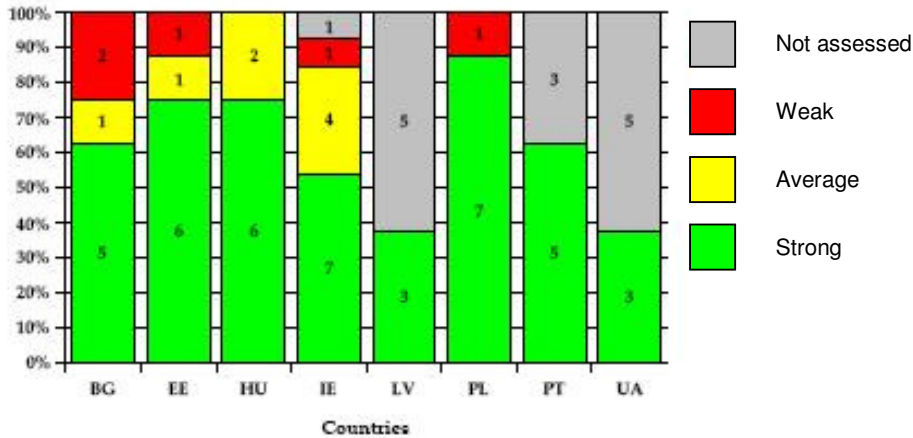
1.3 Hungary

The case of Hungary is not chosen randomly, it was based on findings of recent research into the implementation of Aarhus by The Access Initiative (TAI)¹. TAI studied the implementation of the Aarhus Convention in eight European countries namely Bulgaria, Estonia, Hungary, Ireland, Latvia, Poland, Portugal and Ukraine. The three figures displayed below show some of their outcomes. The first shows the legal framework on access to information, the second shows the legal framework on participation in decision-making and the third shows the legal framework of access rights. The Aarhus Convention has three pillars and the three figures presented below each stands for one of the pillars of the Aarhus Convention. The structure of the Aarhus Convention is further explored in chapter 4. The figures shown below are one of the reasons why Hungary was chosen as a single case. Here the tables will be discussed shortly.

Figure 1.1 relates to the first pillar of access to information and shows the access of citizens to information in eight countries. To be able to determine the quality of the legal framework of each country on access to information, eight indicators are used. The countries can score weak, average or strong on each indicator, sometimes an indicator is not assessed or not available. As can be seen from this table Hungary scores the best of all countries with six indicators scoring strong and just two scoring average. This is interesting because countries with similar socialist backgrounds such as Bulgaria and Poland score lower. The question that arises here is what characteristic of the Hungarian state makes it score so high on these indicators. This is one of the questions that will be answered in this thesis and one of the reasons why Hungary was chosen as a single case. One negative trend that is seen in Hungary and highlighted in the description of the figures in the TAI research is that there is no regulation regarding data provision and transfer. The administrative organs that own the information sometimes ask high sums of money for the data provision. This activity supplements their budget, but makes it very expensive for organisations to obtain the data. This practice does not contribute to the access to information in Hungary. Even though this negative trend is signalled Hungary still is an interesting case to investigate more in-depth.

¹ The Access Initiative was established in 2000, it developed a methodology to measure the progress in implementing the access rights of the Aarhus Convention. For more information see: www.accessinitiative.org

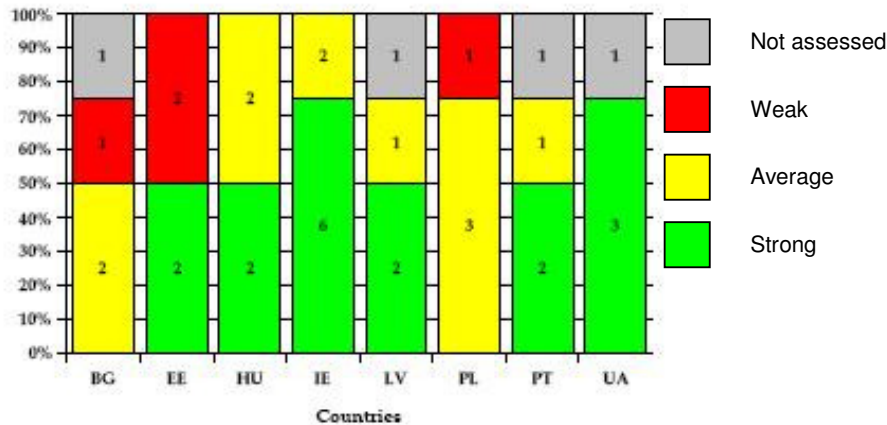
Figure 1.1 Law / Access to information



Source: The Access Initiative European Regional Report

The next figure (1.2) shows the scores on 4 indicators that determine the quality of the legal framework for participation in decision-making. This figure can be related to the second pillar of the Aarhus Convention, the public participation pillar. As can be seen Hungary is again the country that scores best in this group. Only Ireland has a higher score but this is difficult to compare to the others because it was determined on eight indicators and not four as all of the others. Ireland is because of the different research method left out of the analysis here. This makes Hungary just like in the figure above the country that scores best with two indicators determined as strong and two as average. The Ukraine has more indicators determined as strong but has one which could not be determined and thus it can be said that Hungary scores best. The high score on participation in decision-making is again a reason to focus on Hungary as a single case. All the more because it scores highly in both participation in decision-making and access to information.

Figure 1.2 Law / Participation in decision-making

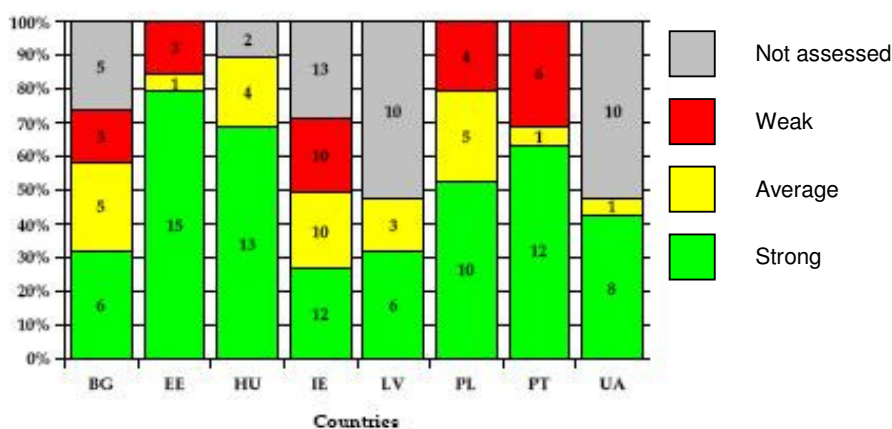


Source: The Access Initiative European Regional Report

The last figure (1.3) in this row that is presented here is Hungary's score on 18 indicators concerning the quality of the legal framework on access rights. This figure relates to the third pillar of the Aarhus Convention, access to justice. It is of less importance here because the research focuses on the first two pillars (see explanation in the methodology chapter).

Nevertheless, as the figure shows an overall view it is placed here to make sure that even though the research is focused on two pillars the overall view is not lost. This overall view is important because the pillars are closely connected. As can be seen from this figure, Hungary scores well overall but does not score best as in the two other figures shown above. Only Estonia scores better than Hungary in this figure, all other countries score less. Estonia is a true competitor for Hungary because it is the only country that even comes close to Hungary in the other two figures. Still Hungary scores quite well in this figure, non of the indicators is determined as weak, although there are two indicators that are not determined. Hungary comes out of this figure as scoring better than average and like in the other two figures this sparked the focus of this research on Hungary. What characteristics of the state make that Hungary scores so high? In order to answer this question this research focuses on Hungary in the hope to fulfil the aim of this research and answer the raised questions.

Figure 1.3 Legal framework of access rights



Source: The Access Initiative European Regional Report

In this chapter an introduction was made into the subject, scope and aim of this research. In the next chapter the theories that are used in this research are described. Several theories are used and they are explained in-depth in chapter two. Afterwards the methodology that is used will be discussed. The methodology goes into the way in which the research is done and discusses the arguments behind choices which are made. Chapter four will tell more on the subject of the Aarhus Convention and its characteristics. Chapter five looks into Hungary, the country which is focussed upon here, the history, specific features, economic and political system etc. In chapter six the implementation of the Aarhus Convention in Hungary is analysed with the use of the theories already discussed in chapter two. Chapter seven focuses on the success criteria and lessons that can be learned from the implementation of the Aarhus Convention in Hungary. The final chapter consists of the conclusions that can be drawn from all the forgone information and analysis.

2. Theory

Several theories can be used in order to create an understanding of the implementation process of the Aarhus Convention in Hungary. Here, five theories on the influence of different aspects of the state and treaties on implementing international treaties are used. The steps that Hungary took to implement the Aarhus Convention will be explained with the use of these theories. The theories reflect different aspects of implementation and in this way complement each other. Each theory has an aspect that is of significant explanatory power, but leaves out another important aspect. All four theories are used in order to avoid as much as possible the neglecting of important explanatory factors. Some aspects concentrate on the state Hungary, others on the treaty of Aarhus and finally some aspects combine these two and relate them to each other. Different variables and indicators are discussed in the theories presented in this chapter. These variables and indicators and how they are related will be shown in the operationalisation in the next chapter.

First, the Misfit theory and Veto-player argument are discussed. Next, the worlds of compliance theory developed by Falker is illustrated. Afterwards, Knill's adaptational pressure theory is outlined. Additionally, some other influential aspects are explained. From these theories criteria for successful implementation are derived. These are talked about in the next paragraph. Finally, the theories used here are shortly summarized.

2.1 Misfit

There has been a lot of research into what determines the success or failure of international rules and treaties. (Duina 1997, 1999, Duina and Blithe 1999, Knill and Lenschow 1998, 2000, Börzel 2000) Falkner describes in her article that one of the most important things is if the rules that are set, are in the end also applied. The rules that are set in treaties often have a top-down character and thus national, regional and local authorities have to adapt to them. In recent years the degree of fit or misfit has been seen as one of the most influential factors in compliance to international legislation (Falkner, 2006, 1). With this fit or misfit the gap between international rules and existing institutional and regulatory traditions is meant. International treaties sometimes press for changes in deeply rooted institutional and regulatory structures, which are often resistant to change. If international legislation and domestic administrative traditions fit together adaptational pressure is low. When a low adaptational pressure is concerned implementation is smooth and within the deadline. If they do not fit together adaptational pressure is higher. In this case, it is more problematic to implement. Thus delays are to be expected, even failure to implement can occur sometimes (Falkner, 2006, 1).

There are two different sorts of misfit either of quantitative or qualitative nature. Quantitative natured misfit is a gradual difference, while qualitative natured misfit is a matter of principle. The researchers that study the empirical use for the misfit theory use not only legal misfit, they also calculate the practical significance and the scope of application. Completely new rules, far-reaching gradual changes and/or important qualitative innovations are considered as a high degree of legal misfit. If this is not the case then a medium or low degree of misfit is assigned (Falkner, 2006, 2).

The empirical findings in Falkner's study resulted in the conclusion that an exclusive focus on the goodness of fit is not sufficient. Three observations clearly displayed this insufficient explaining power of the misfit theory. *"First, a high degree of misfit may be a welcome opportunity for domestic governments to change the status quo in a politically more desirable direction."* (Falkner, 2006, 3) Governments are not only motivated by domestic concerns, this would mean that all change would be gradual and incremental and no major legislative reforms would ever take place. Second, there were some empirical examples of domestic actors initially resisting changes implied by international rules. This resistance was swiftly dropped because the actors wanted to avoid being a long-term non-complier. Third, some cases showed that under certain conditions the adaptational pressure may have a positive effect on the implementation process. These three examples of deviation from the

misfit theory “*demonstrate that the causal mechanisms underlying the misfit approach may be found only rarely in empirical reality*” (Falkner, 2006, 4).

The misfit theory will be used to explain the implementation of the treaty of Aarhus by Hungary, even in the light of the empirical findings displayed above. The three findings will be taken into the assessment, but are not a reason to discard the misfit theory completely. The theory is still useable because it is not used exclusively but in combination with other theories. These additional theories close the gaps found by Falkner in the misfit theory. The gaps are closed by using other factors which are of importance in the successful implementation of treaties.

2.2 Veto-players

The second important influence on the implementation of international treaties is the number of veto-players, it is an important condition for successful implementation. The argument comes down to the decision-making structure of the country. The theory says that the success of implementation is dependent on the number of veto-players. The assumption is “*that the reform capacity of a political system decreases as the number of distinct actors whose agreement is needed to pass the reform increases*”. (Falkner, 2006, 2) According to this logic it should be much more difficult to implement a treaty in a country with a large number of veto-players than in a country with a small number of veto-players. A country with a large number of veto-players ends up in a deadlock more often. A country which has a small number of veto-players should reform much more easily and thus implement smoother and faster. There is another factor connected to the veto-player argument that may have influence in the implementation process and that is: a consensus oriented decision-making culture. Even if there are multiple veto players, a stalemate situation can be avoided in case of a consensus oriented decision-making culture. This means that the decision-making culture has to be looked into as well if the veto-player argument is studied.

Falkner et al. (2006) did empirical research on the subject of the explanatory power of the Veto-player argument. Their analysis demonstrates that the veto-player argument does not match their empirical data as a sole explanatory factor. Each country in their analysis is able to comply with implementation deadlines, even countries with many veto-players can implement on time. On the other hand there are countries with a small number of veto-players that occasionally surpass the deadlines. There are two shortcomings of the veto-player argument found by Falkner (2006). First, in a significant number of cases the preferences of the veto-players had to be taken into account in order to explain the outcomes. Second, in a considerable number of countries transposition regularly remains an administrative process, which is isolated from political actors. If this is the case then veto-players have no or little influence on the implementation process or the success thereof.

In this research the use of the veto-player argument will be considered. It will be used in order to discuss Hungary’s implementation of the Aarhus Convention. The reason for using the veto-player argument is that although it has shortcomings it might still be a decisive argument in implementation success. The argument is used keeping in mind the shortcomings Falkner found. This means that first the location of the transposition process will be determined. This can either be the administrative or political arena. In case it is the political arena it will be necessary to look at the preferences of the veto-players. In case the process takes place in the administrative arena the argument will not be considered to have an effect on implementation success.

2.3 Worlds of compliance

The shortcoming that Falkner et al. found in both the misfit and veto-player argument made them look at the data again. This time they discovered a regular pattern of compliance or non-compliance of countries. Each country had a “*specific national culture of appraising and processing adaptation requirements*” (Falkner, 2006, 7), from these cultures three different patterns were extracted. These patterns form the basis for three different worlds of compliance: a world of law observance, a world of domestic politics and a world of neglect. The surprising fact is that these patterns seem rather stable over time and even outlive

different (ideologically opposing) governments (Falkner, 2006, 7). In the following paragraph the three worlds of compliance will be discussed and their use within this study will be explained.

In compliance there are separate goals on the basis of which states act. For example, compliance goals, domestic goals, international goals, etcetera. The world of law observance is a world where the compliance goal overrides domestic concern. This means that the goal of compliance to international rules is thought to be more important than domestic goals. This is even the case when these goals might clash. In this world the transposition is usually on time and correct even when problems are experienced. In this world citizens are used to complying, there is a sort of national 'compliance culture'. Non-compliance occurs only rarely and situations of non-compliance are ended quickly. (Faulkner, 2006, 7)

In the world of domestic politics there are multiple goals and compliance is at best one of them (Falkner, 2006, 8). This means that the goals which are present are not always favourable for implementing international rules. In this world domestic concerns are high on the agenda. There are two separate paths that the implementation process can take. Transposition is timely and correct if no domestic concern plays a major role. Non-compliance is a likely outcome if domestic concern and the international requirements do not match. Non-compliance is not frowned upon by the citizens and even open calls for disobedience from politicians are sometimes granted.

In the world of neglect, compliance with international requirements is no goal in itself. Without any powerful action taken by supranational actors these neglecting countries do not transpose at all. Two factors may support this behaviour and that is a posture of 'national arrogance' and administrative inefficiency. In these countries there is usually a lack of desire or ability to change in order to comply. The initial action is usually to do nothing, only after an intervention the transposition process may be initiated (and can proceed rather fast). Compliance is often correct, although only on a superficial level. Falkner et al. derived the following model of the different worlds of compliance.

Table 1. The worlds of compliance according to Falkner et al.

	World of law observance	World of domestic politics	World of neglect
Typical process	Dutiful adaptation.	Conflict/compromise.	Inertia.
Transposition is typically...	... on time and correct (even where domestic interest exists).	... on time and correctly only if there is no conflict with domestic concerns.	... later and/or 'pro forma'.
Conditions of non-compliance	Lack of awareness; otherwise non-compliance occurs rarely and briefly.	Political failure (lack of compromise among conflicting interests or compromise against the terms of EU law). If non-compliance occurs, it tends to be rather long-term.	Bureaucratic failure (inefficiency, non-attention). Non-compliance is the rule rather than the exception.
Factors facilitating compliance	Culture of good compliance as a self-reinforcing social mechanism.	Fit with preferences of government and major interest groups.	Accelerating issue linkage with domestic reforms, high profile of particular cases.

Source: Falkner, G. (2006, 8)

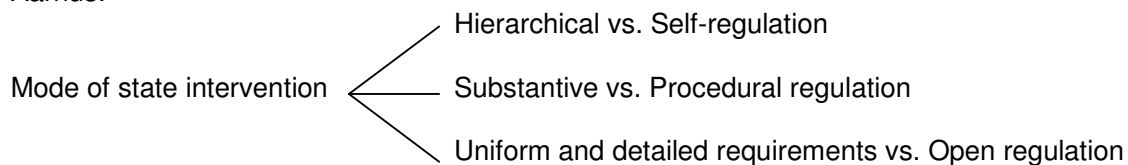
These worlds of compliance will be used to categorise Hungary's implementation process of the Aarhus Convention in one of these worlds. This categorisation is done on the basis of the way in which Hungary implemented the Aarhus Convention. It is useful to understand to which category Hungary belongs in order to explain how the treaty of Aarhus was implemented and what factors lead to this kind of (successful) implementation.

2.4 Adaptational pressure

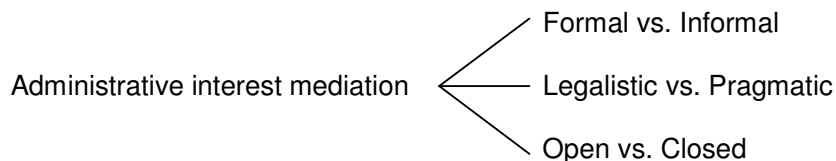
Another theory which deals with the shortcomings of previous ones is the theory of adaptational pressure by Knill (1998). According to him the adaptational pressure of treaties is highly dependent on three dimensions. The adaptational pressure theory will be discussed here along with its three dimensions. The adaptational pressure that is exerted on a country by international legislation is very much dependent on the country itself. Knill (1998) has split the adaptational pressure up in the following three different dimensions, the policy dimension, institutional dimension and dynamic dimension. These dimensions will be discussed here separately.

Policy dimension

The policy dimension has to do with the match or mismatch of international rules and national administrative traditions. It is much like the conventional misfit theory, except for the determining of this dimension which Knill does in a unique way. There are two analytical sub-dimensions that can be differentiated namely the regulatory style and regulatory structure, these will both be explored here. According to Knill (1998) the regulatory style is defined by two related aspects, the mode of state intervention and administrative interest intermediation. The mode of state intervention is dependent on several dimensions, such as hierarchical versus self-regulation, substantive versus procedural regulation, uniform and detailed requirements versus open regulation allowing for administrative flexibility and discretion (see model below). In this mode of state intervention aspects of the state as well as aspects of the treaty are of importance. In this research we will look into the concepts separately to determine the mode of state intervention in Hungary in the case of implementing the treaty of Aarhus.



Administrative interest intermediation can be identified in different patterns. The patterns are formal versus informal, legalistic versus pragmatic, and open versus closed relationships between administrative and societal actors. These can be put in a model, the result of this is portrayed below. In this study the nature of the Hungarian system in the light of these concepts will be looked at, in order to determine the regulatory style of Hungary. To be able to do this the mode of state intervention and administrative interest mediation will be combined.



Regulatory structure is just as regulatory style of importance in determining the policy dimension of adaptational pressure. It is related to the vertical and horizontal distribution of administrative competencies. With the vertical distribution of competences Knill (1998) aims at the centralisation or decentralisation of administrative competencies. The horizontal distribution aims at the concentration or fragmentation of the administrative competencies. Regulatory structure is also determined by patterns of administrative coordination and control. These four concepts make up the regulatory structure of a country.

In order to determine the policy dimension of adaptational pressure the regulatory style and structure of Hungary will be determined by the use of the concepts that influence

them. Most of the information can be found in the literature on Hungary's administrative system. Additional information can be derived from the interviews.

Institutional dimension

Because the administrative traditions (or policy dimension) says nothing about the institutional scope of the changes which result from the treaty, the institutional dimension is needed to determine this scope. According to Knill (1998, 5) *"the institutional scope and hence the degree of adaptation pressure increases with the extent to which challenged arrangements are institutionally embedded"*. Knill defines institutional embeddedness as the degree of institutionalisation or institutional stability of sectoral administrative traditions. Administrative traditions can be seen as core or peripheral traditions depending on the embeddedness of the existing arrangements. According to Hall (1993) embeddedness depends on the administrative relations and to which degree they are ideologically rooted in "paradigms". According to Knill (1998) there is a higher adaptational pressure if the changes that are posed by a treaty are challenging embedded administrative arrangements. In other words, the embeddedness (core or periphery) of the regulatory style and structure (administrative arrangements) influences the adaptational pressure.

