

Human Rights Council, 30th session

Side-event dedicated to the Special Rapporteur Report on the Right to Information on Hazardous Substances and Wastes

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Presented by Maryna Yanush, Aarhus Convention Secretariat

Distinguished delegates and participants,

Thank you very much for the opportunity to speak today at this timely and important event, especially in the run-up to the adoption of the Sustainable Development Goals and targets. We look forward to continuing our joint efforts in the implementation of Goals 12 and 16 to increase and widen the accessibility of information and reduce the death toll from hazardous chemicals and wastes.

The report presented by the Special Rapporteur, Mr. Bascut Tuncak, is a valuable contribution to improving public accessibility of information on hazardous substance and wastes. It convinces us of the crucial importance of public access to such information, lack of which simply costs human lives and reduces health and well-being. The report highlights a number of current challenges and suggests solutions that will guide our future work.

The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters¹, known as the Aarhus Convention, and its Protocol on Pollutant Release and Transfer Registers², are part of these solutions. They provide solid legal frameworks on access to environmental information through guaranteeing public rights and imposing obligations on public authorities. At its core, the Aarhus Convention is a framework that effectively links human and environmental rights.

Both treaties having 47 and 33 Parties, respectively, remain the only legally binding international instruments on environmental democracy that put Principle 10 of the Rio Declaration on Environment and Development in practice. They offer global, multi-stakeholder platforms to exchange experience in public access to environmental information, including on polluting substances and wastes.

¹ More information is available from <http://www.unece.org/env/pp/welcome.html>.

² More information is available from <http://www.unece.org/env/pp/prtr.html>.

Allow me to reflect on how the implementation of the Aarhus Convention and the Protocol on PRTRs could support the recommendations suggested by the Special Rapporteur and provide some lessons learned.

First of all, let me address **what information should be disclosed** under the Convention and the Protocol.

The definition of environmental information given in the Convention is quite broad, indicative and non-exhaustive. It covers any information on the state of elements of the environment; factors like substances, activities or measures affecting or likely to affect the environment; analyses and assumptions in environmental decision-making; state of the human environment affected or may be by the state of the elements of the environment.

The information can be provided in the form of “processed” or “raw” data. The approaches regarding access to raw data as well as access to primary statistical data relating to the environment vary between the Parties and they have recently shared experience in this regard.

Environmental information has cross-sectoral nature without clear boundaries to delineate environmental from other types of information. In many countries, access to a particular type of information can be regulated by sectoral legislation and it is important to ensure that sectoral legislation would not preclude access to such information without legitimate restrictions.

The PRTR Protocol enhances public access to information through the establishment of coherent, integrated, nationwide pollutant release and transfer registers. Known in short as a PRTR, it is a publicly accessible register containing information on the releases (emissions) from facilities into the environment, and transfers to other facilities, of a defined set of pollutants from certain specified activities. The information contained in a PRTR is generated through periodic reporting, usually on an annual and mandatory basis, by the facilities responsible for the activities causing the releases and transfers. The PRTR should be accessible via the Internet and searchable according to individual facility, owner/operator, type of pollutant, type of activity and environmental medium (air, water, land). Members of the public do not only become users of such information but also should be involved in PRTR design.

Secondly, let me address **key Parties’ obligations** in accordance with the Convention and its Protocol.

Both instruments are minimum standards that level the playing field for all stakeholders and ensure non-discrimination and equality. The Parties to the Aarhus Convention strive to ensure access to environmental information upon request, collection and dissemination of environmental information, timely informing the

public within the public participation procedure as well as promoting informed public participation and the application of the Aarhus principles in the international forums in matters relating to the environment.

While passive access to information is still relevant, the current trend under the Convention is a shift towards more active dissemination of environmental information and use of electronic information tools. This includes the development of pollutant release and transfer registers, shared environmental information systems, e-Government and Open Government Data Initiatives as well as the INSPIRE infrastructure. The latter links information with spatial data.

Regarding public access to sufficient environment-related product information in accordance with the Convention, the Parties under the Aarhus Convention developed various tools to inform the public regularly of the environmental impact of their activities and products as well as to ensure that sufficient product information could be made available to the consumers. This work is in progress and they continuously exchange information on this matter through national implementation reports. Some parties put effort in promoting voluntarily eco-labelling schemes for products and services that enable consumers to make informed environmental choices.

Another important obligation arises in the event of imminent threat to human health and the environment. Public authorities should disseminate all necessary information to the members of the public who may be affected. For example, this Convention's obligation might help to prevent risks to people in the countryside from exposure to pesticides used from crop spraying. The solution could be simply to establish effective procedures to have full and direct access to information about the crop-spraying close to their settlement as well as prior notice to the population before any spraying.

Thirdly, let me address **the application of the restrictions in access to environmental information.**

Information may be withheld where disclosure would adversely affect various interests, e.g. national defence, international relations, public security, the course of justice, commercial confidentiality, intellectual property rights, personal privacy, the confidentiality of the proceedings of public authorities; or where the information requested has been supplied voluntarily or consists of internal communications or material in the course of completion. There are, however, some restrictions on these exemptions, e.g. the commercial confidentiality exemption may not be invoked to withhold information on emissions which is relevant for the protection of the environment. To prevent abuse of the exemptions by public authorities, the Convention stipulates that most of the aforementioned exemptions are to be interpreted in a restrictive way, and in all cases may only be applied when

the public interest served by disclosure has been taken into account. Refusals, and the reasons for them, are to be issued in writing where requested.

The experience shows the increasing mediating role of the public authorities when dealing with public requests to provide sensitive commercial and business information.

The role of judiciary remains crucial in clarifying the scope of the environmental information and the application of restrictions.

The Convention also requires to provide adequate and effective remedies and review procedures to be fair, equitable, timely and not prohibitively expensive. Access to information on review procedures should be publicly available.

Can the Aarhus Convention inspire? Well, the right to information related to hazardous substances produced, stored or processed at industrial facilities as well as public participation and access to justice are also an integral part of the UNECE Convention on the Transboundary Effects of Industrial Accidents (known as Industrial Accidents Convention). These provisions are currently being amended to strengthen and align them with the UNECE Aarhus Convention.

To conclude, I would like to stress that many of topics highlighted by the Special Rapporteur are dealt with by the Task Force on Access to Information under the Aarhus Convention. I take this opportunity to invite those who are interested to continue the discussion to the fourth meeting of the Task Force that will take place in the Palais des Nations from 8 to 10 December this year. All information will be available on the website soon³.

We are also organizing a global round-table on PRTRs that will take place in Madrid on 26 November 2015 back-to-back with the Working Group of the Parties to the Protocol on PRTRs⁴.

Thank you for your attention!

³ <http://www.unece.org/env/pp/aarhus/tfai4.html#/>

⁴ http://www.unece.org/prtr_grt2015/#/