In this dimension the basic conception of the state is also of importance. According to Badie and Birnbaum (1983) there are two different conceptions of states. One is the state-led society and the other is the society-led state. In the state-led society the authority to intervene and control lies with the state. The state rules over society. In a society-led society there are networks and institutions that lead the state. In this way the state is actually governed by society. It has to be kept in mind that this is an ideal type of the state, no state is exactly or completely state-led or society-led. Many states are even both in some parts of their organisation, and in reality there is always a grey area between state-led and society-led. The ideal type of the state will be used in determining to which broad category Hungary belongs concerning the embeddedness of administrative traditions. Specifically studied are the parts of the administration that are affected by the Aarhus Convention. It would be of no use to determine if the defence department of Hungary is state-led or not. It is of importance to determine if the aspects of the state which are affected by the treaty of Aarhus are peripheral or core aspects of administrative traditions. This can be done by analysing to which extent *"these elements are linked to basic patterns of the administrative organisation and state structure"* (Knill, 1998, 6).

Dynamic dimension

The dynamic dimension concerns the structural stability of embeddedness, which is also called "embeddedness of embeddedness" (Knill, 1998). This dimension is called the dynamic dimension because it is capable of changing. The developments in this dimension can be far-reaching, this depends on the reform capacity of the political system, which is in its turn dependent on the number of institutional veto-points. The reform capacity is dependent on three different factors. First, the political system which includes the party system and degree of political decentralisation. Second, the extent to which the administrative activity is based on legal and formal requirements. Third, the more comprehensive and fragmented administrative structures, the more difficult it is to implement reforms 'from above'.

In conclusion Knill (1998) identifies by the use of the three dimensions, three different levels of adaptational pressure. The pressure is high if the core aspects of administrative traditions are challenged. A moderate pressure is awarded if the new legislation only demands changes within the core of national administrative traditions. Low pressure is given in a situation where administrative traditions provide for a smooth and effective implementation of international legislation. The level of adaptational pressure of the Aarhus Convention will be determined for Hungary on the basis of the three dimensions of adaptational pressure.

Implementation path

From these three different levels of adaptational pressure Knill (1998) identified three different 'implementation paths'. These paths connect to the levels of adaptational pressure and describe the way in which legislation is 'normally' implemented if a certain pressure is experienced. It is dependent on the implementation path if implementation is effective or not. The implementation paths that are distinguished are, 'Contradiction to the Core: Administrative resistance', 'Change Within a (Changing) Core: Accepted or Neglected Adaptation?' and 'Confirmation of the Core: Compliance Without Change'. These paths will be explained below.

'Contradiction to the Core: Administrative resistance' this is the path where international legislation implies policies which are contradictory to the administrative core. This path likely results in ineffective implementation, because administrative traditions and culture are not easy to change. Even in a changing environment, the institutions remain stable. According to Knill (1998) *"it follows from the "logic of appropriateness" that we observe either incomplete, incorrect, or symbolic adaptations, which fail to effectively meet EU requirements"* or in this case international requirements.

'Change Within a (Changing) Core: Accepted or Neglected Adaptation?' is the path where changes occur within the existing institutional framework. There are no fundamental reforms needed although changes can be substantial. In some cases elements are added to a "static" core, in others national independent reforms may be the result of international requirements. This reform dynamic can, according to Knill (1998), *"alter the "logic of appropriateness" at the sectoral level, so that effective adaptation to EU requirements can be achieved within a changing core"*. Moderate adaptational pressure which is exerted in this path of implementation may result in successful implementation. On the other hand, it occurs that international requirements are underestimated or ignored, which results in ineffective implementation. The end result of this path thus depends on *"the nature of specific actor constellation"* (Knill, 1998, 8).

'Confirmation of the Core: Compliance Without Change' is a path that occurs when the international regulations do not require any adaptation of the institution. This is mostly the case where national arrangements are the same as or go beyond treaty provisions. Because compliance is not problematic in these cases, the result is effective implementation of international legislation.

The theory that is provided by Knill will be used to determine what implementation path Hungary used to implement the treaty of Aarhus. This will help in the explanation for the implementation of the Aarhus treaty and the success of this implementation.

2.5 Other influential aspects

Finally, Weiss et al. (1999) has four different characteristics which influence the compliance of states to international legislation. First, are general characteristics involving the country. These general characteristics influence the compliance behaviour of states. Next to these general characteristics, the treaty is naturally of influence on the implementation. The provisions that a treaty asks for, can have a high or low ambition and the signatories of a treaty are of influence in determining this. It is clear that the treaty aspects can be of influence in the success of compliance. Here two treaty aspects will be discussed, the characteristics of the activity involved and the characteristics of the accord. Additionally to all the aspects that have already been discussed above there is one other aspect that will be researched. This is the aspect of the international environment in which the treaty is born and evolves.

General characteristics involving the country

According to Weiss (1999, 5) *"countries are at the centre of the compliance process and must take the required actions to fulfil their obligations under the treaties"*. Implementation and compliance varies significantly because of different characteristics of different countries. Next to many other characteristics, one of the confirmed relevant factors is the wealth and democratic degree of a country. Other basic factors are of influence as well, such as *"the*

countries previous behaviour regarding the issue, history and culture, geographical characteristics, and the number of neighbouring countries. The economy, political institutions, and attitudes/values are fundamental factors affecting compliance, while a country's administrative capacity, leadership, nongovernmental organisations, as well as its knowledge and information base serve as proximate factors". (Weiss, 1999, 5)

These factors are not all of the same importance to compliance and implementation and the success thereof. Weiss elaborates in the article on the following factors, administrative capacity, economic factors, political systems and institutions, features of democratic government, non-governmental organizations, leaders and the physical conditions of a country. These are also the factors that will be looked into for the case of Hungary. Most of these will be described in chapter five. These general characteristic involving the country will mostly be used as (indirect) factors for explaining the success of the implementation of the Aarhus Convention in Hungary.

Characteristics of the activity involved

The "important characteristics of the activity targeted by the agreement include the number of participants involved, the significance of markets and trade to the activity (whether centralised or dispersed), and the degree of concentration of the activity in major countries". (Weiss, 1999, 3)

Previous research has confirmed the logical assumption that with a smaller number of participants involved in the treaty, the less expensive and easier it is to monitor and regulate the activity. Economic incentives can also be influential in compliance, in a stimulating as well as restraining way. Economic incentives can induce the actors in negotiation to be less ambitious because of the costs experienced by businesses. On the other hand regulating ambition might be higher because of public pressure on businesses to stop a certain activity.

These characteristics of the activity will be studied for the Aarhus Convention, in order to be able to explain the misfit and success of compliance in Hungary. Next to these issues the characteristics of the accord will be studied, below will be explained why and which aspects.

Characteristics of the accord

"The characteristics of an accord, such as the perceived equity of the obligations, the precision of the obligations, provisions for obtaining scientific and technical advice, monitoring and reporting requirements, implementation and noncompliance procedures, incentives and sanctions are important to compliance". (Weiss, 1999, 3)

Weiss points out that according to the equity of obligations for certain countries rules might be too ambitious while for others they might be not at all. That is why some treaties have provisions for these situations and demand less of underdeveloped countries. The precision of obligations is of influence not only for successful implementation, because countries know exactly what is expected, but also because it makes assessment and monitoring of compliance much easier. This brings us to monitoring and reporting obligations these are of importance in order to check whether the treaty was implemented correctly and successfully. Implementing and non-compliance procedures might be relied on in case of reported non-compliance. Tools for compliance in this perspective can be incentives and sanctions, which might persuade an actor to implement and stop being a non-complier.

These aspects will be looked at for the case of the Aarhus Convention, this is done in order to determine if and how the compliance behaviour of Hungary results from the aspects determined by the treaty. The characteristics of the activity and the characteristics of the accord will be described in chapter six.

The international environment

The international environment is according to Weiss of interest in examining treaties and compliance because it creates momentum or 'leader countries' which can proceed the coming to life of a treaty and the speed with which it is agreed upon and adopted. It does not refer to the 'natural' environment, but to international developments in the world surrounding

the environment and environmental legislation. Media and public opinion can also exert a certain amount of pressure and make a treaty more or less successful, and can enhance compliance and implementation. Finally markets can play an important part in being an outside pressure on governments, they can persuade them to implement or not.

In order to see if there was any sign of momentum a general picture of the international environment will be given. This picture will include any media, market and public pressure. Furthermore, eventual 'leader countries' in the drafting of the treaty will be identified, because they can be of great influence. The international environment will be discussed in chapter four under the drafting of the Aarhus Convention. In this chapter the theories which are used have been broadly discussed.

2.6 Summary of the theories

In this chapter five theories on the implementation of international treaties are discussed. First, two conventional theories on implementation and compliance have been explained, namely the misfit theory and veto-player argument. The misfit theory refers to the gap between existing international rules and national regulation. The degree of misfit combines aspects of the state as well as the treaty. The veto-player argument identifies the importance of veto-players in decision making. The veto-player argument is a state related aspect. Next to these two conventional theories two contemporary theories have been discussed. The worlds of compliance theory and the adaptational pressure theory. The worlds of compliance are based on patterns of appraising and processing adaptation requirements. Three worlds of compliance have been identified namely: a world of law observance, a world of domestic politics and a world of neglect. The adaptational pressure theory, determines adaptational pressure by three dimensions. These dimensions are, the policy dimension, institutional dimension and dynamic dimension. The level of adaptational pressure determines the implementation path. There are three implementation paths:

- 'Contradiction to the Core: Administrative resistance'
- 'Change Within a (Changing) Core: Accepted or Neglected Adaptation?'
- 'Confirmation of the Core: Compliance Without Change'.

To make sure that other aspects of importance to implementation and compliance are not neglected Weiss' theory on compliance to international agreements is discussed. Four different characteristics influence the compliance of states to international legislation. These characteristics are, general characteristics involving the country, characteristics of the activity involved, characteristics of the accord and the international environment.

2.7 Success criteria

Success criteria are needed in order to determine the success of the implementation of the Aarhus Convention in Hungary. In this research these criteria are exerted from the theories described above, after they are applied to the case of Hungary. In chapter six the theories are applied to the case of the implementation of the Aarhus Convention in Hungary. The criteria are determined after applying the theories, because some theories might be discarded. Theories can be discarded because they do not apply to this specific case. The success criteria are not only exerted from the theories, but also from the interviews. The interviewees have an opinion on what caused the implementation of the Aarhus Convention in Hungary to be a success. What they see as a determining factor, will be seen as a criterion for success. The success criteria are discussed and applied to the case of Hungary in chapter seven. The success criteria develop into key learning points for the implementation of the Aarhus Convention in other countries. In the same chapter these learning points for other countries are discussed. Before all this can be done, the methodology that is used in this research is outlined in the next chapter.

3. Methodology

The methodology that has been used during the process of this research will be described in this chapter. First, The problem analysis and the variables within this research are briefly stated. In the rest of this chapter the methodological choices that are made and the underlying arguments will be explained. This is done to display the logic and compelling connection between the central research question and the choice of methods. The research choices and the descriptive character are discussed. Additionally, the data collection procedures are explained. Finally an operationalisation will be given and the reliability and validity are discussed.

3.1 Problem analysis

The problem analysis consists of the central research question, already posed in the introduction and sub-questions. The sub-questions are posed in order to be able to answer the central question. The central research question is:

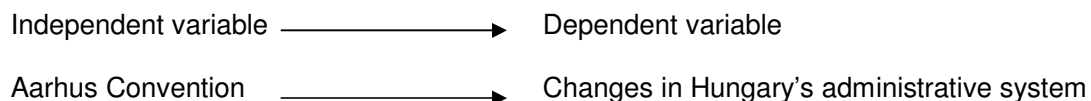
What can be learned from the implementation of the Aarhus treaty in Hungary with respect to improving the implementation of treaties?

The sub-questions posed to answer this question are the following:

1. What is the treaty of Aarhus about?
2. Which changes have to be implemented on the account of the Aarhus Convention?
3. Which theoretical approaches exist on the successful implementation of international treaties?
4. What makes the implementation of a treaty successful?
5. What makes Hungary an interesting case in studying the implementation of the Aarhus Convention?
6. Where does Hungary stand in the process of implementing the Aarhus Convention and how was the situation before?

3.2 Variables

Research can always be determined in a dependent and independent variable. The dependent variable within any research is the variable that may vary and is aimed at describing, explaining or theorising on. The independent variable is a stable factor within the research, which (supposedly) had a certain effect on the dependent variable. In this research the dependent variable is the changing administrative system in Hungary and the independent variable is the Aarhus Convention, which should have brought some change to the administrative system in Hungary since it came into force. The dependent and independent variables of this study can be put in a model as follows:



3.3 Research choices

In order to do research, some choices have to be made, this is done for different reasons. Here the choices which are made within this research are explained and arguments are raised for these choices. First, the choice for qualitative research will be discussed, then the choice for a single case and lastly the pillar focus will be explained.

Qualitative research

In this research the choice is made to conduct qualitative research. This choice for qualitative research is made because this research methodology is most suitable for the in-

depth study of an implementation process. In order to explore how successful the change to the administrative system was. These reasons are two of the many reasons for choosing qualitative research, which are mentioned in 'Designing Qualitative Research' by Marshall and Rossman (1989). In this research the importance of context is stressed, which makes qualitative research the best method of study. As Marshall and Rossman write (1989; 47): *"The significance of organizational culture as a way of understanding, describing and explaining complex social phenomena has been increasingly acknowledged by students of organisations, consultants to organisations and those of us who spend most of our workday lives within organisations"*. In the research the impact of Hungarian organisational culture, which is present in national administrations, will be studied in order to determine its influence on successful implementation. An external trigger for change can transform cultural values and norms of an organisation. Next to this effect the external trigger may also lead to conflict, anger and uncertainty as proposed changes clash with local beliefs. The external trigger is in this case the pressure to comply with the treaty of Aarhus.

Single case

This research can be seen as a single case study. Next to reasons for choosing Hungary given in the introduction there are other reasons to choose a single case. The reason for the choice of just one case is because this allows the researcher to do an in-depth analysis of this case. The case of Hungary is selected because it is one of the 'new' member states of the EU, with a background that is very common in the former East-block. This shared background makes the case of Hungary representative of the problems that are also experienced by other former East-block countries. The fact that Hungary is a 'new' EU member state makes it an interesting case because the theories used here have not yet covered Hungary. This means that this study is treading upon new ground within the well established implementation literature.

Pillar focus

In this research a concentration on the pillars of access to information and participation in decision-making is at hand. On the basis of various reasons it is chosen to do so. First, is that the complete treaty would be too broad to investigate within this research and an in-depth analysis would be unattainable. The access to justice pillar is worthy of a complete research in itself. Secondly, the first two pillars lay more in the field of public administration and the third pillar more in the field of public or environmental law. Third reason is the average time which is needed to implement provisions, normally administrative provisions are implemented faster than judicial.² Because of this a practice in using the provisions of the first two pillars is to be expected, while this is unsure for the third. This makes it possible to study these practices and the implementation processes that are behind them.

Of course the third pillar can not be denied completely, it is an integral part of the treaty. The third pillar ensures that the first and second pillars are enforceable. It opens up the opportunity to enforce the rights under the first two pillars in a court of justice. The policy that is used here is not to look specifically into the third pillar, but to elaborate on it if it is touched upon in studying the other two pillars.

3.4 Descriptive analyses

The largest part of the research question is descriptive, next to this there is a lessons-learned part. This makes the research extremely eligible for research strategies such as participant observation, in-depth interviewing and document analysis. (Marshall, 1989) Triangulation of information sources will be applied in the quest for answers. Information will be found in literature, interviews and during an internship at the REC (The Regional Environmental Centre for Central and Eastern Europe) in Hungary. All three of these strategies will be used within the research. The two months stay and internship in Hungary can be seen as a form of participatory observation. While working and living in Hungary the researcher gets

² Interview with Csaba Kiss, 12 June 2007.

acquainted with the culture, work behaviour and thoughts on government and politics of Hungarians. Because of the international work-environment at the internship location, other perspectives of people with other nationalities, on the Hungarian way of doing things are also picked up. Document/historical analysis is done in the form of studying earlier work on the implementation of Aarhus and Hungary. In order to understand if the situation has changed since the beginning of the efforts to implement the Aarhus Convention, the analysis of these documents/history is a necessity.

3.5 Data collection

Primarily the data collection is done by the means of interviews. These interviews are normal in-depth interviews as well as 'elite'-interviews. The interviews are done in a semi-structured or structured way, in order to guide the informants in a certain direction, but not to constrain their answering. These interviewing techniques are combined because the researcher strives to eliminate strengths and weaknesses of each separate instrument. Interviews are the best way to obtain large amounts of contextual data quickly and in a face-to-face manner. Face-to-face encounters also have their benefits because of other types of information that are picked up, for example hand gestures, facial expressions and body language. Next to the fact that interviewing can only be done with cooperation from the research subject, it also opens a way to follow-up data collection if this is necessary. One of the disadvantages of relying primarily on interviews for data collection is dependence on a small number of key informants. Another disadvantage is that the method of interviewing is highly dependent upon the ability of the researcher. The outcomes are not only dependent on interviewing techniques but also on the ability of the interviewer to be resourceful, systematic and honest, in order to control bias. In the light of the advantages displayed above, it can still be said that interviewing informants is the most efficient and hence best form to study institutionalised norms and statuses (Marshall, 1989; 109) and thus the best method to answer the research question which is posed here.

The persons who are interviewed are chosen based on their knowledge, function and role involving the Aarhus Convention. Some interviewees are working at the REC and are involved in drafting as well as implementing and enforcing the convention. Others work at ministries and have to change their working-ways in order to comply with the convention. A third group consists of those who are on the other side, they are users of the provisions of the Aarhus Convention. There were some difficulties in finding people who could be interviewed because of the language barrier. The researcher does not speak a word of Hungarian and some of the candidates for interviews were afraid of giving interviews in English. This problem was overcome by using the contacts the REC had, most of these contacts were able and willing to give interviews in English. One of the interviews was done in German, but this posed no problem. Even though there was a language barrier, most interviewees were able to express their thoughts. They took the time to do so and if something was unclear they elaborated upon it until there was a mutual understanding. In annex one, a list of the interviewees, their function and role in the Aarhus Convention can be found. There is one disadvantage of using people who could speak English, they might be biased because of their international orientation.

In order to make the interviews usable for this thesis they had to be coded. Coding is a process of structuring and this makes the interviews comparable to each other. During the coding process irrelevant passages in the interviews are deleted. Passages with similar subjects in different interviews are given a keyword that describes them and makes them easy to be compared. In this way each passage that is of interest in the interviews is clearly labelled. After the interviews are coded, they are used here to investigate the implementation process of the Aarhus Convention in Hungary.

3.6 Operationalisation

In the section below it is demonstrated how the changes in Hungary's national administrative system will be measured during the course of this research. The concept of change and the aspects of culture of the national state are operationalised in order to make them

measurable. This process also defines how changes in future treaties should be shaped according to these data. The level of measurement is ordinal, which means that there is a scale in e.g., the worlds of compliance, adaptational pressure, etc.

On the pages 20, 21 and 22 the operationalisation of the research is displayed with dimensions, sub dimensions and indicators for the capacity to change Hungary's administrative system. These dimensions, sub dimension and indicators follow directly from the established literature on change capacity. These theories are already discussed in-depth in the theoretical framework. The indicators that are shown here are not yet measurable units. The measurement and how we are going to determine if something does or does not belong to a certain category has been explained in the theoretical framework. After the discussion of each theory, there was an explanation of how this theory is going to be used within this research.

3.7 Reliability and validity

“Reliability is a matter of whether a particular technique, applied repeatedly to the same object, yields the same results.” (Babbie, 2001; 140) There is always a problem of reliability in social research, because it relies often on qualitative research. The problems with reliability are higher with the use of qualitative research methods, then with the use of quantitative research methods. The first step to make sure that this is not the case here, is the intensive attention that was given to the research methodology. One of the ways to make qualitative research more reliable is to base it on a methodology which makes it reproducible and representative. It still is very difficult to have the same outcome, if interviews are done by two different researchers. This problem is confined within this research by asking information only of people that are likely to know the answer and about things that are relevant to them (e.g. because of an affiliation to their work). Next to these measures the usage of established measures is practised all through the research (e.g. measures that are already established in previous literature on the subject).

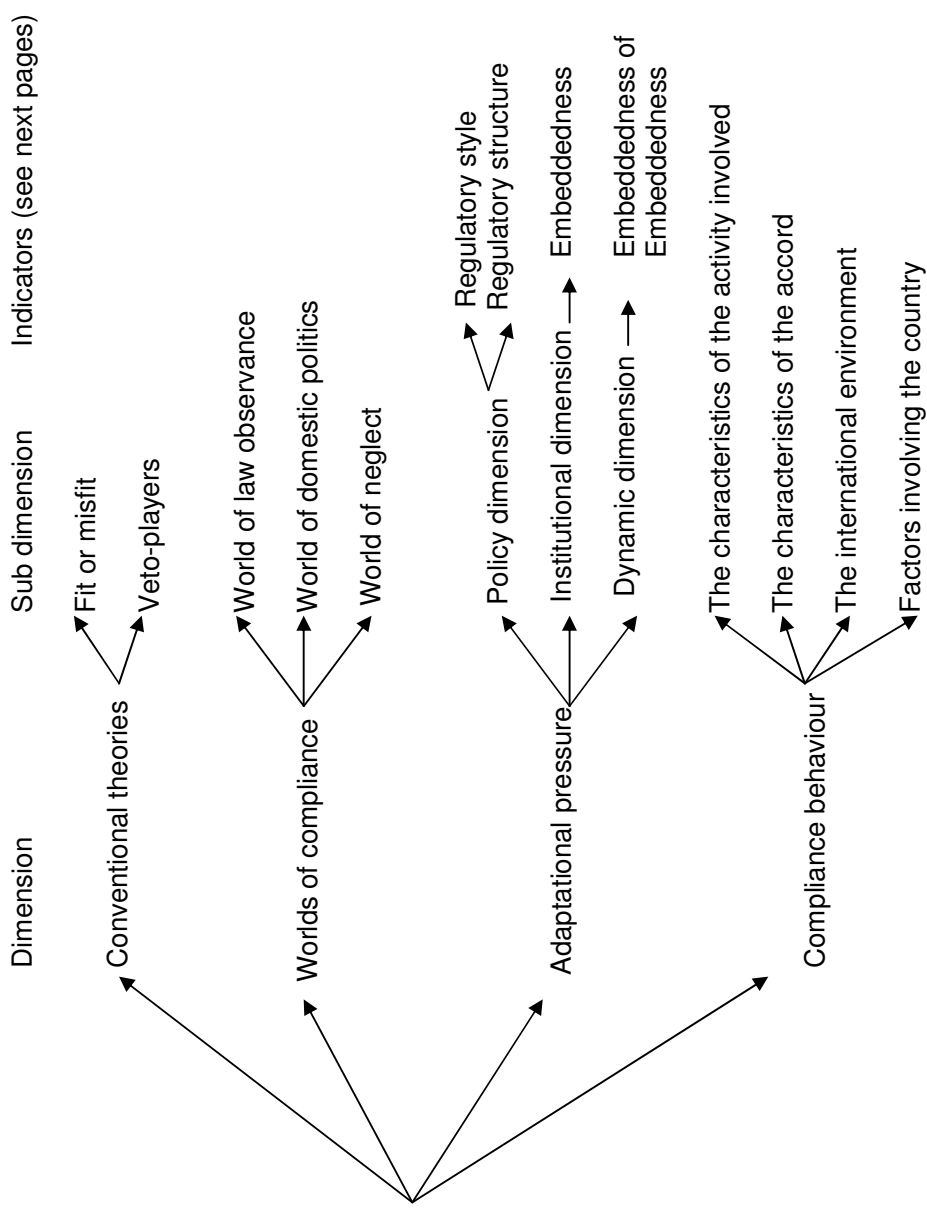
“Validity refers to the extent to which an empirical measure adequately reflects the real meaning of the concept under consideration”. (Babbie, 2001; 143) The way that validity is concerned in this research is that a form of constructed validity is used, it is thus considered how the variable in question theoretically ought to relate to other variables. The variables are drawn from several theories on compliance and administrative change, some of these overlap. This means that they are used in more than one of the theories, others are mentioned in one single theory. Additionally are all dimensions of change and compliance measured within the research, which makes it more valid.

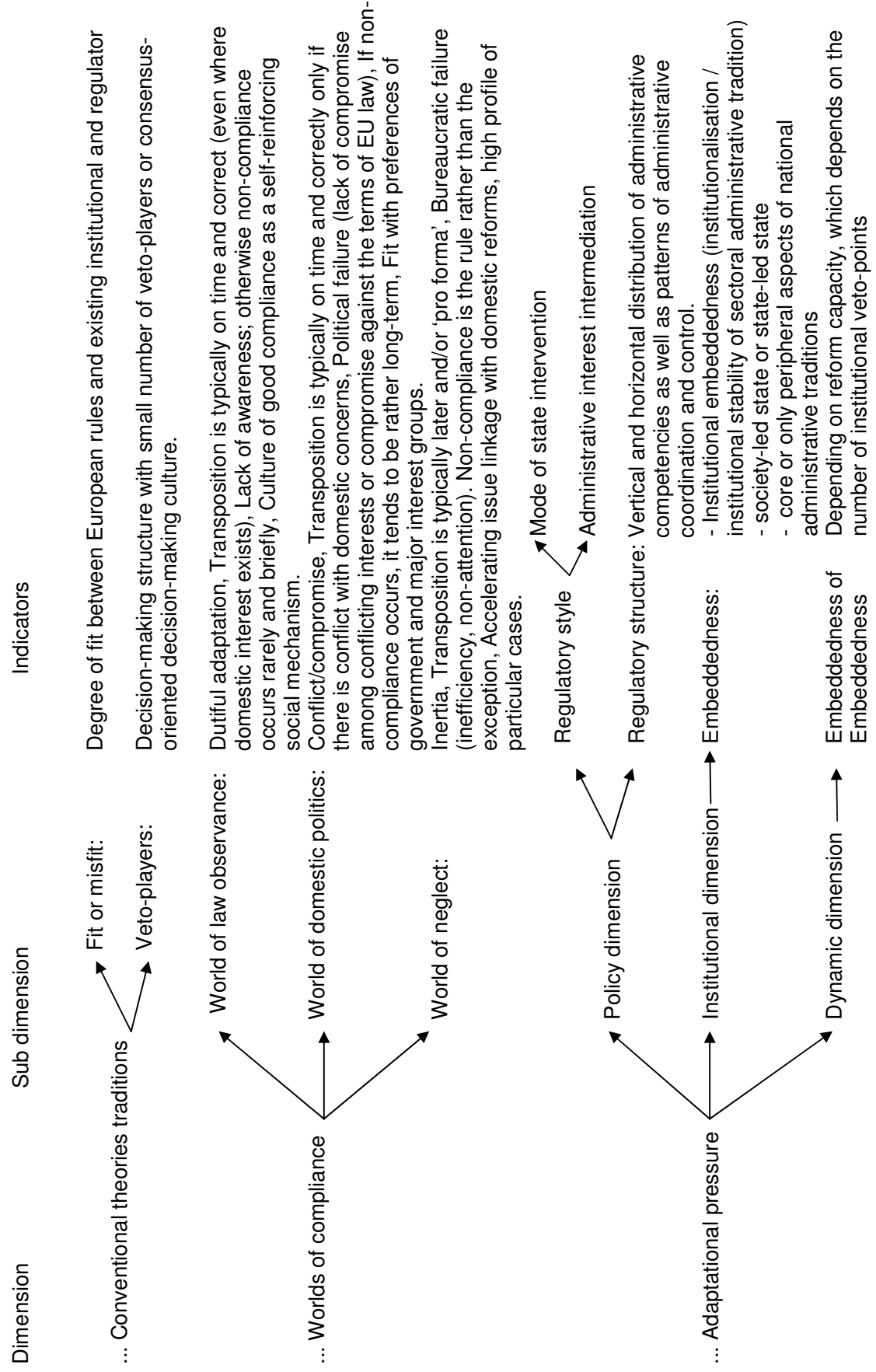
On the next three pages the operationalisation is displayed. In this chapter the methodology was outlined. The choices within this research are explained as well as certain research characteristics. The next chapter will tell more about the treaty of Aarhus. It will go into the aim, characteristics and development of the Aarhus Convention.

Operationalisation

Dependent variable

Hungary's capacity to change the administrative system





Dimension	Sub dimension	Indicators
... Compliance behaviour	<ul style="list-style-type: none"> <li data-bbox="373 483 406 630">→ The characteristics of the activity involved <li data-bbox="373 630 406 777">→ The characteristics of the accord <li data-bbox="373 777 406 924">→ The international environment <li data-bbox="373 924 406 1365">→ Factors involving the country: 	<p data-bbox="373 1365 406 1932">Number of participants involved, the significance of markets and trade to the activity, the location of the activity and the degree of concentration of the activity in major countries</p> <p data-bbox="406 1365 438 1932">Perceived equity of the obligations, the precision of the obligations, provisions for obtaining scientific and technical advice, monitoring and reporting requirements, implementation and non-compliance procedures, incentives and sanctions.</p> <p data-bbox="438 1365 470 1932">The international community's increasing attention to international environmental issues, including international environmental accords, is one of the most important factors explaining the acceleration in the trend toward improved implementation and national compliance (late 1980s/early 1990). Mobilization of worldwide media, roused the public opinion, and energized national and international NGOs and the public to put increased pressure on governments, this enhanced implementation and compliance. International governmental organisations paid more attention to environmental issues. Markets played an important role. Finally, having a 'leader' country (or countries) was crucial to the negotiation of particular treaties and to compliance with them.</p> <p data-bbox="470 1365 503 1932">Richer and more democratic countries comply better, than poorer and less democratic countries.</p> <p data-bbox="503 1365 535 1932">Basic parameters, countries previous behaviour regarding the issue, history and culture, geographical characteristics and the number of neighbouring countries. The economy, political institutions, and attitude/values are fundamental factors for compliance, while a country's administrative capacity, leadership, NGOs and knowledge and information base serve as proximate factors.</p>

4. The treaty of Aarhus

In this chapter the focus is on the treaty of Aarhus and its characteristics. First, the steps that lead to its establishment and drafting are discussed. Second, is an explanation of the goals and aim of the Aarhus Convention. Finally, the international environment is discussed, this is one of the characteristics of Weiss (1999) which involves features of the treaty. The other two characteristics (of the activity involved and the accord) are discussed in chapter six.

4.1 Drafting the treaty of Aarhus

The treaty of Aarhus is not a stand alone document in international legislation. It is a treaty which came forth of the 'Environment for Europe' process, which started in 1991. According to UNEP, the Aarhus Convention can be seen as an advanced articulation of article 10 of the Rio declaration (1992). Below article 10 of the Rio declaration is cited:

"Principle 10

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided." (UNEP, Rio declaration, 1992)

Next to this the Aarhus Convention builds upon the Sofia Guidelines (1995), these are the draft guidelines on access to environmental information and public participation in environmental decision-making. The Sofia Guidelines were drafted at the Third Ministerial Conference in October 1995 in Sofia, Bulgaria.

Eventually the Aarhus Convention was adopted on 25 June 1998, in the city of Aarhus, Denmark. The treaty entered into force in 2001. It is an international treaty under the lead of the United Nations Economic Commission for Europe (UNECE). The treaty consists of three pillars, namely:

1. Access to information
2. Public participation
3. Access to justice

Two characteristics of the Aarhus Convention make it a special treaty. The first is the fact that NGOs were part of the whole process. According to UNEP, the Aarhus Convention is quite innovative for the unprecedented level of NGO involvement in its conceptualisation, negotiating, drafting, signing, ratification, and implementation. (UNEP, 2002) The second is the content of the convention. Many other conventions or international treaties are forbidding a certain action or harm-causing substance. The Aarhus Convention sets out to give more rights to citizens and in a way poses obligations to governments and their officials. This makes the scope and the content of the Aarhus Convention quite particular.

4.2 Treaty characteristics

It is good to know where the treaty finds its base and what makes it special, but there are more important things that should be known about the Aarhus Convention. What does it strive for? Why does it give these rights to people? What is the use of making more information accessible? What is the benefit of having public participation in decision-making? Here the answers to these important questions will be given.

First, what does the convention strive for? This question is closely related to the second question, because what the convention strives for closely connects to the rights of people. The second question is: Why does the Convention give these rights to people? The convention aims to make people more aware of the environment around them. It aims at achieving this awareness by getting people involved and making it easier for them to get information on the environment. The ultimate goal is by making people more aware of the

environment, also making them more conscious and in the end more environmentally friendly. People often do not comprehend the environmental consequences of their actions. The Aarhus treaty hopes to give them the tools so that they can find this out for themselves.

The use of making environmental information accessible is already touched upon above, but there is more behind it. Much information is costly to obtain, it takes setting up a network of measure stations and people who gather, control and interpret the data. Non-profit organisations and private people cannot do this themselves. The government needs the information as well and has the resources to obtain this information. It is understandable that the government wishes to keep this information to themselves and not disperse it because of the costs. On the other hand in order to be as transparent as possible, others should be able to at least have insights in these data. In order to be on the same knowledge-level as the government, non-profit organisations and citizens should have access to their data. This is one of the practical uses of publicly accessible data.

The benefits of public participation in decision-making are widely debated in government organisations and non-profit organisations. Of course there are benefits to have the people say what they think about a certain plan, but it also raises many new questions. In what phase of the decision-making procedure should people get the possibility to participate? What should their influence be? When do we have to say that governments have a mandate to make certain decisions on their own? These questions are difficult to answer, one effect can be that it raises public support if a decision is made in dialogue with the people. The other questions are worthy of a complete thesis on their own. What can be extracted from the text of the Aarhus Convention is that its signatories presume that public participation in decision-making raises the quality of the decision itself. This can be seen as one of the goals of the Aarhus Convention, next to making people more aware of their environment and improve transparency in government organisations. All these goals in the end lead to one important aim of the Aarhus Convention and that is improving the quality of the environment, it is after all an environmental treaty.

4.3 The international environment

In the chapter on theory it is said that the international environment can be of influence in establishing or compliance with treaties. Again, here is not meant the natural environment but international developments surrounding the environment and environmental legislation. This international environment also creates momentum for leader countries. These leader countries often speed up the process of drafting, agreeing on and adopting a treaty. Additionally this process is influenced by media and public opinion. Finally, markets are able to put pressure on governments in an attempt to make them implement or not.

The international environment shows that there is an increasing attention to international environmental issues. According to Weiss (1999, 4) this attention "*increased sharply in preparation for the 1992 United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro, which brought together leaders from many countries and an unprecedented number of NGOs.*" As said before this conference ignited the spark that later created the Sofia Guidelines which lead to the Aarhus Convention. In this period there was an enthusiasm concerning access to information and public participation.³ Governments and NGOs alike thought that input from citizens could enhance decision-making and raise public support.

The media and public opinion are more difficult to assess, here it is impossible to determine if in the world press Aarhus related articles put pressure on governments to adopt or comply with the Aarhus Convention. In Hungary on the other hand the press is fairly active and Aarhus related topics are discussed in newspaper articles.⁴ In this way the media raises awareness of citizens and informs the public of the existence of the treaty. These articles appeared after the adoption of the treaty, thus they had no effect on the drafting, agreeing on and adoption of the treaty. On the other hand they might have an influence on compliance

³ Interview with Gábor Baranyai, 15 June 2007.

⁴ Interview with Stephen Stec, 22 June 2007.

with the Aarhus Convention, because conflicts between the government and NGOs were broadly covered in the media. This coverage might have pressured the government to work more cautiously in future projects, which leads to a better application of the provisions of the Aarhus Convention.⁵

In Hungary public opinion is strongly represented in the environmental NGOs. Since the fall of the communist system, which was linked to an environmental issue (see next chapter), the public was convinced that they should be able to influence future decisions concerning the environment. This conviction still remains and the public is thus very much in favour of the use of the rights which they are given in the Aarhus Convention.

Above it is stated that markets can influence implementation processes, this will be discussed more in-depth in chapter six. What can be said here is that the Aarhus Convention does not touch upon the market in a way that it for example restricts the production of certain substances. This makes the Aarhus Convention less important for business to pressure governments to comply or not. The second influential factor is a 'leader country'. In the drafting and implementation there was no 'leader country' identified. Denmark which was the host country did put a lot of effort in it, but it did not play a 'leading role'. The drafting was done under the lead of the UNECE and no single country stood out in its commitment to the Aarhus Convention.

Concerning the international environment it can be said that compliance with the Aarhus Convention was certainly influenced by media and public opinion. The influence of markets on the process of drafting adoption and compliance is minimal and no 'leader country' could be identified.

In this chapter the treaty of Aarhus is discussed. The drafting, its characteristics and the international environment that surrounds it are reviewed. In the introduction the reasons for choosing Hungary as a case are already discussed. Compared to other European countries, Hungary is relatively successful in implementing the Aarhus Convention. In the next chapter Hungary itself will be discussed, in order to find out if characteristics unique to this country helped implementing the convention.

⁵ Interview with Gábor Baranyai, 15 June 2007.

5. Hungary

In this chapter more background information is given about Hungary. First, general information about the country, subjects such as the history, the political system, the EU accession and the political change are discussed. Afterwards, the characteristics of Hungary which are important for implementation of international treaties according to Weiss (1999) are outlined.

5.1 History

Kontler (2002) has written an extensive history of the Hungarian state, this document is used as a key source of information here. The Austrian-Hungarian Empire is taken as a starting point, because there is no need to go all the way back in the history of Hungary. *"In 1867, Hungary became a constitutional monarchy (...) and an equal partner of Austria within the Habsburg Monarchy (...)"* (Kontler, 2002, 263) Hungary and Austria thus cooperated within the structure of a monarchy. Austria, even though it suffered some setbacks, was still seen as one of the great powers of that time, among others because of its strategic location. Kontler (2002) even says that these setbacks were needed in order for Austria to be willing to cooperate with Hungary. The cooperation of these two nations was called traditionally the Compromise of 1867.

On June 28, 1914 Archduke Francis Ferdinand was killed in Sarajevo (Kontler, 2002, 302). This historic event led to the outbreak of the First World War, in which most of continental Europe was involved. The war was started with great optimism and patriotic enthusiasm. During the four years of war this optimism weakened, the war exhausted the multinational empire. Discontent of the people was getting greater and forced the rulers to discuss armistice, peace negotiations began on October 2nd of 1918. The Austro-Hungarian Monarchy was crumbling by the end of World War I and all nationalities within the former Austrian-Hungarian Empire claimed their independence. On November 11, 1918 World War I officially came to an end. (Kontler, 2002, 319-324)

Hungary was seen as one of the losers of World War I, together with Germany, Austria and Italy. Hungary came out of World War I *"deprived of two-thirds of its former territory and nearly sixty percent of its population, including thirty percent of ethnic Hungarians"* (Kontler, 2002, 342). The 1920's were a more favourable and quiet period, it seemed like the losers of World War I were surrendering to their fate. But when the economic crisis began in 1929 the peace proved to be too fragile. The successor states of Austria-Hungary proved not to be a match for Nazi Germany. Hitler's Germany was seen as an important economic partner and accepted as an ally. The Second World War was fought in alliance with Germany, which had devastating results for Hungary. (Kontler, 2002, 325-327) This devastating result can clearly be deduced from the last paragraph on this subject in Kontler's *A History of Hungary*.

Budapest was taken by the Red Army on February 13, 1945. (...) The second World War for Hungary was over, leaving it under a foreign occupying force with devastated resources, a broken conscience and an identity crisis arguably still worse than at the beginning of the period which it thus ended." (Kontler, 2002, 386)

Hungary was one of the most affected countries of the Second World War. After the Second World War the countries of Central and South-Eastern Europe were occupied by Russia and Stalin imposed his socio-political system on these countries. *"Hungary belonged to the outer zone of that belt (belt of vassal states west of Russia), where a transitory period was contemplated by the new conquerors before complete Sovietisation could be achieved, though this latter was undoubtedly their goal from the very beginning."* (Kontler, 2002, 388) Hungary was transformed in a totalitarian regime, dependant on Moscow. However, Hungary did not go down without a struggle and the only anti-totalitarian revolution ever was fought in 1956. Even though the revolution failed, Moscow recognised the limits of suppressing the Hungarian people (Kontler, 2002, 390).

From 1956 onward Hungary enjoyed more freedom and rights than other soviet block countries, such as more flexible economic policies. *"By 1963 Hungary had become the subject of an unlikely consensus: Khrushchev (Russian) as well as American government circles praised it as a model communist country which had been the most successful dismantling Stalinism."* (Kontler, 2002, 437) In 1968 an economical reform was launched which became known as the 'New Economic Mechanism'. This reform ensured progress by using market economy mechanisms in the command economy that Hungary was. This opening of the Hungarian market is often referred to as 'goulash communism' or 'refrigerator socialism' it was only possible because of 'soft dictatorship'. The people of Hungary were in a lesser degree (compared to other East-block countries) subject to things like censorship and 'suppression violence'. Another development was that the Hungarian household mechanised, people owned TV-sets, vacuum cleaners and refrigerators.

From 1972 on, the New Economic Mechanism was criticised and some of the changes in the economic system were made undone. This reorientation of the economy happened simultaneously with a worldwide economic crisis. Because of the deteriorating economic situation it was decided in 1977 to go back to the economic reforms, they were even radicalised. This radicalisation among other things consisted of a liberalisation of foreign trade and the labour market, and many other reforms. According to Kontler (2002, 457) the reforms *"brought about profound changes in the structure of the economy and life patterns in Hungary"*. These changes thus meant a return to the market economy for Hungary, but the change was not complete and Hungarians were somewhere in the middle between a command and market economy.

The people were becoming more and more dissatisfied with the situation of being stuck in the middle and longed for the 'real thing'. From growing dissatisfaction an opposition began to form in the late 1970's. There were three mass demonstrations during the communist regime. One of these demonstrations is of importance here because it was connected to the environmentalist movement. *"A protest march in October 1988, against the construction of the hydro-electric system planned on the Danube called attention to the economic spoliation of communism and the disastrous ecological effects of its project 'to transform physical nature'."* (Kontler, 2002, 465) As in many East-block countries the fight for independence in Hungary, started from the environmentalist movement.

In November 1988 Miklós Németh became the new premier of Hungary and he *"turned out to be one of the engineers of transition"* (Kontler, 2002, 466). Developments followed each other in a fast tempo and ultimately lead to the constitutional amendment. Here a part of Kontler (2002, 468) is cited to show what the constitutional amendment meant.

"It (the amendment) defined the peaceful transition to a market economy and the rule of law as the goal of the state, whose form became a republic (replacing the 'peoples republic'), and civil democracy and democratic socialism its fundamental principles. It guaranteed civil and human rights, declared the establishment of the multi-party system and not only eliminated the clause referring to the 'leading role of the Marxist-Leninist party of the working class', but explicitly ruled out the exercise of public authority by a single party. Representative and responsible government, along with the separation of powers was enacted; the institution of the Presidium was abolished and replaced with the office of president with fairly weak powers, to be elected by the legislature."

The amendment was officially announced on October 23, 1989 and on this same day the republic was declared. The change was complete this time and thus not only on paper but also in practice.

The transition process of Hungary has been one of the most successful compared to other former East-block countries. The market economy was achieved through major privatization and human services could rely on state support. (Freedom house, 2006) According to the Nations in Transit 2006 report Hungary's *"strong and stable parliamentary system permitted consecutive governments to succeed to power smoothly"* (Freedom house, 2006, 1). The former opposition which was created from the 1980 onward has become the

new political elite. The business sector in Hungary is developing ever since just as the civil society which is engaged in policy making and implementation.

According to the Freedom House report, mentioned before above, the country has been given an overall democracy score of never higher than 2.0 and at its best 1.50. In this case the scale being from 1 to 7, 1 representing the best score and 7 the worst. There are of course still some problems in several areas but according to Freedom House (2006) these are not substantial. Problems are mostly experienced in the areas of independent media and corruption and improvement is attainable.

Hungary has a multi party system which is relatively bipolar *“with social democratic and market values guiding the political Left and conservative Christian democratic values guiding the political Right”* (Freedom house, 2006, 1). The current head of state is president Laszlo Solyom, who was elected to a five-year term by parliament on June 7th 2005. Next to the national level there are 3200 local municipalities in Hungary.⁶ The country is thus decentralised, but responsibilities remain at national level. The local government does not have many discretionary powers of its own. So even if the Hungarian government is decentralised, power is highly centralised.

5.2 EU accession and EU membership

In 2002 Hungary became a member of the European Union at the same time as nine other countries. The accession process was not easy for Hungary, because it meant complying with the ‘*acquis communautaire*’. The environmental legislation of the *acquis* will be concentrated on here, because it was meant to bring the new member states up to the level of the ‘older’ member states. This part will be largely based on an evaluation of the environmental accession process done by the Hungarian government. From this evaluation it can be concluded that *“Hungary has met the majority of the commitments made in the accession negotiations”* (Country-profile Hungary, 10). There were some problems and a few delays for which Hungary was granted some extra time. These problems were in the field of ‘packaging and packaging waste’, ‘urban waste water management’, ‘large combustion plants’ and ‘incineration of hazardous waste’. One of the main conclusions of the evaluation is that *“At present environmental law and regulations in Hungary are in line with the EU *acquis*”* (Country-profile Hungary, 14).

5.3 Connection of environmental organisations to the political change

Above the connection between the political change in Hungary and the environmental movement was already shortly mentioned. Here this connection will be further examined and the relation to political and public interest in the environment will also be described. The political change in Hungary in 1989 was connected to the environmental movement in the sense that one of the three mass demonstrations was for ecological reasons. The protest was organized because the Hungarian government wanted to make a dam in the Danube. Is it fair that on the basis of this fact the environmental movement has been seen as one of the strongest public movements within Hungary and that the public thus had an interest in the environment? Or was there something else happening in Hungary, namely that the only way for the people to demonstrate and organise themselves was under the pretence of the environmental interest? Was the environment just a ‘safe’ disguise in order to be able to protest against government policy?

Miklos Persanyi has a few arguments on the subject of the link between environmentalism and the political change in Hungary and the public awareness on environmental problems. First, he argues that it is false to state that there is a strong environmental movement in Hungary. The second is that according to him *“at the end of the twentieth century, in middle-industrialized countries, environmental issues have become the standard targets for every kind of political movement opposing existing authoritarian structures”* (Persanyi, 1993, 135). Third, his experience is that environmental groups have only a moderate influence after political changes. He concludes that despite these three

⁶ Interview with Gábor Baranyai, 15 June 2007.

arguments, the environmental movement is rooted deeply in Hungarian society. (Persanyi, 1993)

One of the things that Persanyi (1993) clearly voices in his article is that Hungarians used the worsening situation of the environment to express their discord with the communist system. Environmental protest was one of the few forms of protest that was allowed. Hungarians at the time were not an exceptionally environmentally aware people. This was made very clear after the system change when the environmental movement lost major public support. After the political change in Hungary people lost interest in the environmental movement, because now they were allowed to express their discomfort in any way they wanted. The environmental issues were no longer needed as a 'cover'.

The same can be said of political interest in the environment, because as Persanyi makes clear the first anti-communist government *"incorporated many of the green demands into its program"* (Persanyi, 1993, 149). Sadly after a few months conflicts arose over the green issues, these were only one part of the major change Hungary was going through. The government, just as the people *"turned their attention toward other pressing social concerns"* (Persanyi, 1993, 150). Here it has to be mentioned that other parties (not strictly green organisations) also incorporated environmental issues in their broader plans and thus the environmental movement did lose much attention. Nowadays the NGO situation is a bit more positive. There are many environmental NGOs, which are very active. They still have a mandate problem, because most of them do not have many members. The NGOs work together, which works very well for them.

5.4 Characteristics of Hungary

Weiss (1999) elaborates in the article on the implementation of environmental treaties on the following factors: administrative capacity, economic factors, political systems and institutions, features of democratic government, non-governmental organizations, leaders and the physical conditions of a country. These are the factors that will be shortly discussed here for the case of Hungary. These general characteristic involving the country will mostly be used as (indirect) factors for explaining the success of the implementation of the Aarhus Convention in Hungary.

Administrative capacity is of importance here because *"strong administrative capacity generally leads to better implementation and compliance"* (Weiss, 1999, 5). According to Weiss gross national product and administrative capacity are closely connected. If a country has more resources, then it can develop a stronger administration. GDP is the most commonly used indicator for national income. Because the World Bank uses GDP as their only indicator for national income and not GNP, it is used here too. The only difference with GNP is that the value of income from abroad is not included. In figure 5.1 the GDP data for Hungary for the last six years is displayed. From this table it can be concluded that the GDP of Hungary is rising and has more than doubled in these six years.

Figure 5.1 GDP in Current US \$

Hungary	
2001	53317046272
2002	66710310912
2003	84418797568
2004	102158450688
2005	110364196864
2006	112898523136

Source: WDI online

To be able to say if the administrative capacity is strong the GDP has to be compared to other European countries. The current GDP rates of Austria, the Netherlands and Bulgaria are displayed in figure 5.2. From these figures it can be concluded that the administrative capacity of Hungary is comparatively strong. The administrative capacity is considerably weaker than those of 'old' member states, like the Netherlands. It is also weaker compared to

that of Austria, which is a younger member state but one without a communist past. If the GDP of Hungary is compared to a state with a similar past it is actually relatively high. Here it can be concluded that Hungary has a relatively strong administrative capacity.

Figure 5.2 GDP in current US \$

Country	2006
Hungary	112898523136
Netherlands	657590124544
Bulgaria	31483000832
Austria	322443640832

Source: WDI online

Another factor that Weiss (1999) points at are economic factors, but it is immediately mentioned that these only have an indirect effect. It is pointed out that changes in GNP or GNP growth rates do not have a major effect, just a crisis like economic collapse and chaos can have an effect. Since Hungary has started implementing the Aarhus Convention there has been no major economic chaos or collapse of the economic system and thus this factor can be dismissed.

As mentioned in the introduction to this paragraph the political system and institutions are both factors that can effect the success of implementation. Weiss (1999) points out that the effect of these factors is complex and mixed. The political system is already discussed above and thus here the institutions will be briefly outlined. The problem that Hungary has with its institutions is that the government is divided into institutions which all have the responsibility for a certain aspect of the environment. Next to that environmental issues are not confined to one ministry, almost all institutions to some degree involve environmental issues. This makes compliance to the Aarhus treaty not always easy.

Features of democratic government are already discussed above in the history of Hungary. It is clear that there is a fairly democratic government based on the grade that is given by Freedom House (2006) for the overall democracy. The influence of a democratic government can have on compliance and implementation is quite big. In democratic governments citizens play a larger role and thus influence government policy more. The same goes for NGOs in a democratic government and the independence of the court. This can also work against successful implementation, because environmental issues are not always supported by the people, NGOs or the judicial system for that matter.

Especially environmental non-governmental organisations can have a positive influence on successful implementation. According to Weiss (1999) they can assist in compliance and implementation, but other NGOs can work against this purpose. It depends on the NGO and the way in which it uses its influence if the implementation is progressed or deteriorated. The NGOs that influenced the implementation of the Aarhus Convention are discussed in the next chapter.

The physical conditions of a country which are discussed above are all indirect influences on the successful implementation of the Aarhus treaty. It is good to discuss them before we get to the analysis of the implementation of the Aarhus Convention in Hungary. Some of the things that were found in the analysis directly connect to these physical conditions of the country. In the next chapter the implementation of the Aarhus Convention in Hungary is analysed. This is done by the use of the theories already discussed in chapter two.

6. Analysis

In this chapter the theories which were discussed in chapter two are applied to the case of Hungary. This is done in order to explain the implementation process of the Aarhus Convention in Hungary from different theoretical angles. First, characteristics of the treaty are discussed, namely the characteristics of the activity involved and the characteristics of the accord. Secondly, the misfit theory will be applied and afterwards the veto-player argument. Thirdly, an attempt will be made to classify Hungary into one of the worlds of compliance. Fourthly, the adaptational pressure of the Aarhus Convention for Hungary is determined. Afterwards, the implementation and compliance strategy of Hungary is outlined. Finally, the analysis is summarized.

Before the theories are applied to the case of Aarhus, one remark has to be made here. The practical use of the terms compliance and implementation is different from the use in the theory. In theory compliance goes one step further than implementation. In the interviews it is noticeable that the practical use of these two terms is exactly the other way around. The interviewees speak of compliance when they refer to just superficial or minimal changes in legislation. Implementation is used when they mean the more practical use of international requirements. This is why from this chapter on the two terms are used interchangeable, in the context of the sentence it is made clear if superficial or adaptation to the core is meant.

6.1 Characteristics of the activity involved

In this paragraph the characteristics of the activity that is regulated within the Aarhus Convention is discussed. These characteristics might influence compliance with the treaty of Aarhus. Weiss (1999) identifies two different characteristics of the activity, the number of participants and economic incentives. Both will be discussed, together with their influence on Hungary's implementation of the Aarhus Convention.

Weiss (1999) uses the number of participants as an indicator for the possible success of implementation and compliance with treaties. The logic behind this is that if the number of participants is smaller, it is easier and less expensive to monitor. This logic is illustrated by the difference in compliance to two different treaties namely the Montreal protocol and CITES⁷. The Montreal protocol aims at stopping the production of ozone-depleting substances and CITES aims to stop illegal trade in endangered species. If these cases are compared, the logical relation between the number of participants and successful compliance is confirmed. The Montreal protocol was much more successful, which can be contributed to the limited number of participants, which makes it easier to enforce and monitor. CITES is less successful because it comes down to the individual level, millions of individuals can influence this process, which makes it much more difficult to enforce. (Weiss, 1999, 2)

In the case of the treaty of Aarhus, before the number of participants will be discussed, it first has to be made clear that there is a difference between this treaty and other environmental treaties. Most international environmental treaties (see examples above) handle on the subject of stopping or forbidding a certain activity or substance. The treaty of Aarhus on the other hand does not aim to stop a certain activity but aims to give rights to citizens and NGOs and puts obligations on governments. This difference makes that the number of participants has virtually no influence on the enforcement possibilities and ultimately the compliance with the treaty. The number of participants in the Aarhus Convention applies to the government, NGOs and citizens. In case of the Aarhus treaty the number of participants is thus quite large, but this is not of direct influence on the success of implementation. There is some indirect influence because all these participants must be made aware of their new rights, and government officials must be held to their new obligations. It is difficult to make such a large group of participants aware of their newly

⁷ Convention on International Trade in Endangered Species

acquired rights. Next to this government officials have to be trained on their new obligations, it is quite a lot of work to reach every government official which has to do with environment on every administrative level. Conclusively it can be said that in the treaty of Aarhus, the number of participants only has an indirect effect on compliance.

The second influence on compliance according to Weiss (1999) is economic incentives. These can act in a stimulating as well as inhibiting manner. There is not much economic incentive concerned in the Aarhus Convention. The only economic incentive is the economical worth of environmental information and environmental information concerning businesses. The economical worth of environmental information works in an inhibiting way, information which is sometimes acquired by governments under high costs has to be dispersed. Environmental information concerning businesses also works in an inhibiting way, there is a separate clause in the treaty of Aarhus which excludes this kind of information from dispersion. Businesses do not want information on their polluting actions to be freely accessible because this might hurt them. It can thus be said that economic incentives have an inhibiting influence on access to information, this makes it more difficult for countries to comply with the Aarhus Convention.

6.2 Characteristics of the accord

Weiss points to different characteristics of the accord which might influence the compliance with them, the equity of obligations, the precisions of obligations, the monitoring and reporting obligations and implementing and non-compliance procedures. Here all of these characteristics will be applied to the Aarhus Convention, in order to find out if the characteristics of the treaty have an influence on compliance.

The equity of the convention is difficult to determine. The Aarhus Convention does not give funds to countries that have more difficulties complying or have no budget for compliance. The demands are the same for countries that might have more problems complying, they cannot comply to the Aarhus Convention in a lower degree. In this respect countries belonging to the former Soviet Union, young states, former dictatorships and countries in transition are expected to have more compliance problems. The convention luckily does have certain provisions for these kinds of countries. They are helped with implementation guides and other forms of practical help, for example trainings, workgroups or support from experts. The REC is one of the organisations (on non-profit basis) that supports Central and Eastern European countries in their attempt to comply with the Aarhus Convention.

The precision of the obligations in the convention is debatable. It has to be mentioned here that some interviewees said that the conventions precision is diverse. According to CEU professor Antypas, *"the Aarhus Convention is strong on information, considerably weaker on public participation and kind of vague really on justice"*.⁸ From this remark it can be concluded that the access to information provisions of the treaty are quite precise, the public participation provisions are less precise and the access to justice provisions are seen as vague and thus not precise enough. Another thing that is said in the interviews is that most countries have problems complying with the third pillar (access to justice), which is also considered to be vague. This is a sign that the theory of Weiss is confirmed in this case, and that complying is dependent on the precision of the formulation. Because this research focuses on the first and second pillar this means that the influence on compliance is low, because both pillars are relatively precise in their formulation.

The monitoring and reporting conditions of the treaty of Aarhus can be considered as quite extensive.⁹ Countries have to report on implementation and compliance to the Aarhus Secretariat. Monitoring is done also by the Aarhus Secretariat and by other bodies such as (inter)national NGOs, who can at all times report a government to the compliance committee if they suspect that rights which are granted by the convention are being infringed. These two elements although they are not as strong as national compliance measures are quite unique

⁸ Interview with Alexios Antypas, 5 June 2007.

⁹ Interview with Csaba Kiss, 12 June 2007.

in international legislation.¹⁰ This makes that countries are probably more inclined to comply or be non-compliant for shorter periods of time. Here it can thus be said that the monitoring and reporting conditions of the Aarhus Convention contribute to implementation of the convention.

6.3 Misfit

The degree of fit or misfit refers to the similarities or differences between international rules and existing institutional and regulatory tradition. These changes can sometimes have an effect on deeply rooted institutional and regulatory structures. Here the determination will be made on the degree of misfit between the Aarhus Convention and existing legislation and practise in Hungary. In order to determine this degree of misfit it is needed to differentiate between qualitative or quantitative natured misfit. However, before this can be done first a description will be given of the existing institutional and regulatory tradition concerning access to information and public participation in Hungary. After this, there will be an indication of the degree of misfit between the Aarhus Convention and these traditions and if these changes were of qualitative or quantitative nature. Finally, the implementation process of the Aarhus Convention in Hungary will be explained with these outcomes.

The existing institutional and regulatory traditions

In this paragraph the existing legislation and practice on the access to information and public participation is explored. The information that is used here comes from articles on the subject and the interviews. First, the domestic legislation on access to information will be described, then the legislation on public participation.

According to Antypas (2003, 200) *“the Hungarian Constitution establishes the principle of the public’s right to information of the public interest in Article 61(1), linking it to freedom of expression. The right to access information, including environmental information, is further elaborated in the Protection of Personal Data and Disclosure of Public Data Act, the Environmental Protection Act, and the Governmental Order on Environmental Impact Assessment.”* The access to information and active dissemination of information, which are requirements of the Aarhus Convention are to be found in the Data Protection and Disclosure Act of 1992. Access to information can be denied on the basis of national defence or security, criminal or other judicial or police procedures, monetary or currency policy, or international relations and relations with international organisations. (Antypas, 2003)

Interesting is that business confidentiality or business secret is not a reason for non-disclosure of information.¹¹ The concept of Business confidentiality is only defined in the Hungarian law on competition and not in the Data Protection and Disclosure Act. The government should make the most important data available through publishing (either on the internet or hardcopy). Data that is considered here is data on the activities, the authority, competences and structures of the authority, as well as data that they collected and laws. The procedures on requests for information, denial of the request and notification thereof all comply with the Aarhus requirements. *“The Environmental Protection Act of 1995 specifies the particular right to environmental information.”* (Antypas, 2003, 201)

General public involvement in the decision-making process (before, during or after) and the right to petition and complain are established in the Hungarian Constitution. More specific public participation rights are provided in the Environmental Protection Act and the Governmental Order on Environmental Impact Assessment. Public participation or citizen participation is understood as individual participation as well as participation through a representative, non-governmental organisation or local government. In the interview Csaba Kiss¹² describes the public participation in Hungary as “fluctuating”. He says the following: *“In the beginning of the 90’s when the, actually the change of the political system was somehow attached to the environmental movement, one of the big achievements was getting legal*

¹⁰ Interview with Csaba Kiss, 12 June 2007.

¹¹ Interviews with Csaba Kiss, 12 June 2007 and Magdolna Toth Nagy, 6 June 2007.

¹² Interview with Csaba Kiss, 12 June 2007.

standing based on a creative interpretation of a very old law from the 1950's, which regulated generally every (...) procedure. And of course those who wrote the law in 1957 did not suppose that let's say almost 50 years later, NGOs will use it to establish their standing, but that happened". In the beginning getting legal standing was relatively easy for NGOs and the used this possibility frequently. "But then, there was a reverse movement, that, the courts started to interpret conditions or criteria of legal standing more restrictively."¹³ During this period it was much more difficult for NGOs or civil initiatives to get legal standing. Without legal standing it is much more difficult for these organisations to be seen as partners in decision-making procedures and to influence these processes. "That worked, let's say between 1993 and 1995 and in '95 the new Environmental Act came into force, on December the 19th. And that really opened up legal standing, and of course the court system did not really, I mean the administrative authorities reacted quite liberally and they granted standing to most of the NGOs."¹⁴ The coming into force of new legislation gave a thrust in the creation of organisations with legal standing. It made legal standing something that could be achieved easily. There was however a downside because "(...) again the courts (...) reversed (...) this process by saying that although all NGOs that are environmental, have legal standing in environmental procedures, the notion environmental procedure was interpreted restrictively, and only Environmental Impact Assessment (EIA) procedures fell under the scope of this category."¹⁵ The situation was that there were many environmental organisation with legal standing, but they could not influence decision-making outside the scope of EIA procedures. "And then later, (...) three years later in 2004 the Supreme Court said that every procedure which involves the environmental authority is per se environmental. And since then we have this new age that it is even more liberal, how standing is perceived."¹⁶ Thus after a fluctuating process of easy legal standing, difficult legal standing and easy legal standing but no influence, the stage of easy legal standing and broad influence has finally been reached.

As can be seen above the situation before Aarhus was quite liberal, Gábor Banyai in the interview even calls it "a very liberal system (...) since 1996, following the getting into force of the Hungarian Environmental Act." It was relatively easy for NGOs to get legal standing, access to information was subjected to liberal legislation as well as public participation. However many interviewees make a distinction between legislation and actual practice, just as theorists make the distinction between implementation and compliance. One of the interviewees even said that Hungary was actually passive but in compliance.¹⁷ What he meant was that in legalistic terms Hungary complies with the Aarhus Convention but the government is not pro-active. Kiss says the following on this: "(...) One thing is the text of the law and the other thing is practice. Definitely practice does not show so good signs as regulation."¹⁸ Although the legislation was very liberal before the Aarhus Convention, in practice it was clearly more difficult to change old traditions. It is easier to change or adapt legislation, but it takes some time until officials and traditions change. As Eva Csobod mentions in the interview, governments are not eager to provide information, they are used to make a business of the information they gather, it is sold for quite high prices.¹⁹ Next to that the power that comes with having this information used to be one of the benefits of being a civil servant. It is thus a big shift for them to actively disseminate this information for free all of a sudden, even though the law says they should. The same goes for public participation another Aarhus provision. In decision-making the civil servants see themselves as experts and do not appreciate the involvement of unschooled (in the specific subject) citizens. They seem not to understand the added value of public involvement in decision-making.

¹³ Interview with Csaba Kiss, 12 June 2007.

¹⁴ Idem.

¹⁵ Idem.

¹⁶ Idem.

¹⁷ Interview with Alexios Antypas, 5 June 2007.

¹⁸ Interview with Csaba Kiss, 12 June 2007.

¹⁹ Interview with Eva Csobod, 25 June 2007.

Degree of misfit

In this paragraph the degree of misfit between domestic legislation and the Aarhus Convention will be determined. In order to do so the domestic legislation and convention provisions are compared. According to the interviewees the convention did not bring substantial changes to Hungarian legislation. Many Hungarian laws were already in the spirit of Aarhus. If convention provisions had to be incorporated in national law, this was done literally. According to Kiss the transposition of the Aarhus Convention could be described as “perfect”.²⁰ The treaty was literally transposed into the domestic bill of law, the sentences were not reformulated.²¹ Combine this with the fact that Hungary was well prepared for the Aarhus Convention because of the content of their former legislation. According to Gábor Baranyai²² Hungary has been in the forefront of a general way of thinking that the public has to be provided with more rights, which existed at the time of the creation of the convention. Baranyai says: “*by the time the convention, was born, ratified and came into force, Hungary had done much of its homework*”.²³ These two facts show that the degree of misfit between Hungary’s legalistic system and Aarhus provisions in theory was low.

Worth mentioning here is that the Aarhus Convention sometimes has a reverse effect on regulation. In one case it made Hungarian legislation stricter than before. Above confidential business information was already mentioned as not being a reason for non-disclosure in Hungarian domestic law. The Aarhus Convention does identify business secrets as a reason for denying an information request. So this ground upon which information can be denied, was brought in by the Aarhus Convention.²⁴ This shows that the Aarhus Convention in this case restricted citizens rights instead of broadening them.

There were a few practical problems that had to be dealt with, because practice was lagging behind on the changes that were made in the Hungarian legislation. The coming into force of the Aarhus Convention was an additional incentive to carry out tasks which were planned anyway for a while.²⁵ There was also some administrative resistance or bureaucratic inertia, these subjects are further discussed in another part of this chapter. The active dissemination of information and information databases are also a practical problem on which Hungarian authorities are still working. Building up a network of environmental information, integrating databases, and disseminating information is easier said than done. The goal this year, is to connect databases and make them searchable in a user friendly manner. Progress in this field is very slow, the interconnected database has been promised in 1995 in the Environmental Protection Act.²⁶ This problem is not only experienced externally, internally there are problems with connecting information too. Since the transfer of the Water department, from the ministry of Transport to the ministry of Environment in 2002, the ‘water’-databases are still not accessible by ‘environment’-officials.²⁷ These internal database problems are really a hinder to meet the requirements of access to information.

Which degree of misfit between domestic Hungarian legislation and practices and the Aarhus Convention can be assigned? As said before completely new rules, far-reaching gradual changes and/or important qualitative innovations are considered as a high degree of legal misfit. In this case the rules can not be considered completely new, most of them were already existing in domestic legislation before the coming into force of the Aarhus Convention. As to the practical significance of the changes brought by the Aarhus Convention it can be said that there are some problems. These can be overcome although this is a slow process. The scope of application is mainly national because most environmental information is in the hands of the national government. It does not only affect the Ministry of Environment and Water but also other ministries or government institutions

²⁰ Interview with Csaba Kiss, 12 June 2007.

²¹ Idem.

²² Interview with Gábor Baranyai, 15 June 2007.

²³ Idem.

²⁴ Interview with Csaba Kiss, 12 June 2007.

²⁵ Interview with Gábor Baranyai, 15 June 2007.

²⁶ Idem.

²⁷ Interview with József Gayer, 19 June 2007.

that have environmental information.²⁸ This makes it difficult to identify this information and integrate it into one central database. If the legal misfit, practical significance and scope of application are taken into account, a low degree of misfit can be assigned to this case.

The question here is whether this low degree of misfit is of a quantitative or qualitative nature. Quantitative natured misfit is a gradual difference, while qualitative natured misfit a matter of principle is. Here it can be said that the misfit is of gradual difference. Since the political change in Hungary this process has been going on, on paper faster than in practice, but even practice is adapting to the new rules and changes in legislation. This process started before the Aarhus Convention but the convention turned out to be an incentive for this change. As is explained in the second chapter 'theory', a low degree of misfit normally leads to smooth and timely implementation. In this case it can be said that this is true because the empirical findings that Falkner (2006) identifies do not apply here.

6.4 Veto-players

This paragraph looks into the importance of veto-players in the implementation process. In the theory chapter, next to misfit the number of veto-players is identified as an important condition for successful implementation. The theory was found to have two important shortcomings. The first shortcoming is that when the veto-player argument is used, the preferences of the veto-players have to be taken into account. The second is of great interest here, because the number of veto-players is irrelevant if the transposition and implementation process is isolated from political actors. In the case of implementing the Aarhus Convention in Hungary this is clearly the situation. The transposition and implementation of the Aarhus Convention are strictly an administrative processes, political actors do not influence them. The fact that this is the case can also be concluded from the observation that there was no political controversy considering the adoption of the Aarhus Convention in Hungary. The number of veto-players is thus not of interest in this case and is not further examined.

6.5 Worlds of compliance

On the basis of patterns that were detected in the way in which countries tend to implement policies, Falkner identified three worlds of compliance. In this paragraph it will be determined to which world Hungary belongs. In order to do so the goals on which the government acted will be determined and Hungary will be assigned to one of the categories.

The Aarhus Convention and the domestic legislation are so close to each other that it can be said that the goals of the government were in line with those of the Aarhus Convention. Another sign that shows this is the fact that Hungary can be considered as one of the countries in the forefront of developing more democracy in environmental policy.²⁹ This does not mean that Hungary should automatically be assigned to the world of compliance, because there is no information on how the implementation process might have been if domestic goals and international goals clash. There is no reason to believe that in Hungary a kind of compliance culture automatically results in timely and correct implementation. Here it has to be said that it is difficult to determine the world of compliance Hungary would belong to based on one case. It could just as well belong to the world of law observance as to the world of domestic policies. There needs to be more research into Hungary's compliance behaviour in other cases to determine its world of compliance. It can be said here that at least in this case there is no sign to belief that Hungary belongs to the world of neglect. There might be signs of inertia but this is not a widespread policy in the government concerning compliance with international legislation. This can also be seen from the adaptations Hungary was willing to make to be able to enter the European Union.

Here the conclusion has to be made that on the basis of this single case research it is not possible to categorise Hungary into one of the worlds of compliance. This can only be done on the basis of more cases, or wider research. It would be interesting to make this

²⁸ Interview with Gábor Baranyai, 15 June 2007.

²⁹ Idem.

determination in order to be able to predict Hungary's reaction to new international legislation or EU requirements.

6.6 Adaptational pressure

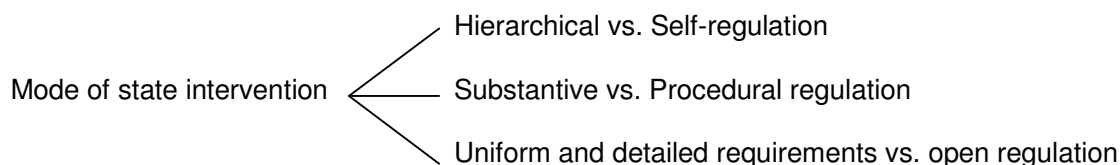
The last theory that is applied to the case of the implementation of the Aarhus treaty in Hungary is Knill's (1998) theory on adaptational pressure. As described in the chapter on theories his theory consists of three dimensions which will all be applied to the implementation of the Aarhus Convention in Hungary. The policy dimension will be discussed first, afterwards the institutional dimension and lastly the dynamic dimension.

Policy dimension

The policy dimension says something about the differences between international rules and national administrative traditions. The dimension is divided into two concepts, namely regulatory structure and regulatory style. Regulatory style consist of 'mode of state intervention' and 'administrative interest mediation'. The chapter on theories displays two models that show what the 'mode of state intervention' and 'administrative interest mediation' are determined by. These models will be used here to determine what mode of state intervention Hungary applies to and what kind of administrative interest mediation Hungary exercises.

Regulatory style

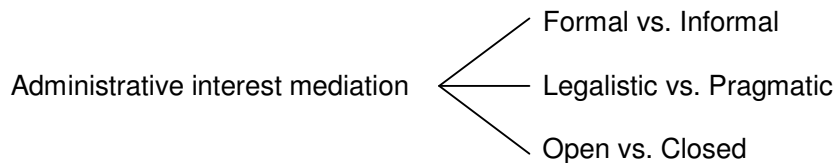
First, the mode of state intervention will be determined. The model that helps determining the mode of state intervention is the following.



As can be seen in this model, to determine the mode of state intervention three aspects have to be assessed. The Aarhus Convention is quite hierarchical because the main responsibilities lay with the national government. The treaty does not consider the option of self-regulation but implies top-down implementation. Countries have a say in whether or not they join the convention, but if they do there is minimal room for individual state discretion. Thus the Aarhus Convention can be defined as hierarchical. The distinction between substantive and procedural regulation is hard to make in the case of the Aarhus Convention. Because the convention gives rights and demands certain duties from citizens as well as the government, it should be determined as procedural. On the other hand the treaty covers important human rights and can thus be seen as substantive. The Aarhus Convention might be determined as 'substantive' procedural regulation. The accuracy of the Aarhus Convention is already discussed in this analysis. The accuracy of the Aarhus Convention is diverse in the different pillars. The first and second pillar are relatively detailed. The third pillar is less uniform and lacks detail, which makes implementation troublesome. Because of the focus on the first and second pillar in this research, it is determined that the requirements are uniform and detailed.

What can be concluded here on the mode of state intervention for the case of the implementation of the Aarhus Convention in Hungary. The mode of state intervention can be determined as hierarchical, 'substantive' procedural and the relative uniform and detailed regulation.

Second aspect is the administrative interest mediation. The model that displays the characteristics that determine administrative interest mediation is displayed below.



Administrative interest mediation says something about the relationship between administrative and societal actors. Are these relationships formal or informal, legalistic vs. pragmatic and open or closed? This is something that is quite difficult to determine as an outsider. In the interviews many comments were made on the relation between administration and societal actors, on the basis of these comments a determination will be made here. The relation between societal actors and administration is often formal and legalistic. Connected to the Aarhus Convention, societal actors often need to perform legal actions in order to get the information they are entitled to. The interaction between ministries and NGOs is close, e.g. the lines of communication are short, but can be characterised as formal. It has to be said that the administration is relatively open, it is easy to contact them, the difficulty is getting what is needed. On the basis of this determination it can be said that the patterns of administrative interest mediation are of an open, formal and legalistic nature.

Knill (1998) admits that administrative interest mediation and mode of state intervention are two closely related concepts. When a mode of state intervention consists of substantive and detailed regulation, then often the administrative interest mediation is of a formal legalistic nature. This is also the case here, concerning the implementation of the Aarhus Convention in Hungary. The mode of state intervention consists of hierarchical, substantive and detailed regulation and the administrative interest mediation is of a formal and legalistic but open nature. The regulatory style is determined by these two aspects.

Regulatory structure

The second concept of the policy dimension is regulatory structure, it is defined by the vertical and horizontal distribution of administrative competences. The vertical distribution of administrative competences relates to centralisation or decentralisation. In the case of Hungary this is very clear. Hungary has many local governments and also provincial governments, its structure is thus quite decentralised. The competencies of the local and provincial governments however are minimal, practically everything of a substantive nature is determined by the national government. This is what horizontal distribution consists of, the concentration or fragmentation of administrative competencies. In Hungary these are mostly concentrated in the national government layer.

Next to the above mentioned concepts of horizontal and vertical distribution of administrative competencies, the regulatory structure is also determined by patterns of administrative coordination and control. These other two factors are also executed by the national government which coordinates and controls implementation processes. As to the regulatory structure of Hungary it can be said that even though it has many local governments, the important decisions, coordination and control are done by the national government. Hungary is thus a country with a very centralised regulatory structure.

When the two concepts of the policy dimension are combined the image that is portrayed is the following. The regulatory style consists of the mode of state intervention and the administrative interest mediation. The mode of state intervention is determined by the treaty of Aarhus, which is described as hierarchical, substantive and detailed regulation. The administrative interest mediation is of a formal, legalistic but open nature. And finally the regulatory structure is shown to be highly centralised. On the basis of these characteristics of the policy dimension a moderate adaptational pressure can be assigned.

Institutional dimension

The second dimension which in Knill's theory is relevant to the success of implementation of international treaties is the institutional dimension. This dimension determines the

institutional scope of changes which are caused by the implementation of treaties. Here the institutional dimension will be determined upon the embeddedness and the conception of the state. This is done to build a picture of the adaptational pressure created by the institutional dimension.

The embeddedness depends on the administrative relations and to which degree they are ideologically rooted in "paradigms". (Hall, 1993) Knill (1998) says that there is a higher adaptational pressure if the changes posed by a treaty are challenging embedded administrative arrangements. Here will be determined if this is the case for the Aarhus treaty in Hungary. In the interviews the question was asked whether the demands posed by Aarhus Convention were difficult to comply with. This question was meant as an indication of adaptational pressure perceived by the interviewees. Another question that was asked if people said that there was a low adaptational pressure was if the Aarhus Convention changed a lot in Hungary. Unexpectedly the answers often opposed each other. Many interviewees said that the adaptational pressure was low, but admitted that Aarhus caused major change. This is very interesting, how can something that has a low degree of adaptational pressure bring such change. Every interviewee regarded the adaptational pressure as low because the legal framework was already present in Hungary. On the side of legislation there was not much change needed. On the other hand most of them point towards the practical implementation as being difficult.

The changes had to made in the working ways of the people that deal with the legislation. In the case of Aarhus these people are the administrators who have information and those that make decisions (on environmental issues). They had to change the way they act on a request for information and how they include citizens in decision-making. What comes forward in the interviews is that this took some getting used to. Antypas and Stec refer to resistance and inertia in the interviews.³⁰ Stec says: *"The main obstacle is that you might have some bureaucratic inertia, basically just people who are wanting to continue to do business as usual, not being interested in what they perceive as being extra work."*³¹ He clearly points at the fact that administrative traditions are hard to change in Hungary and are thus relatively embedded. Concluding he does say that *"with the right support (...) that can be overcome"*.³²

Antypas³³ finds resistance in another part of the Hungarian administration. He identifies resistance on the part of ministries or other public authorities, who have competences in things such as road building. They often interpreted the Aarhus Convention as something that does not apply to them because they are not part of the Ministry of Environment and Water. This is another example of embeddedness of administrative traditions, because these other authorities are not environmental they perceive themselves as unaffected by the Aarhus Convention. This example also has another side to it because in recent judicial rulings this way of thinking was disapproved by judges. The Supreme Court made a decision in 2004 which was in line with the Aarhus Convention and said that every procedure which involves the environmental authority is per se environmental. What is interesting about this is that it was made in 2004 even though the convention came into force in 2001. This an example that shows that the judiciary practice changes slowly. Another interesting aspect is that every procedure which involved the environmental authority was seen as an environmental decision, also road building and construction even though the Ministry of Environment and Water doesn't execute these policies.³⁴ This ruling makes it possible for citizens to get informed and participate in decision-making.

Kiss also makes a distinction between the law and the practice of access to information. The law is quite open and easy, any information which is not strictly personal is

³⁰ Interviews with Stephen Stec, 22 June 2007 and Alexios Antypas, 5 June 2007.

³¹ Interview with Stephen Stec, 22 June 2007.

³² Idem

³³ Interview with Alexios Antypas, 5 June 2007

³⁴ Interview with Csaba Kiss, 12 June 2007.

public interest and can be disclosed.³⁵ In practice however the path to get information proves to be long and difficult. As he describes it: *“you request some information, you are first denied that information. Then you go to the court and the court procedure takes, let’s say first and second instances all together, two years. By the time you get the information, it is quite outdated.”*³⁶ What he points at here is the administrative tradition of not disclosing information, which is only broken with on the basis of a judges order.

Csobod³⁷ shows that even if the legislation is present, people have to implement it. People on certain positions need to use the provisions of the Aarhus Convention, they need to learn and understand it. If they do this then it comes down to cooperation, cooperation between parties which are not used to this. According to her it thus goes down to the level of individuals in administration as well as NGOs that need to work together. Logic presupposes that this can cause friction because of the different goals of NGOs and Ministry officials. Cooperation between these two is something that needs some getting used to, from both sides, but in the end can lead to changes in the administrative traditions as well as working methods of the NGOs.

Following the argumentation of the interviewees it can be said that adaptational pressure was low, but administrative traditions did change because of it. It is actually quite remarkable that even a low adaptational pressure in Hungary caused it to change so much. The administrative traditions can be determined as embedded, but not resistant to the adaptational pressure caused by the Aarhus Convention.

The conception of the state

Knill points at another part of the institutional dimension that is of importance. This is the conception of the state as Badie and Birnbaum (1983) described. They make a difference between a state-led society and a society-led society. These two societies being ideal types, there is no single state that exactly applies to one of the two. In the interviews the question was asked if the interviewee saw Hungary as a state-led society or more as a society-led society. To make the question a bit easier to answer the interviewees had to keep in mind the part of the government that has to work with the Aarhus Convention. The answer to this question was very diverse, but according to them a categorisation of Hungary is made in one of the two ideal-types.

Not many interviewees see Hungary as a state-led society. Gayer says that speaking as someone who works for the ministry he sees Hungary as being state-led. He adds that there is a movement, however slow, towards a more society-led state. Lenkei makes a difference between practice and theory. According to him people have influence in many things, but do not have it in many other. He says that it appears to be like a society-led state in theoretical aspects, but in praxis the state remains state-led.

Some interviewees see Hungary on the environmental aspect as a society-led society. According to Stec³⁸ you could never say that Hungary has a state-led society because of the weak state institutions. According to him the society has been divided, there have been a lot of changes in government and the opposition has always been very strong. This is his argumentation on the side of the government, on the other hand he sees the civil society in Hungary as being strong and it has developed alternative structures. In this respect he sees Hungary as being society-led. Antypas³⁹ clearly makes a distinction between the area of the environment and other government tasks. He points out that Hungary in the area of environment is society-led, civil society often sets the agenda and creates public debate. The last interviewee that sees Hungary as a society-led state is Kiss⁴⁰, he points at the environmental movements organised in civil society (NGOs). According to him the influence

³⁵ Interview with Csaba Kiss, 12 June 2007.

³⁶ Idem.

³⁷ Interview with Eva Csobod, 25 June 2007.

³⁸ Interview with Stephen Stec, 22 June 2007.

³⁹ Interview with Alexios Antypas, 5 June 2007.

⁴⁰ Interview with Csaba Kiss, 12 June 2007.

of the environmental NGO movement can be seen as an example of the society-led state Hungary is.

For other interviewees Hungary was not characterised by one of the two ideal-types, but it was in transition from one type to the other. According to Csobod, Toth Nagy and Baranyai⁴¹ Hungary is on its way from being a state-led society to becoming a society-led society. According to Baranyai⁴² Hungary has traditionally been a society that was strongly regulated, he refers to communism and the role of civil society in Hungary's past. But Hungary is gradually moving towards a society-led society, in the '90 especially this was easy because funding was less of a problem. Even now, while acquiring funds is becoming more difficult, the environmental movement is still rising.

Toth Nagy⁴³ qualifies Hungary as being in the middle of the scale in the area of environment. NGOs have influence in policy making and there is quite a lot of initiative. She adds: *"I think that we are progressing towards a society where citizens or NGO initiative are influencing more, but we are still not there. But I see, (...) in the last fifteen years positive change."* In the interview Toth Nagy also points at the fact that even though NGOs are well organised and can influence decisions, it is difficult for them to mobilise public support, which makes it questionable on the basis of which mandate they are acting.

In addition to the previous two Csobod⁴⁴ also says that she feels that Hungary is halfway between the state-led and society-led society. She accentuates the influence of large international NGOs which learn local NGOs how to act and work together on the principle of consensus. In this way they find out how they can be a partner of the government, instead of each others enemy.

Concluding it can be said that Hungary is a state on its way to becoming a society-led society and in some aspects is already there. The two interviewees who see it as a state-led society agree that it is moving away from that (even if it is just in theory, praxis usually follows).

Dynamic dimension

This third and final dimension of adaptational pressure concerns the structural stability of embeddedness. This depends on the reform capacity of Hungary, which depends on the political system, the basis of the administrative activity and the fragmentation of administrative structures. Hungary's political system has been described in chapter five. The reform capacity also depends on the degree of political decentralisation, which in the case of Hungary is low. Hungary is politically centralised in the way that most political responsibilities of importance, lay with the national government. The degree to which administrative activity is based on legal and formal requirements is also of importance. The activities which are concerned with the Aarhus Convention are mostly of legal and formal requirements. These requirements have all been met by the Hungarian law and only practical use is an inhibiting factor. Fragmentation of the administrative structures in Hungary is widespread, but the many local governments do not have many discretionary abilities. Important decisions are made by the national government and not left for the local administrations to decide on. This concentration of administrative responsibilities makes implementation easier because it only applies to this level. As a result of this a low degree of adaptational pressure can be awarded to the dynamic dimension.

Hungary's implementation path

On the basis of the three dimensions determined above it can be concluded that Hungary took the implementation path of 'Change within a changing core: Accepted or neglected adaptation?'. This is because there were no fundamental reforms needed, nevertheless

⁴¹ Interviews with Eva Csobod, 25 June 2007, Magdolna Toth Nagy, 6 June 2007 and Gábor Baranyai, 15 June 2007.

⁴² Interview with Gábor Baranyai, 15 June 2007.

⁴³ Interview with Magdolna Toth Nagy, 6 June 2007.

⁴⁴ Interview with Eva Csobod, 25 June 2007.

substantial change occurred. In this path moderate adaptational pressure is exerted, which is the case in Hungary considering the implementation of the Aarhus Convention. According to Knill (1998) this implementation path may result in acceptance as well as neglecting. In this case it can be stated that the implementation path lead to acceptance, because government as well as civil society strive to fully use the potential of the Aarhus Convention. Even though it took some time to evolve, it can not be stated that the convention is neglected in any possible way.

6.7 Implementation and compliance strategy

In some countries it is a habit that new policy or international treaties are implemented with the aid of implementations guides and compliance strategies. Such a methodological working method could improve the success of the implementation process, because it is well thought out. These plans normally compare new legislation to the existing legislation (misfit) and on the basis of the identified gaps a strategy is formed. The question that will be answered here is if Hungary had such a plan for the implementation of the Aarhus Convention. The next question is if there was an influence on the successfulness of the implementation whether or not Hungary had such a strategy?

In the interviews the question was asked if Hungary had a specific implementation strategy for the Aarhus Convention or not. Both Lenkei and Kiss answer that they are not sure if there was a specific strategy. Lenkei⁴⁵ thinks that there was no strategy, he mentions also that there was no separate budget available for the implementation of the Aarhus Convention. Kiss⁴⁶ does not have information on the specific strategy for the Aarhus Convention, but he does comment that there is an overall implementation strategy in Hungary. What is done is that the responsible ministry make a sort of checklist of what has to be transposed. Then they walk through that checklist and every item that is not present has to be transposed. The result is that EU directives for example are not transposed as a coherent system, but are separately found in diverse laws.⁴⁷ This is not the official information on the government strategy and in the case of the Aarhus Convention this did not happen.

According to Antypas⁴⁸ there was no implementation strategy for the Aarhus Convention in Hungary. In previous research he himself had tried to figure out exactly the same thing and he came to the conclusion that there was no strategy. He also says that a strategy was not really necessary because of the minimal legalistic misfit in this case. There was so little that had to be changed that a strategy was redundant. Baranyai⁴⁹ a member of staff in the Ministry of Environment and Water explains that there was no specific strategy. Because the Aarhus Convention was pretty much a product and way of thinking of that time. Hungary had been in the forefront of this movement and had already incorporated many aspects of it before the Aarhus Convention came into force.

Concluding it can be said that there was no strategy because there appeared to be no need for it. The influence of a strategy on the success of the implementation process can thus be ruled out in the case of the implementation of the Aarhus Convention in Hungary.

6.8 Summary of the analysis

The implementation of the Aarhus Convention in Hungary is analysed with the help of five theories. These theories are the degree of misfit, the veto-player argument, the worlds of compliance, the adaptational pressure and Weiss' theory on the compliance to international agreements. Here a short summary of this analysis is presented.

According to the degree of misfit theory, there is in this case a low degree of misfit, which is of a quantitative nature. Misfit of this degree and nature, leads to smooth and timely

⁴⁵ Interview with Péter Lenkei, 18 June 2007.

⁴⁶ Interview with Csaba Kiss, 12 June 2007.

⁴⁷ Idem.

⁴⁸ Interview with Alexios Antypas, 5 June 2007.

⁴⁹ Interview with Gábor Baranyai, 15 June 2007.

implementation. However, Falkner (2006) identifies some empirical findings that can interfere with the implementation process. In this case these empirical findings are not present and implementation is smooth and timely.

The veto-player argument does not prove to have any analytical explaining power in this case. The implementation of the Aarhus Convention in Hungary is strictly an administrative process. Because of this, political actors cannot influence the implementation process and the number of veto-players is irrelevant. The veto-player argument has to be discarded.

The worlds of compliance is the second theory that has been discarded in this research. On the basis of one case, Hungary cannot be categorised in one of the worlds of compliance. It would be interesting to make this determination of the category Hungary belongs to, but wider research is required to do so. Here the theory has to be discarded and the analysis is based on the other theories.

The adaptational pressure is one of the theories that proved to be very helpful. The adaptational pressure is determined on the basis of three dimensions. The policy dimension, institutional dimension and dynamic dimensions. A specific implementation path follows from the levels of adaptational pressure in these separate dimensions. Hungary's implementation of the Aarhus Convention follows the path of 'Change within a changing core: Accepted or neglected adaptation?'. This path can result in acceptance of international regulation as well as neglecting it. In this case the path leads to acceptance, government as well as civil society strive to use the Aarhus Convention to its full potential.

In her theory on compliance to international agreements, Weiss (1999) points at four important characteristics. These characteristics are, general characteristics involving the country, characteristics of the activity involved, characteristics of the accord and the international environment. The international environment and general characteristics involving the country are discussed in previous chapters. In this chapter the characteristics of the activity involved and the characteristics of the accord are presented. Concerning the characteristics of the activity involved, it can be said that the number of participants has an indirect effect and economic factors have an inhibiting effect. Concerning the characteristics of the accord, there are three influential factors, the equity, the precision and the monitoring and reporting requirements. The Aarhus Convention has provisions which makes the implementation of the convention equal. The Aarhus Convention and especially the first two pillars are formulated relatively precise and the reporting and monitoring requirements are strong.

In this chapter the case of the implementation of the Aarhus treaty in Hungary has been applied to the theories on implementation of international treaties and legislation. Now that the analysis is done, success criteria can be derived from the theories that are used. The next chapter will look into the success criteria. It will also determine what lessons can be learned from the implementation of the Aarhus Convention in Hungary. These learning points can improve future implementation of treaties.

7. Success criteria

The implementation of the Aarhus Convention has been broadly discussed in the last chapter on the analysis of the Hungarian case. What has been explicitly left out of the analysis is the success of the implementation and what factors caused it. Here answers are given to the question, what makes implementation successful? In the theories on implementation of international legislation success-factors are mentioned. These will be identified here and their effect on the implementation of the Aarhus Convention in Hungary is outlined. Next to this the interview information will be incorporated here, in the interview the question is asked "what makes the implementation of the Aarhus Convention in Hungary successful?". The interviewees had specific characteristics of the Hungarian state or the Aarhus Convention, which according to them made implementation successful. Finally, it is discussed what can be learned from the implementation of the Aarhus Convention in Hungary. This is done to make suggestions for future implementation processes of international treaties.

7.1 Successful implementation

The successfulness of implementation is dependent on several factors. The theories used in this research describe indicators which are of influence on compliance, these indicators can also be seen as criteria for successful implementation. Next to this the effectiveness is often subject of theories. If a treaty is effective then the implementation must have been successful, otherwise the treaty could have never reached the effect it aimed for.

On the aspect of the activity involved the number of participants is seen as an indicator of successful implementation concerning a treaty. In the case of the implementation of the Aarhus Convention in Hungary this indicator has shown that the restricting effect a large number of participants may have on the implementation of a treaty is not present. The fact that this inhibiting factor was not perceived does not make the implementation automatically successful, it does however eliminate one inhibiting factor. Next to the number of participants the theory points at economic incentives as having inhibiting effects on treaties. Treaties can be less successful because economic incentives counteract what it strives for. This effect is thus on a treaty itself and not on the implementation process of a treaty. This makes that this indicator is not a factor on which the success of the implementation process of the Aarhus Convention in Hungary is dependent.

The characteristics of the accord also point at several indicators for successful implementation. The first is the treaty's equity, implementation can only be successful if unequal countries are helped in their efforts to implement. In the case of the Aarhus Convention, practical help is offered to countries that struggle with the implementation. This makes the implementation more successful, than it would be if there were no provisions for helping them. The precision of the formulation of the accord can also influence the success of its implementation. A treaty that is formulated more precise, proves to be easier to implement and ultimately more effective. The fact that the first and second pillar of the Aarhus Convention are relatively precise makes it that implementing them is more successful than implementing the third pillar which is formulated less exact. The last indicators of successful implementation, that depend on the characteristics of the accord are the monitoring and reporting provisions. If countries are monitored and have to report, they are stimulated to implement faster and more complete. The Aarhus Convention has strong monitoring and reporting provisions, which make it difficult for countries to neglect implementation of the treaty. The monitoring and reporting provisions thus contribute to successful implementation.

Other criteria for successful implementation are smooth and timely implementation. Smooth and timely implementation can be accomplished if the degree of misfit between national legislation and treaty provisions is low. In the previous chapter a low degree of misfit has been assigned in the case in the implementation of the Aarhus Convention in Hungary. This low degree of legal misfit creates the opportunity to smoothly and timely implement the

convention, which is exactly what Hungary has done. The low degree of misfit is thus another criteria for successful implementation.

The number of veto-players is another indicator for successful implementation that can be found in the theories used here. This indicator is not of interest because the veto-players have no influence on implementation, if the implementation process takes place isolated from political actors. This is the case in the implementation of the Aarhus Convention in Hungary and thus the veto-players do not restrict successful implementation.

What can be seen as a criteria for success is the flexibility of the state. If a state has a good adaptation competence, then it is easier to implement new legislation. It has been said before that the Hungarian state is relatively easily changed. It can quickly adapt to new legislation, the only thing is that administrative traditions follow slightly later. This high adaptation competence of the Hungarian state makes implementation processes more successful.

Another factor is the existing legislation in a certain country. Because of general historical events Hungary has relatively young laws on environmental issues. These laws have been adapted to meet the requirements of the *acquis* during the EU accession process. The next adaptation, which was to meet with the demands of the Aarhus Convention was not substantive because Hungary had been gradually adapting its legislation for a few years. The previous adaptations were all heading in the same direction as the Aarhus Convention and thus formed a fundament for implementing it.

In Knill's theory the success is dependent on the implementation path that countries follow. In the case of the implementation of the Aarhus Convention in Hungary, this path has proven to be the 'change within a changing core'-path. This path has two different outcomes, namely successful implementation or ignorance. Because it can impossibly be said that Hungary ignored the Aarhus Convention, it has to be concluded here that the implementation path Hungary walked lead to successful implementation.

7.2 Interviews

In the interviews the question was asked what makes the implementation of the Aarhus Convention in Hungary successful. The answers to this question were differing, but some similarities can be found. Antypas, Csobod and Toth Nagy⁵⁰ were all convinced that the NGO structure in Hungary was one of the reasons for successful implementation. Antypas comments that it is really the NGO structure that makes implementation successful not just the existence of NGOs. According to Toth Nagy this structure is something like an environmental consulting network. In this network there are about 18 NGO groups that are active. There is structural funding from the Ministry of Environment and Water and sometimes NGO expertise is used on project-basis. The NGOs even help with one indicator of successful implementation mentioned above, enforcement. By helping countries in monitoring and reporting practices the existence of NGOs and the NGO-network prove to be one of the reasons for successful implementation. Csobod adds that the NGOs and the past of the environmental movement are a solid fundament for citizen initiatives in Hungary.

Stec⁵¹ does not only concentrate on the NGOs but sees Hungarian civil society as a whole as one of the grounds for successful implementation. The active civil society in Hungary tends to fight hard for what they believe in and Aarhus can be a tool to achieve their goals. According to Stec *"you might find a higher rate of people attempting to make use of the Aarhus Convention here as compared to other countries, then as a result of that, that helps to develop the practice and peoples familiarity with it"*.⁵² He also brings attention to the role of the press, which plays an important role according to him. The active press tries to cover environmental issues and hopes to use the Aarhus Convention in getting information. Stec has seen articles in the Hungarian press on the treaty of Aarhus and this gives him

⁵⁰ Interviews with Alexios Antypas, 5 June 2007, Eva Csobod, 25 June 2007 and Magdolna Toth Nagy, 6 June 2007.

⁵¹ Interview with Stephen Stec, 22 June 2007.

⁵² Idem.

good hope. It might even create awareness for Aarhus and environmental issues in the Hungarian population.

Baranyai⁵³ comments on the NGO involvement in another way, he sees the situation as rather full of conflict. According to him NGOs have learned to behave in a bad way, which has caused them to stop plans which were relatively good. On the other hand he does see the benefit of the NGO structure, it does open up a dialogue between businesses, NGOs and government organisations. The dialogue at least creates an understanding of each other's situation. He has even seen examples of very good cooperation with NGOs, this is mainly in the area of nature conservation and national parks. Yet another thing with the NGO-structure is that the bodies that these NGOs are involved in often come up with a consensus based advice. This is sometimes very difficult for the NGOs because they want to be part of the decision-making (in an advisory role), but they do not want to be bound by the decisions of these bodies. According to Baranyai the NGO structure did not always have a positive effect on the successful implementation of the Aarhus Convention.

7.3 Key learning-points

“A stupid man does not learn from his mistakes, a smart person does learn from his mistakes and intelligence lays in learning from the mistakes of others”⁵⁴
(Hungarian proverb)

Now that the success factors in the implementation process of the Aarhus Convention in Hungary have been determined, the question is what other similar countries can learn from this case. There are certain reasons for successful implementation that can be used in other countries, other reasons are strictly connected to specific background or characteristics of Hungary. In this paragraph the factors for successful implementation will be discussed one by one and their value for other countries is determined.

The first success indicator that is discussed here are the characteristics of the accord. The treaty of Aarhus has certain characteristics, which makes its implementation successful in Hungary. This factor is not for other countries to learn from, but more for treaty-makers. While drafting a treaty, the makers should not only focus on the aim, but also on the road that leads there. This means that incorporating certain characteristics in a treaty results in a more successful implementation process.

The degree of misfit is the second indicator for successful implementation. This indicator applies to both the treaty drafters and implementing countries. It is an indicator which is difficult to control for both these parties. A high degree of misfit can be caused by national legislation which is lagging behind or by extreme demands posed in treaties. However a high degree of misfit does not automatically presupposes an unsuccessful implementation process just as the other way around a low degree of misfit does not guarantee successful implementation. Sometimes change is possible if the need for it is pressing enough. Because of the dependency of both sides, this indicator for success cannot be used as a learning-point for countries. However they can take into account when joining new treaties if their domestic legislation is capable of such changes. The drafters of a treaty are able to confine the challenges posed on domestic legislation by new treaties through keeping treaty provisions close to administrative reality.

The flexibility of the state is something that countries can learn from this process and are able to change themselves. A flexible state administration proves to increase the success of the implementation process. By training administrators and innovating state administrations, states can keep themselves as flexible as possible. Being flexible does not mean that a state impulsively has to comply to every spur of the moment, it does mean that well thought out changes are taking place on a regular basis.

⁵³ Interview with Gábor Baranyai, 15 June 2007.

⁵⁴ Interview with József Gayer, 19 June 2007.

Although the implementation path that is chosen does prove to be an indicator for the successfulness of implementation, states do not choose these paths consciously. Many factors determine the implementation path which is ultimately followed. Some of the factors are not determined by the state itself, so in this aspect of successful implementation there is little that a state can do. The treaty of Aarhus was made obligatory by the European Union for new member states. Hungary took it up as a political demand from the EU without paying any specific domestic attention to it. On the other hand it cannot be said that states have no influence at all. An implementation process does not happen to a state, they happen because states commit themselves to treaties, set up an implementation process and lead a process of implementation. So in the case of the implementation process of the Aarhus Convention in Hungary both is true. There was some attention to setting up a compliance oriented implementation process, but this was done with as little political domestic attention as possible. This does show that even with the smallest attention the an implementation process can become successful, if the state generally acts in the spirit of the convention.

The learning points mentioned above were extracted from the theories used in this study. The interviews showed that there was another factor which caused Hungary to successfully implement the Aarhus Convention. This is the environmental movement and NGO structure. Although this is something which is probably not unique to Hungary it does influence the success of implementation and is something that other states can learn from. Working together with NGOs, granting legal standing and supporting NGOs is something other countries can relatively easily copy and can have a positive effect on the implementation process of the Aarhus Convention.

In this chapter the success criteria and lessons-learned are discussed. Every important aspect of the research has been discussed now. It is time to form a conclusion, this is done in the next chapter.

8. Conclusion

Introduction

The aim of this study is to create an understanding of the implementation process of the treaty of Aarhus in Hungary. Before it was possible to do so, many aspects of the Aarhus Convention, its implementation and the case had to be explored. This is done in the forgone chapters. The theories are discussed in chapter two and they are applied to the case in chapter six. In chapter three the methodology which is used is outlined and explained. Chapter four sketches a picture of the Aarhus Convention and chapter five does the same for Hungary. In chapter seven the success criteria are determined as well as the lessons which can be learned. Here a conclusion is formulated by answering the sub-questions and the central research question. Finally, the theories which have been used are reflected upon.

1. What is the treaty of Aarhus about?

The treaty of Aarhus combines both human rights and environmental issues in one single treaty. The treaty focuses on three pillars:

1. the access to information pillar
2. the participation in decision-making pillar
3. the access to justice pillar

The Aarhus Convention aims to raise public awareness in environmental issues and does this by giving tools to citizens in the form of human rights. Ultimately the treaty of Aarhus strives to improve the environment in all signatory countries. For treaties the international developments surrounding the environment and environmental legislation are of importance. Internationally the attention for environmental issues has increased and there is consensus that public participation enhances decisions and raises public support. Articles covering the Aarhus Convention in the Hungarian media raises public awareness for the treaty as well as the environment. Public opinion and markets can also have an influence on treaties.

2. Which changes have to be implemented on the account of the Aarhus Convention?

The Aarhus Convention demands access to information, participation in decision-making and access to justice in environmental matters. What countries have to change depends on their policy before the Aarhus Convention. The changes that have to be implemented in Hungary on the account of the Aarhus convention can be derived from the degree of misfit between domestic regulations and the provisions of the treaty. In Hungary there is a low degree of misfit and the misfit that does exist is of a quantitative nature. The low degree of misfit implies that there was not a major difference between the domestic law and the provisions of the Aarhus Convention. Additionally, it regards a quantitative misfit, which means that the differences in domestic regulation and treaty provisions were gradual. A low degree of misfit normally leads to smooth and timely implementation. In the case of Hungary the low degree of misfit concerning the Aarhus Convention had a successful influence on the implementation.

There has to be made a difference here between theoretical misfit and practical. In theory Hungary implemented the treaty of Aarhus almost "*perfect*", but practice shows some problematic areas. In theory or from a legalistic view the misfit was of a low degree and quantitative nature, but Hungary did have some problems in bringing the laws into practice. It thus took practice some time to follow-up with the legalistic changes.

3. Which theoretical approaches exist on the successful implementation of international treaties?

Five theories which reflect on implementation of international treaties are used in this study. Two conventional theories point at the importance of the degree of misfit and the number of veto-players. The degree of misfit has already been referred to above. The logic behind the number of veto-players is that implementation is more difficult with a large number of veto-

players than with a small number. Next to these two theories there are two contemporary theories, the worlds of compliance and adaptational pressure. In the worlds of compliance theory, countries are categorised according to regular patterns of compliance. There are three different worlds of compliance namely, the world of law observance the world of domestic politics and the world of neglect. According to the adaptational pressure theory implementation success is dependent on adaptational pressure, which consists of three dimensions. The three dimensions are the policy dimension, institutional dimension and dynamic dimension. The degree of adaptational pressure results in a specific implementation path on which successful implementation is dependent. Next to the Conventional and contemporary theory Weiss' theory on compliance to international agreements is used. This theory identifies other influential factors on the implementation process. These factors are the general characteristics of a country, the characteristics of the activity involved, the characteristics of the accord and the international environment.

4. What makes the implementation of a treaty successful?

From the theories used here, several success criteria can be extracted. The number of participants is one factor that did not inhibit successful implementation of the Aarhus treaty in Hungary. Economic incentives however did prove to be an inhibiting factor for successful implementation. The three aspects that make up the characteristics of the accord can also be perceived as criteria for success. These three aspects are equity, precision with which the treaty is formulated and monitoring and reporting requirements. A low degree of adaptational pressure can cause smooth and timely implementation which are also indicators for success. The flexibility or adaptation competence of the state or administrative aspect of the state is another criterion. If states adapt easily, implementation is much more successful. However if they do not have to adapt much, it is even better, so states with contemporary legislation implement treaties more successful. This makes the extent to which domestic legislation is contemporary another criterion for success. The last success criterion which can be derived from the theories, is the implementation path. Following a certain implementation path determines the success of implementation. From the interviews one criterion is extracted as well, this is the presence and organisation (network) of NGOs. A network of NGOs can have a positive effect on implementation and thus make implementation of the Aarhus Convention more successful.

5. What makes Hungary an interesting case in studying the implementation of the Aarhus Convention?

In the introduction Hungary is compared to other European countries in research of The Access Initiative. In this comparison Hungary already comes forward as an interesting case because it scores relatively high. Additionally Hungary's history as a former East-block country makes it an interesting case. In Hungary the transition process was closely connected to the environmental movement. This fundament of the environmental movement makes that there are special conditions for environmental issues in Hungary. These conditions make Hungary an interesting case. Hungary is also a relatively young member of the European Union, which is another characteristic that makes it interesting. Finally, in Hungary there are many environmental NGOs and they are quite active. This is the last characteristic of Hungary that makes it an interesting case.

6. Where does Hungary stand in the process of implementing the Aarhus Convention and how was the situation before?

The answer to sub-question two already mentioned that the transposition of the Aarhus Convention was perfect in Hungary. It is also noted that that some practical issues have not been resolved. Here the situation before the Aarhus Convention is discussed first. Hungary can be seen as quite liberal before the Aarhus Convention came into being. It was relatively easy to get legal standing as an organisation and both access to information an public participation were subjected to liberal legislation. In practice however there were already

some problems with the liberal system before the Aarhus convention. The coming into force of the Aarhus convention was an additional incentive to solve these practical problems.

There were some internal as well as external problems with integrating databases containing information on environmental issues. The government is working hard on solving these problems and a fully integrated database is coming nearer. Administrative resistance or bureaucratic inertia was another problem, the people that deal with the legislation had to change their working ways. This change took some getting used to from public administrators and civil servants. With the help of trainings and support this hurdle for change was overcome.

Another form of resistance had to be overcome by the help of the judicial system. Ministries or other public authorities, perceived the convention as something that did not apply to them. They thought so because they were not part of the Ministry of Environment and Water. In a ruling of the Supreme Court this issue was settled. The Supreme Court ruled that every procedure which involves the environmental authority is per se environmental.

The path to get information which citizens are entitled to can still be very long and difficult. This makes that by the time the access to information is given, the information is outdated. This problem closely connects to the one mentioned above. Administrative traditions are sometimes only broken with on the basis of a judges order, even if the legislation on which these traditions were founded has already changed.

What it ultimately comes down to is the individual level, people have to implement the treaty of Aarhus. In Hungary they are well on their way of doing this, some hurdles have already been overcome and on the others they are still working. The successfulness in the implementation of the Aarhus convention lays primarily in their strive for compliance and behaviour in the spirit of the convention.

The central research question: What can be learned from the implementation of the Aarhus treaty in Hungary with respect to improving the implementation of treaties?

Given the answers to sub-questions the following answer to the central research question has to be given. There are several lessons that can be learned from the implementation of the Aarhus Convention in Hungary. First, the Regional Environmental Centre can learn from the analysis of the implementation process. The valuable lesson for them is that their support to NGO's in Central and Eastern European countries can benefit the implementation of the Aarhus Convention in these countries.

Hungary should learn to appreciate its active NGO community. This community stimulates the implementation of the Aarhus Convention by using it extensively. They continually put pressure on the government to operate in the spirit of the treaty of Aarhus. NGOs achieve this by pursuing their legal rights in a court of law. In this manner the NGOs contribute to changes in administrative traditions in Hungary.

Internationally there several valuable learning points for other countries. They can guide their change in a specific direction and make implementation of international regulation more successful in the future. States can learn to be more flexible, which makes it easier for them to change and adapt to treaty legislation. Secondly they can learn from the problems they have in implementing and concentrate on those issues. From the interviews and additional learning point can be derived for other countries, namely supporting and stimulating an active NGO movement and organising them, for example in a network. This point is not only valuable for the REC but also for other countries. NGOs are often seen as a nuisance and this research clearly shows that they can be a valuable addition in an implementation process.

Treaty-makers and -drafters can also learn from this research. Certain influences cannot be ignored, but countries cannot adapt to them. The influence of the characteristics of the accord is one of those. What can be learned is that incorporating certain characteristics into a treaty can make its implementation more successful. These characteristics are equity, precision and reporting and monitoring requirements. The degree of misfit is another one, it is something that is affected by the country as well as the treaty. Because of this two-sided dependency it can not be appointed as something countries can learn from. Treaties on the

other hand can be drafted in a way that is close to the administrative reality, which makes it easier to implement them and thus often more successful.

Theoretical reflection

The question that a researcher has to ask in the theoretical reflection is: if the same choices would be made if this research had to be done all over again? Would the same theories be used? And do the theories fit the reality or are they too abstract? In this case some of the theories would be used again and some would be discarded. The adaptational pressure theory developed by Knill, would be used again. The theory gives a broad view of the factors which influence an implementation process. The misfit theory would be discarded because it is very similar to the adaptational pressure theory but leaves out important characteristics. In this case the veto-player argument and worlds of compliance theory, both proved not to be useful. They were discarded on the basis of different arguments. One single case proved not to be enough to determine the world of compliance Hungary belongs to. The veto-player argument proved not to be influential here because the implementation was strictly and administrative process. These two theories can be very useful, but in this specific case they were not. In future research they cannot be discarded beforehand, their usefulness depends on the characteristics of the case. The last theory, which is Weiss' theory on compliance to international agreements is a broad and valuable addition to the adaptational pressure theory. It is determined to be useful because of its broad scope on country characteristics, treaty characteristics, and the international environment.

9. Literature

- Antypas, A. (2003), *A new age for environmental democracy: The Aarhus Convention in Hungary*, in: Environmental Liability, volume 11 issue 6, Lawtext Publishing Limited, Witney, United Kingdom.
- Babbie, E. (2001), *The practice of social research*, Wadsworth, Belmont, USA.
- Badie, B., and P. Birnbaum (1983), *The sociology of the state*, University of Chicago Press, Chicago, USA.
- Börzel, T.A. (2000), *Why there is no 'Southern Problem': On Environmental Leaders and Laggards in the European Union*, Journal of European Public Policy, volume 7 issue 1, Routledge, London, United Kingdom.
- Duina, F.G. (1997), *Explaining legal implementation in the European Union*, International Journal of the Sociology of Law, volume 25 issue 2, Academic press, London, United Kingdom.
- Duina, F.G. (1999), *Harmonizing Europe: Nation-States within the Common Market*, State University of New York Press, Albany, USA.
- Duina, F.G. and F. Bliethe (1999), *Nation-States and Common Markets: The Institutional Conditions for Acceptance*, Review of International Political Economy, volume 6 issue 4, Routledge, London, United Kingdom.
- Falkner, G., M. Hartlapp and O. Treib (2006), *Worlds of Compliance: Why leading approaches to the implementation of EU legislation are only 'sometimes-true theories'*, EUI Working Paper, RSCAS N. 2006/22, European University Institute, Florence, Italy. URL: http://www.iue.it/RSCAS/WP-Texts/06_22.pdf
- Glachant, M. (2001), *Implementing European Environmental Policy*, Cheltenham.
- Hall, P.A. (1993), *Policy Paradigms, Social Learning and the State, The Case of Economic Policymaking in Britain*, in: Comparative politics, volume 25, issue 3, City University of New York, Political Science Program, New York, USA.
- Héritier, A., C. Knill and S. Mingers (1996), *Ringing the Changes in Europe, Regulatory Competition and the Transformation of the state*, de Gruyter, Berlin, Germany.
- Hill, H.C. (2003), *Understanding Implementation: Street-Level Bureaucrats' Resources for Reform*, in: Journal of Public Administration Research and Theory, volume 13 issue 3, Oxford University Press, Cary, North Carolina, USA.
- Kiss, C. et al. (2006), *Environmental Democracy, An Assessment of Access to Information Participation in Decision-making and Access to Justice in Environmental Matters in Selected European Countries*, The Access Initiative European Regional Report, The EMLA Association, Hungary.
- Knill, C. (1998), *European Policies: The impact of National Administrative Traditions*, in: Journal of Public Policy, volume 18 issue 1, Cambridge University Press, United Kingdom.
- Knill, C. (2001), *The Europeanisation of national administrations: patterns of institutional change and persistence*, Cambridge University Press, Cambridge, UK.
- Knill, C. and A. Lenschow (1998), *Coping with Europe: The Impact of British and German Administrations on the Implementation of EU Environmental Policy*, Journal of European Public Policy, volume 5 issue 4, Routledge, London, United Kingdom.
- Knill, C. and A. Lenschow (2000), *Implementing EU Environmental Policy: New Directions and Old Problems*, Manchester University Press, Manchester, United Kingdom.
- Kontler, L. (2002), *A History of Hungary*, Palgrave Macmillan, New York, USA.
- Levy, R. (2000), *Implementing European Union public policy*, Cheltenham, United Kingdom.
- Lindblom, C.E. and E.J. Woodhouse (1993), *The policy-making process*, third edition, Prentice-Hall, Englewood Cliffs, New Jersey, USA.
- Lipsky, M. (1980), *Street-Level Bureaucracy*, Russell Sage, New York, USA.
- Coun. M and H. de Man (2001), *Kennismaking met de organisatiekunde*, Lemma, Utrecht.
- Marshall, C. and G.B. Rossman (1989), *Designing Qualitative Research*, Sage Publications, Newbury Park, California, USA.

- Mazmanian, D.A. and P.A. Sabatier(1981), *Effective policy implementation*, Lexington Books, Lexington, MA, USA.
- Persanyi, M. (1993), *Red Pollution, Green Evolution, Revolution in Hungary*, in: B. Jancar-Webster, *Environmental Action in Eastern Europe*, Sharpe Inc., New York, USA.
- Sabatier, P.A. and H.C. Jenkins-Smith (1993), *Policy change and earning: An advocacy Coalition Approach*, Westview Press, Boulder, Colorado, USA.
- Teusen, G. and J.H. Simonsen (2000), *Compliance with the Aarhus Convention Denmark/Estonia*, in: *Environmental Policy and Law*, volume 30, number 62, issue 6, IOS Press, Amsterdam, the Netherlands.
- United Nations Economic Commission for Europe, UNECE (1998), *Convention on access to information, public participation in decision-making and access to justice in environmental matters*, Aarhus, Denmark. URL: <http://www.unece.org/env/pp/treatytext.htm>
- United Nations Economic Commission for Europe, UNECE (1995), *Ministerial conference, Environment for Europe, Draft guidelines on access to environmental information and public participation in environmental decision-making*, Sofia, Bulgaria. URL: <http://www.unece.org/env/documents/1995/cep/ece.cep.24e.pdf>
- United Nations Environment Programme, UNEP (1992), *Rio Declaration on Environment and Development*, Rio de Janeiro, Brazil. URL: <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=78&ArticleID=1163>
- United Nations Environment Programme, UNEP (2002), *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements*. URL: <http://www.unep.org/DEC/OnLineManual/Compliance/NegotiatingMEAs/Transparency/Resource/tabid/605/Default.aspx>
- Weiss, E.B., H.K Jacobson (1999), *Getting Countries to Comply with International Agreements*, in: *Environmental*, volume 41, issue 6, Scientists' Institute for Public Information, St. Louis, MO, USA.
- Zaharchenko, T.R. and G. Goldenman (2004), *Accountability in Governance: The challenge of Implementing the Aarhus Convention in Eastern Europe and Central Asia*, in: *International Environmental Agreements: Politics, Law and Economics*, volume 4, issue 3, Kluwer Academic Publishers, the Netherlands.

Regulation

- The Constitution of the Republic of Hungary, adopted 20 August, 1949, established by Act XX of 1949.
- Act LXIII of 1992 on Protection of Personal Data and Disclosure of Data of Public Interest.
- Act LIII of 1995 on General Rules of Environmental Protection.
- Governmental Order on Environmental Impact Assessment, Governmental Decree 2001:20 (II 1 4.)

Annex 1 List of Interviewees

Alexios Antypas, is a professor at the Central European University (CEU) in Budapest, Hungary. He has done research on the implementation of the Aarhus Convention in Hungary. He was interviewed on 5 June 2007.

Magdolna Toth Nagy, works at the Regional Environmental Centre for Central and Eastern Europe (REC) in Szentendre, Hungary. She is the head of the Public Participation Programme at the REC. Magdolna Toth Nagy participated in drafting the Aarhus convention and works with the convention on a daily basis. She was interviewed on 6 June 2007.

Csaba Kiss works for the Environmental Management and Law Association (EMLA) in Budapest, Hungary. Csaba is an attorney and deputy director at EMLA. Personally he did not participate in the drafting of the convention, but EMLA was involved. Sándor Fülöp represented EMLA in the NGO delegation during the drafting process and has a seat now on the compliance committee. Csaba can be considered as an user of the Aarhus Convention. He was interviewed on 12 June 2007.

Gábor Baranyai and Eszter Fábián were interviewed at the same time. They both work at the Ministry of Environment and Water in Budapest, Hungary. Gábor has a background of being a lawyer and is head of the EU and International department. He has been handling the legal side of the Aarhus Convention for about two years. He has also represented Hungary in the Aarhus compliance committee in two cases. Eszter Fábián works for the EU and International department. She is the focal point for the Aarhus convention within the Hungarian government. They were interviewed on 15 June 2007.

Peter Lenkei works for Levegő Munckacsoport or Clean Air Action Group in Budapest, Hungary. CAAG is an umbrella-organisation which has 130 member organisations. He is an environmental consultant, in this function he is a user of the Aarhus convention. This interview was conducted in German because of the interviewees limited knowledge of the English language. He was interviewed on 18 June 2007.

József Gayer is a section head in the Ministry of Environment and Water, department Water, directorate Water Framework. He is mainly concerned with the public participation part of the Aarhus Convention and works on the Water Framework Directive (WFD). He was interviewed on 19 June 2007.

Stephen Stec works at the Regional Environmental Centre for Central and Eastern Europe (REC) in Szentendre, Hungary. He is a senior legal specialist and head of the Environmental Law Programme. He was already involved with the Sofia Guidelines and became a legal advisor to the NGO coalition in the negotiations of the Aarhus Convention. When he started working at the REC he switched coalitions and became part of the REC delegation. He participated in workgroups such as the compliance and enforcement workgroup. He was co-author of the implementation guide to the Aarhus Convention and editor of the handbook access to justice under the Aarhus Convention. He has written several articles on the Aarhus Convention. Recently his activities on the Aarhus Convention have been more access to justice related. He was interviewed on 22 June 2007

Eva Csobod, works at the Regional Environmental Centre for Central and Eastern Europe (REC) in Szentendre, Hungary. She is the director of the country office Hungary at the REC. She taught sustainable development and environment related courses at University and used the Aarhus process as a case study. She was interviewed on 25 June 2007.

Annex 2 The Aarhus Convention

CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

**done at Aarhus, Denmark,
on 25 June 1998**

The Parties to this Convention,

Recalling principle I of the Stockholm Declaration on the Human Environment,

Recalling also principle 10 of the Rio Declaration on Environment and Development,

Recalling further General Assembly resolutions 37/7 of 28 October 1982 on the World Charter for Nature and 45/94 of 14 December 1990 on the need to ensure a healthy environment for the well-being of individuals,

Recalling the European Charter on Environment and Health adopted at the First European Conference on Environment and Health of the World Health Organization in Frankfurt-am-Main, Germany, on 8 December 1989,

Affirming the need to protect, preserve and improve the state of the environment and to ensure sustainable and environmentally sound development,

Recognizing that adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself,

Recognizing also that every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations,

Considering that, to be able to assert this right and observe this duty, citizens must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters, and acknowledging in this regard that citizens may need assistance in order to exercise their rights,

Recognizing that, in the field of the environment, improved access to information and public participation in decision-making enhance the quality and the implementation of decisions, contribute to public awareness of environmental issues, give the public the opportunity to express its concerns and enable public authorities to take due account of such concerns,

Aiming thereby to further the accountability of and transparency in decision-making and to strengthen public support for decisions on the environment,

Recognizing the desirability of transparency in all branches of government and inviting legislative bodies to implement the principles of this Convention in their proceedings,

Recognizing also that the public needs to be aware of the procedures for participation in environmental decision-making, have free access to them and know how to use them,

Recognizing further the importance of the respective roles that individual citizens, non-governmental organizations and the private sector can play in environmental protection,

Desiring to promote environmental education to further the understanding of the environment and sustainable development and to encourage widespread public awareness of, and participation in, decisions affecting the environment and sustainable development,

Noting, in this context, the importance of making use of the media and of electronic or other, future forms of communication,

Recognizing the importance of fully integrating environmental considerations in governmental decision-making and the consequent need for public authorities to be in possession of accurate, comprehensive and up-to-date environmental information,

Acknowledging that public authorities hold environmental information in the public interest,

Concerned that effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is enforced,

Noting the importance of adequate product information being provided to consumers to enable them to make informed environmental choices,

Recognizing the concern of the public about the deliberate release of genetically modified organisms into the environment and the need for increased transparency and greater public participation in decision-making in this field,

Convinced that the implementation of this Convention will contribute to strengthening democracy in the region of the United Nations Economic Commission for Europe (ECE),

Conscious of the role played in this respect by ECE and recalling, inter alia, the ECE Guidelines on Access to Environmental Information and Public Participation in Environmental Decision-making endorsed in the Ministerial Declaration adopted at the Third Ministerial Conference "Environment for Europe" in Sofia, Bulgaria, on 25 October 1995,

Bearing in mind the relevant provisions in the Convention on Environmental Impact Assessment in a Transboundary Context, done at Espoo, Finland, on 25 February 1991, and the Convention on the Transboundary Effects of Industrial Accidents and the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, both done at Helsinki on 17 March 1992, and other regional conventions,

Conscious that the adoption of this Convention will have contributed to the further strengthening of the "Environment for Europe" process and to the results of the Fourth Ministerial Conference in Aarhus, Denmark, in June 1998,

Have agreed as follows:

Article 1 OBJECTIVE

In order to contribute 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, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.

Article 2 DEFINITIONS

For the purposes of this Convention,

1. "Party" means, unless the text otherwise indicates, a Contracting Party to this Convention;
2. "Public authority" means:
 - (a) Government at national, regional and other level;
 - (b) Natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment;
 - (c) Any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a body or person falling within subparagraphs (a) or (b) above;
 - (d) The institutions of any regional economic integration organization referred to in article 17 which is a Party to this Convention.

This definition does not include bodies or institutions acting in a judicial or legislative capacity;

3. "Environmental information" means any information in written, visual, aural, electronic or any other material form on:
 - (a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;
 - (c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above;
4. "The public" means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups;
5. "The public concerned" means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.

Article 3 GENERAL PROVISIONS

1. Each Party shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the information,

public participation and access-to-justice provisions in this Convention, as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention.

2. Each Party shall endeavour to ensure that officials and authorities assist and provide guidance to the public in seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters.

3. Each Party shall promote environmental education and environmental awareness among the public, especially on how to obtain access to information, to participate in decision-making and to obtain access to justice in environmental matters.

4. Each Party shall provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection and ensure that its national legal system is consistent with this obligation.

5. The provisions of this Convention shall not affect the right of a Party to maintain or introduce measures providing for broader access to information, more extensive public participation in decision-making and wider access to justice in environmental matters than required by this Convention.

6. This Convention shall not require any derogation from existing rights of access to information, public participation in decision-making and access to justice in environmental matters.

7. Each Party shall promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment.

8. Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement. This provision shall not affect the powers of national courts to award reasonable costs in judicial proceedings.

9. Within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.

Article 4

ACCESS TO ENVIRONMENTAL INFORMATION

1. Each Party shall ensure that, subject to the following paragraphs of this article, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information:

(a) Without an interest having to be stated;

(b) In the form requested unless:

(i) It is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form; or

(ii) The information is already publicly available in another form.

2. The environmental information referred to in paragraph 1 above shall be made available as soon as possible and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request. The applicant shall be informed of any extension and of the reasons justifying it.

3. A request for environmental information may be refused if:

- (a) The public authority to which the request is addressed does not hold the environmental information requested;
- (b) The request is manifestly unreasonable or formulated in too general a manner; or
- (c) The request concerns material in the course of completion or concerns internal communications of public authorities where such an exemption is provided for in national law or customary practice, taking into account the public interest served by disclosure.

4. A request for environmental information may be refused if the disclosure would adversely affect:

- (a) The confidentiality of the proceedings of public authorities, where such confidentiality is provided for under national law;
- (b) International relations, national defence or public security;
- (c) The course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;
- (d) The confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest. Within this framework, information on emissions which is relevant for the protection of the environment shall be disclosed;
- (e) Intellectual property rights;
- (f) The confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for in national law;
- (g) The interests of a third party which has supplied the information requested without that party being under or capable of being put under a legal obligation to do so, and where that party does not consent to the release of the material; or
- (h) The environment to which the information relates, such as the breeding sites of rare species.

The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment.

5. Where a public authority does not hold the environmental information requested, this public authority shall, as promptly as possible, inform the applicant of the public authority to which it believes it is possible to apply for the information requested or transfer the request to that authority and inform the applicant accordingly.

6. Each Party shall ensure that, if information exempted from disclosure under paragraphs 3 (c) and 4 above can be separated out without prejudice to the confidentiality of the information exempted, public authorities make available the remainder of the environmental information that has been requested.

7. A refusal of a request shall be in writing if the request was in writing or the applicant so requests. A refusal shall state the reasons for the refusal and give information on access to the review procedure provided for in accordance with article 9. The refusal shall be made as soon as possible and at the latest within one month, unless the complexity of the information justifies an extension of this period up to two months after the request. The applicant shall be informed of any extension and of the reasons justifying it.

8. Each Party may allow its public authorities to make a charge for supplying information, but such charge shall not exceed a reasonable amount. Public authorities intending to make such a charge for supplying information shall make available to applicants a schedule of charges which may be levied, indicating the circumstances in which they may be levied or waived and when the supply of information is conditional on the advance payment of such a charge.

Article 5

COLLECTION AND DISSEMINATION OF ENVIRONMENTAL INFORMATION

1. Each Party shall ensure that:

- (a) Public authorities possess and update environmental information which is relevant to their functions;
- (b) Mandatory systems are established so that there is an adequate flow of information to public authorities about proposed and existing activities which may significantly affect the environment;
- (c) In the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected.

2. Each Party shall ensure that, within the framework of national legislation, the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible, inter alia, by:

- (a) Providing sufficient information to the public about the type and scope of environmental information held by the relevant public authorities, the basic terms and conditions under which such information is made available and accessible, and the process by which it can be obtained;
- (b) Establishing and maintaining practical arrangements, such as:
 - (i) Publicly accessible lists, registers or files;

- (ii) Requiring officials to support the public in seeking access to information under this Convention; and
 - (iii) The identification of points of contact; and
- (c) Providing access to the environmental information contained in lists, registers or files as referred to in subparagraph (b) (i) above free of charge.
3. Each Party shall ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks. Information accessible in this form should include:
- (a) Reports on the state of the environment, as referred to in paragraph 4 below;
 - (b) Texts of legislation on or relating to the environment;
 - (c) As appropriate, policies, plans and programmes on or relating to the environment, and environmental agreements; and
 - (d) Other information, to the extent that the availability of such information in this form would facilitate the application of national law implementing this Convention, provided that such information is already available in electronic form.
4. Each Party shall, at regular intervals not exceeding three or four years, publish and disseminate a national report on the state of the environment, including information on the quality of the environment and information on pressures on the environment.
5. Each Party shall take measures within the framework of its legislation for the purpose of disseminating, inter alia:
- (a) Legislation and policy documents such as documents on strategies, policies, programmes and action plans relating to the environment, and progress reports on their implementation, prepared at various levels of government;
 - (b) International treaties, conventions and agreements on environmental issues; and
 - (c) Other significant international documents on environmental issues, as appropriate.
6. Each Party shall 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, where appropriate within the framework of voluntary eco-labelling or eco-auditing schemes or by other means.
7. Each Party shall:
- (a) Publish the facts and analyses of facts which it considers relevant and important in framing major environmental policy proposals;
 - (b) Publish, or otherwise make accessible, available explanatory material on its dealings with the public in matters falling within the scope of this Convention; and
 - (c) Provide in an appropriate form information on the performance of public functions or the provision of public services relating to the environment by government at all levels.

8. Each Party shall develop mechanisms with a view to ensuring that sufficient product information is made available to the public in a manner which enables consumers to make informed environmental choices.

9. Each Party shall take steps to establish progressively, taking into account international processes where appropriate, a coherent, nationwide system of pollution inventories or registers on a structured, computerized and publicly accessible database compiled through standardized reporting. Such a system may include inputs, releases and transfers of a specified range of substances and products, including water, energy and resource use, from a specified range of activities to environmental media and to on-site and offsite treatment and disposal sites.

10. Nothing in this article may prejudice the right of Parties to refuse to disclose certain environmental information in accordance with article 4, paragraphs 3 and 4.

Article 6 PUBLIC PARTICIPATION IN DECISIONS ON SPECIFIC ACTIVITIES

1. Each Party:

- (a) Shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in annex I;
- (b) Shall, in accordance with its national law, also apply the provisions of this article to decisions on proposed activities not listed in annex I which may have a significant effect on the environment. To this end, Parties shall determine whether such a proposed activity is subject to these provisions; and
- (c) May decide, on a case-by-case basis if so provided under national law, not to apply the provisions of this article to proposed activities serving national defence purposes, if that Party deems that such application would have an adverse effect on these purposes.

2. The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, inter alia, of:

- (a) The proposed activity and the application on which a decision will be taken;
- (b) The nature of possible decisions or the draft decision;
- (c) The public authority responsible for making the decision;
- (d) The envisaged procedure, including, as and when this information can be provided:
 - (i) The commencement of the procedure;
 - (ii) The opportunities for the public to participate;
 - (iii) The time and venue of any envisaged public hearing;
 - (iv) An indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public;

- (v) An indication of the relevant public authority or any other official body to which comments or questions can be submitted and of the time schedule for transmittal of comments or questions; and
 - (vi) An indication of what environmental information relevant to the proposed activity is available; and
- (e) The fact that the activity is subject to a national or transboundary environmental impact assessment procedure.

3. The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision making.

4. Each Party shall provide for early public participation, when all options are open and effective public participation can take place.

5. Each Party should, where appropriate, encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit.

6. Each Party shall require the competent public authorities to give the public concerned access for examination, upon request where so required under national law, free of charge and as soon as it becomes available, to all information relevant to the decision-making referred to in this article that is available at the time of the public participation procedure, without prejudice to the right of Parties to refuse to disclose certain information in accordance with article 4, paragraphs 3 and 4. The relevant information shall include at least, and without prejudice to the provisions of article 4:

- (a) A description of the site and the physical and technical characteristics of the proposed activity, including an estimate of the expected residues and emissions;
- (b) A description of the significant effects of the proposed activity on the environment;
- (c) A description of the measures envisaged to prevent and/or reduce the effects, including emissions;
- (d) A non-technical summary of the above;
- (e) An outline of the main alternatives studied by the applicant; and
- (f) In accordance with national legislation, the main reports and advice issued to the public authority at the time when the public concerned shall be informed in accordance with paragraph 2 above.

7. Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity.

8. Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.

9. Each Party shall ensure that, when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance with the appropriate

procedures. Each Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based.

10. Each Party shall 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 of this article are applied *mutatis mutandis*, and where appropriate.

11. Each Party shall, within the framework of its national law, apply, to the extent feasible and appropriate, provisions of this article to decisions on whether to permit the deliberate release of genetically modified organisms into the environment.

Article 7 **PUBLIC PARTICIPATION CONCERNING PLANS, PROGRAMMES AND POLICIES RELATING TO THE ENVIRONMENT**

Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework, article 6, paragraphs 3, 4 and 8, shall be applied. The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.

Article 8 **PUBLIC PARTICIPATION DURING THE PREPARATION OF EXECUTIVE REGULATIONS AND/OR GENERALLY APPLICABLE LEGALLY BINDING NORMATIVE INSTRUMENTS**

Each Party shall strive to promote effective public participation at an appropriate stage, and while options are still open, 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. To this end, the following steps should be taken:

- (a) Time-frames sufficient for effective participation should be fixed;
- (b) Draft rules should be published or otherwise made publicly available; and
- (c) The public should be given the opportunity to comment, directly or through representative consultative bodies.

The result of the public participation shall be taken into account as far as possible.

Article 9 **ACCESS TO JUSTICE**

1. Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under article 4 has been ignored, wrongfully refused, whether in part or in full inadequately answered, or otherwise not 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.

In the circumstances where a Party provides for such a review by a court of law, it shall ensure that 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.

Final decisions under this paragraph 1 shall be binding on the public authority holding the information. Reasons shall be stated in writing, at least where access to information is refused under this paragraph.

2. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned

(a) Having a sufficient interest

or, alternatively,

(b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition,

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 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.

What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.

The provisions of this paragraph 2 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

3. In addition and without prejudice to the review procedures referred to 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.

4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.

5. In order to further the effectiveness of the provisions of this article, each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.

Article 10 MEETING OF THE PARTIES

1. The first meeting of the Parties shall be convened no later than one year after the date of the entry into force of this Convention. Thereafter, an ordinary meeting of the Parties shall be held at least once every two years, unless otherwise decided by the Parties, or at the written request of any Party, provided that, within six months of the request being communicated to all Parties by the Executive Secretary of the Economic Commission for Europe, the said request is supported by at least one third of the Parties.

2. At their meetings, the Parties shall keep under continuous review the implementation of this Convention on the basis of regular reporting by the Parties, and, with this purpose in mind, shall:

- (a) Review the policies for and legal and methodological approaches to access to information, public participation in decision-making and access to justice in environmental matters, with a view to further improving them;
- (b) Exchange information regarding experience gained in concluding and implementing bilateral and multilateral agreements or other arrangements having relevance to the purposes of this Convention and to which one or more of the Parties are a party;
- (c) Seek, where appropriate, the services of relevant ECE bodies and other competent international bodies and specific committees in all aspects pertinent to the achievement of the purposes of this Convention;
- (d) Establish any subsidiary bodies as they deem necessary;
- (e) Prepare, where appropriate, protocols to this Convention;
- (f) Consider and adopt proposals for amendments to this Convention in accordance with the provisions of article 14;
- (g) Consider and undertake any additional action that may be required for the achievement of the purposes of this Convention;
- (h) At their first meeting, consider and by consensus adopt rules of procedure for their meetings and the meetings of subsidiary bodies;
- (i) At their first meeting, review their experience in implementing the provisions of article 5, paragraph 9, and consider what steps are necessary to develop further the system referred to in that paragraph, taking into account international processes and developments, including the elaboration of an appropriate instrument concerning pollution release and transfer registers or inventories which could be annexed to this Convention.

3. The Meeting of the Parties may, as necessary, consider establishing financial arrangements on a consensus basis.

4. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State or regional economic integration organization entitled under article 17 to sign this Convention but which is not a Party to this Convention, and any intergovernmental organization qualified in the fields to which this Convention relates, shall be entitled to participate as observers in the meetings of the Parties.

5. Any non-governmental organization, qualified in the fields to which this Convention relates, which has informed the Executive Secretary of the Economic Commission for Europe of its

wish to be represented at a meeting of the Parties shall be entitled to participate as an observer unless at least one third of the Parties present in the meeting raise objections.

6. For the purposes of paragraphs 4 and 5 above, the rules of procedure referred to in paragraph 2 (h) above shall provide for practical arrangements for the admittance procedure and other relevant terms.

Article 11 RIGHT TO VOTE

1. Except as provided for in paragraph 2 below, each Party to this Convention shall have one vote.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

Article 12 SECRETARIAT

The Executive Secretary of the Economic Commission for Europe shall carry out the following secretariat functions:

- (a) The convening and preparing of meetings of the Parties;
- (b) The transmission to the Parties of reports and other information received in accordance with the provisions of this Convention; and
- (c) Such other functions as may be determined by the Parties.

Article 13 ANNEXES

The annexes to this Convention shall constitute an integral part thereof.

Article 14 AMENDMENTS TO THE CONVENTION

1. Any Party may propose amendments to this Convention.

2. The text of any proposed amendment to this Convention shall be submitted in writing to the Executive Secretary of the Economic Commission for Europe, who shall communicate it to all Parties at least ninety days before the meeting of the Parties at which it is proposed for adoption.

3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting.

4. Amendments to this Convention adopted in accordance with paragraph 3 above shall be communicated by the Depository to all Parties for ratification, approval or acceptance. Amendments to this Convention other than those to an annex shall enter into force for Parties having ratified, approved or accepted them on the ninetieth day after the receipt by

the Depositary of notification of their ratification, approval or acceptance by at least three fourths of these Parties. Thereafter they shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, approval or acceptance of the amendments.

5. Any Party that is unable to approve an amendment to an annex to this Convention shall so notify the Depositary in writing within twelve months from the date of the communication of the adoption. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time substitute an acceptance for its previous notification and, upon deposit of an instrument of acceptance with the Depositary, the amendments to such an annex shall become effective for that Party.

6. On the expiry of twelve months from the date of its communication by the Depositary as provided for in paragraph 4 above an amendment to an annex shall become effective for those Parties which have not submitted a notification to the Depositary in accordance with the provisions of paragraph 5 above, provided that not more than one third of the Parties have submitted such a notification.

7. For the purposes of this article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

Article 15 REVIEW OF COMPLIANCE

The Meeting of the Parties shall establish, on a consensus basis, optional arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance with the provisions of this Convention. These arrangements shall allow for appropriate public involvement and may include the option of considering communications from members of the public on matters related to this Convention.

Article 16 SETTLEMENT OF DISPUTES

1. If a dispute arises between two or more Parties about the interpretation or application of this Convention, they shall seek a solution by negotiation or by any other means of dispute settlement acceptable to the parties to the dispute.

2. When signing, ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a Party may declare in writing to the Depositary that, for a dispute not resolved in accordance with paragraph 1 above, it accepts one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:

(a) Submission of the dispute to the International Court of Justice;

(b) Arbitration in accordance with the procedure set out in annex II.

3. If the parties to the dispute have accepted both means of dispute settlement referred to in paragraph 2 above, the dispute may be submitted only to the International Court of Justice, unless the parties agree otherwise.

Article 17 SIGNATURE

This Convention shall be open for signature at Aarhus (Denmark) on 25 June 1998, and thereafter at United Nations Headquarters in New York until 21 December 1998, by States members of the Economic Commission for Europe as well as States having consultative status with the Economic Commission for Europe pursuant to paragraphs 8 and 11 of Economic and Social Council resolution 36 (IV) of 28 March 1947, and by regional economic integration organizations constituted by sovereign States members of the Economic Commission for Europe to which their member States have transferred competence over matters governed by this Convention, including the competence to enter into treaties in respect of these matters.

Article 18 DEPOSITARY

The Secretary-General of the United Nations shall act as the Depositary of this Convention.

Article 19 RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

1. This Convention shall be subject to ratification, acceptance or approval by signatory States and regional economic integration organizations.
2. This Convention shall be open for accession as from 22 December 1998 by the States and regional economic integration organizations referred to in article 17.
3. Any other State, not referred to in paragraph 2 above, that is a Member of the United Nations may accede to the Convention upon approval by the Meeting of the Parties.
4. Any organization referred to in article 17 which becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under this Convention. If one or more of such an organization's member States is a Party to this Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under this Convention concurrently.
5. In their instruments of ratification, acceptance, approval or accession, the regional economic integration organizations referred to in article 17 shall declare the extent of their competence with respect to the matters governed by this Convention. These organizations shall also inform the Depositary of any substantial modification to the extent of their competence.

Article 20 ENTRY INTO FORCE

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the sixteenth instrument of ratification, acceptance, approval or accession.
2. For the purposes of paragraph 1 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of such an organization.
3. For each State or organization referred to in article 17 which ratifies, accepts or approves this Convention or accedes thereto after the deposit of the sixteenth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day

after the date of deposit by such State or organization of its instrument of ratification, acceptance, approval or accession.

Article 21 WITHDRAWAL

At any time after three years from the date on which this Convention has come into force with respect to a Party, that Party may withdraw from the Convention by giving written notification to the Depositary. Any such withdrawal shall take effect on the ninetieth day after the date of its receipt by the Depositary.

Article 22 AUTHENTIC TEXTS

The original of this Convention, of which the English, French and Russian texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention.

DONE at Aarhus (Denmark), this twenty-fifth day of June, one thousand nine hundred and ninety-eight.

Annex I LIST OF ACTIVITIES REFERRED TO IN ARTICLE 6, PARAGRAPH 1 (a)

1. Energy sector:

- Mineral oil and gas refineries;
- Installations for gasification and liquefaction;
- Thermal power stations and other combustion installations with a heat input of 50 megawatts (MW) or more;
- Coke ovens;
- Nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors 1/ (except research installations for the production and conversion of fissionable and fertile materials whose maximum power does not exceed 1 kW continuous thermal load);
- Installations for the reprocessing of irradiated nuclear fuel;
- Installations designed:
 - For the production or enrichment of nuclear fuel;
 - For the processing of irradiated nuclear fuel or high-level radioactive waste;
 - For the final disposal of irradiated nuclear fuel;
 - Solely for the final disposal of radioactive waste;
 - Solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.

2. Production and processing of metals:

- Metal ore (including sulphide ore) roasting or sintering installations;
- Installations for the production of pig-iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2.5 tons per hour;
- Installations for the processing of ferrous metals:
 - (i) Hot-rolling mills with a capacity exceeding 20 tons of crude steel per hour;

- (ii) Smitheries with hammers the energy of which exceeds 50 kilojoules per hammer, where the calorific power used exceeds 20 MW;
- (iii) Application of protective fused metal coats with an input exceeding 2 tons of crude steel per hour;
- Ferrous metal foundries with a production capacity exceeding 20 tons per day;
- Installations:
 - (i) For the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes;
 - (ii) For the smelting, including the alloying, of non-ferrous metals, including recovered products (refining, foundry casting, etc.), with a melting capacity exceeding 4 tons per day for lead and cadmium or 20 tons per day for all other metals;
- Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process where the volume of the treatment vats exceeds 30 m³.

3. Mineral industry:

- Installations for the production of cement clinker in rotary kilns with a production capacity exceeding 500 tons per day or lime in rotary kilns with a production capacity exceeding 50 tons per day or in other furnaces with a production capacity exceeding 50 tons per day;
- Installations for the production of asbestos and the manufacture of asbestos-based products;
- Installations for the manufacture of glass including glass fibre with a melting capacity exceeding 20 tons per day;
- Installations for melting mineral substances including the production of mineral fibres with a melting capacity exceeding 20 tons per day;
- Installations for the manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, with a production capacity exceeding 75 tons per day, and/or with a kiln capacity exceeding 4 m³ and with a setting density per kiln exceeding 300 kg/m³.

4. Chemical industry: Production within the meaning of the categories of activities contained in this paragraph means the production on an industrial scale by chemical processing of substances or groups of substances listed in subparagraphs (a) to (g):

(a) Chemical installations for the production of basic organic chemicals, such as:

- (i) Simple hydrocarbons (linear or cyclic, saturated or unsaturated, aliphatic or aromatic);
- (ii) Oxygen-containing hydrocarbons such as alcohols, aldehydes, ketones, carboxylic acids, esters, acetates, ethers, peroxides, epoxy resins;
- (iii) Sulphurous hydrocarbons;
- (iv) Nitrogenous hydrocarbons such as amines, amides, nitrous compounds, nitro compounds or nitrate compounds, nitriles, cyanates, isocyanates;
- (v) Phosphorus-containing hydrocarbons;
- (vi) Halogenic hydrocarbons;
- (vii) Organometallic compounds;
- (viii) Basic plastic materials (polymers, synthetic fibres and cellulose-based fibres);
- (ix) Synthetic rubbers;
- (x) Dyes and pigments;
- (xi) Surface-active agents and surfactants;

(b) Chemical installations for the production of basic inorganic chemicals, such as:

- (i) Gases, such as ammonia, chlorine or hydrogen chloride, fluorine or hydrogen fluoride, carbon oxides, sulphur compounds, nitrogen oxides, hydrogen, sulphur dioxide, carbonyl chloride;
 - (ii) Acids, such as chromic acid, hydrofluoric acid, phosphoric acid, nitric acid, hydrochloric acid, sulphuric acid, oleum, sulphurous acids;
 - (iii) Bases, such as ammonium hydroxide, potassium hydroxide, sodium hydroxide;
 - (iv) Salts, such as ammonium chloride, potassium chlorate, potassium carbonate, sodium carbonate, perborate, silver nitrate;
 - (v) Non-metals, metal oxides or other inorganic compounds such as calcium carbide, silicon, silicon carbide;
- (c) Chemical installations for the production of phosphorous-, nitrogen- or potassium-based fertilizers (simple or compound fertilizers);
 - (d) Chemical installations for the production of basic plant health products and of biocides;
 - (e) Installations using a chemical or biological process for the production of basic pharmaceutical products;
 - (f) Chemical installations for the production of explosives;
 - (g) Chemical installations in which chemical or biological processing is used for the production of protein feed additives, ferments and other protein substances.

5. Waste management:

- Installations for the incineration, recovery, chemical treatment or landfill of hazardous waste;
- Installations for the incineration of municipal waste with a capacity exceeding 3 tons per hour;
- Installations for the disposal of non-hazardous waste with a capacity exceeding 50 tons per day;
- Landfills receiving more than 10 tons per day or with a total capacity exceeding 25 000 tons, excluding landfills of inert waste.

6. Waste-water treatment plants with a capacity exceeding 150 000 population equivalent.

7. Industrial plants for the:

- (a) Production of pulp from timber or similar fibrous materials;
- (b) Production of paper and board with a production capacity exceeding 20 tons per day.

8.

- (a) Construction of lines for long-distance railway traffic and of airports 2/ with a basic runway length of 2 100 m or more;
- (b) Construction of motorways and express roads; 3/
- (c) Construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road, or realigned and/or widened section of road, would be 10 km or more in a continuous length.

9.
 - (a) Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1 350 tons;
 - (b) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1 350 tons.
10. Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.
11.
 - (a) Works for the transfer of water resources between river basins where this transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres/year;
 - (b) In all other cases, works for the transfer of water resources between river basins where the multiannual average flow of the basin of abstraction exceeds 2 000 million cubic metres/year and where the amount of water transferred exceeds 5% of this flow.

In both cases transfers of piped drinking water are excluded.

12. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tons/day in the case of petroleum and 500 000 cubic metres/day in the case of gas.
13. Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.
14. Pipelines for the transport of gas, oil or chemicals with a diameter of more than 800 mm and a length of more than 40 km.
15. Installations for the intensive rearing of poultry or pigs with more than:
 - (a) 40 000 places for poultry;
 - (b) 2 000 places for production pigs (over 30 kg); or
 - (c) 750 places for sows.
16. Quarries and opencast mining where the surface of the site exceeds 25 hectares, or peat extraction, where the surface of the site exceeds 150 hectares.
17. Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km.
18. Installations for the storage of petroleum, petrochemical, or chemical products with a capacity of 200 000 tons or more.
19. Other activities:
 - Plants for the pretreatment (operations such as washing, bleaching, mercerization) or dyeing of fibres or textiles where the treatment capacity exceeds 10 tons per day;

- Plants for the tanning of hides and skins where the treatment capacity exceeds 12 tons of finished products per day;
- (a) Slaughterhouses with a carcass production capacity greater than 50 tons per day;
- (b) Treatment and processing intended for the production of food products from:
 - (i) Animal raw materials (other than milk) with a finished product production capacity greater than 75 tons per day;
 - (ii) Vegetable raw materials with a finished product production capacity greater than 300 tons per day (average value on a quarterly basis);
- (c) Treatment and processing of milk, the quantity of milk received being greater than 200 tons per day (average value on an annual basis);
- Installations for the disposal or recycling of animal carcasses and animal waste with a treatment capacity exceeding 10 tons per day;
- Installations for the surface treatment of substances, objects or products using organic solvents, in particular for dressing, printing, coating, degreasing, waterproofing, sizing, painting, cleaning or impregnating, with a consumption capacity of more than 150 kg per hour or more than 200 tons per year;
- Installations for the production of carbon (hard-burnt coal) or electrographite by means of incineration or graphitization.

20. Any activity not covered by paragraphs 1-19 above where public participation is provided for under an environmental impact assessment procedure in accordance with national legislation.

21. The provision of article 6, paragraph 1 (a) of this Convention, does not apply to any of the above projects undertaken exclusively or mainly for research, development and testing of new methods or products for less than two years unless they would be likely to cause a significant adverse effect on environment or health.

22. Any change to or extension of activities, where such a change or extension in itself meets the criteria/thresholds set out in this annex, shall be subject to article 6, paragraph 1 (a) of this Convention. Any other change or extension of activities shall be subject to article 6, paragraph 1 (b) of this Convention.

Notes

1/ Nuclear power stations and other nuclear reactors cease to be such an installation when all nuclear fuel and other radioactively contaminated elements have been removed permanently from the installation site.

2/ For the purposes of this Convention, "airport" means an airport which complies with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organization (Annex 14).

3/ For the purposes of this Convention, "express road" means a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15 November 1975.

Annex II ARBITRATION

1. In the event of a dispute being submitted for arbitration pursuant to article 16, paragraph 2, of this Convention, a party or parties shall notify the secretariat of the subject matter of arbitration and indicate, in particular, the articles of this Convention whose interpretation or

application is at issue. The secretariat shall forward the information received to all Parties to this Convention.

2. The arbitral tribunal shall consist of three members. Both the claimant party or parties and the other party or parties to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the president of the arbitral tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

3. If the president of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Executive Secretary of the Economic Commission for Europe shall, at the request of either party to the dispute, designate the president within a further two-month period.

4. If one of the parties to the dispute does not appoint an arbitrator within two months of the receipt of the request, the other party may so inform the Executive Secretary of the Economic Commission for Europe, who shall designate the president of the arbitral tribunal within a further two-month period. Upon designation, the president of the arbitral tribunal shall request the party which has not appointed an arbitrator to do so within two months. If it fails to do so within that period, the president shall so inform the Executive Secretary of the Economic Commission for Europe, who shall make this appointment within a further two-month period.

5. The arbitral tribunal shall render its decision in accordance with international law and the provisions of this Convention.

6. Any arbitral tribunal constituted under the provisions set out in this annex shall draw up its own rules of procedure.

7. The decisions of the arbitral tribunal, both on procedure and on substance, shall be taken by majority vote of its members.

8. The tribunal may take all appropriate measures to establish the facts.

9. The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

(a) Provide it with all relevant documents, facilities and information;

(b) Enable it, where necessary, to call witnesses or experts and receive their evidence.

10. The parties and the arbitrators shall protect the confidentiality of any information that they receive in confidence during the proceedings of the arbitral tribunal.

11. The arbitral tribunal may, at the request of one of the parties, recommend interim measures of protection.

12. If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to render its final decision. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings.

13. The arbitral tribunal may hear and determine counter-claims arising directly out of the subject matter of the dispute.

14. Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its expenses, and shall furnish a final statement thereof to the parties.

15. Any Party to this Convention which has an interest of a legal nature in the subject matter of the dispute, and which may be affected by a decision in the case, may intervene in the proceedings with the consent of the tribunal.

16. The arbitral tribunal shall render its award within five months of the date on which it is established, unless it finds it necessary to extend the time limit for a period which should not exceed five months.

17. The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon all parties to the dispute. The award will be transmitted by the arbitral tribunal to the parties to the dispute and to the secretariat. The secretariat will forward the information received to all Parties to this Convention.

18. Any dispute which may arise between the parties concerning the interpretation or execution of the award may be submitted by either party to the arbitral tribunal which made the award or, if the latter cannot be seized thereof, to another tribunal constituted for this purpose in the same manner as the first.