

**Recommendations on Public Participation in Decision-making in Environment Matters**  
**Second draft for consultation, October 2012**  
**Comments on draft document**

**General comments**

In general, Ireland, reiterates the comments provided by the EU and its Member States to the earlier draft that “*the work of the Task Force should focus on sharing expertise and good practice relating to existing obligations. The recommendations... should therefore not exceed obligations stipulated in the Convention*”. A number of the specific comments below highlight where the draft recommendations go beyond the scope of the Convention and Ireland requests that the wording be amended to reflect the wording of the Convention and the remit of these recommendations and indeed the Task Force i.e.: “*..improving implementation of the existing provisions of the Convention...*”

Ireland previously requested that references to “legal framework” be removed from the document, as it does not support the concept of a national legal framework for public participation. However, in this version of the document, there are increased references to a legal framework e.g. where there were previous references to “decisions made by the competent public authority”, these have been replaced with references to a “legal framework providing for...”. Ireland restates its request that this term be amended throughout the document as this goes significantly beyond the requirements of the Directive.

In addition to exceeding its remit by providing recommendations for a national legal framework, the document is also overly prescriptive in describing what should be included in a legal framework. A number of such examples are outlined below.

**Structure of the document**

The introduction to the document outlines the two aims of the document:

- (i) To assist parties when designing their legal framework
- (ii) To assist public officials on a day-to-day basis when designing and carrying out public participation

Throughout the document both these aims are mixed together. It might be more useful to divide the document between these two aims as the first will be set in place before a public official seeks to use the second half of the document. (Comments on the preparation of a framework rather than a legal framework remain relevant in this regard).

**Previous comments**

A number of the comments submitted by Ireland on the previous draft have not been taken into consideration. In the interests of good practice on public participation, Ireland requests a rationale for why these comments have not been reflected in the draft recommendations and details of how they have been considered. Examples include (paragraph numbers from current draft):

- The definitions of the public and the public concerned

- All references to legal framework
- Final paragraph in box on page 5 (in relation to delegating competence for decision making to the public)
- Paragraph 10(c)
- Paragraph 19(c) and (d)
- Paragraph 31
- Paragraph 33(a) and (b)
- Paragraph 34
- Paragraphs 37 and 38
- Paragraph 58(b)
- Paragraph 78
- Paragraph 87
- Paragraph 91(a)
- Paragraph 109
- Paragraphs 113 – 115
- Paragraph 117
- Paragraph 121
- Paragraph 124
- Paragraph 132

### **Specific comments**

**Paragraph 2(b) / 2(c)** define the terms “the public” and “the public concerned”. As stated in our previous comments, Ireland does not support, nor understand the necessity, of redefining these terms given that both are defined in the Aarhus Convention (AC). In both cases, the definition in the draft recommendations goes further than that in the Convention and this is not acceptable.

Box on page 5 recommends that in certain cases “it may be useful to provide the public with a co-decision power (for example by delegating the competence to conduct the relevant decision-making procedure) or even with the exclusive decision-making power [e.g. referendum]”. This seems to go substantially beyond what is required in the Directive.

**Paragraph 30** – Ireland suggests amending this paragraph as follows: “use available social science research” or “consider investment in...” in place of “[Public authorities designing and carrying out public participation procedures should, to the extent feasible and appropriate,] invest in social science research ...” It is obviously far preferential to use research material already available, where possible, from a resource-efficiency perspective.

**Paragraph 31** – while it is noted that the list in paragraph 31 is now described as a recommended list, Ireland still considers the details overly prescriptive in relation to the interpretation of the items listed in Annex 1 to the AC. It would be important that the text would be amended to explicitly state that, “the following, while not requirements of the Convention, is recommended that..”

**Paragraph 38** refers to exemption for projects relating to national defence purpose and states that parties centrally set out a legal mechanism or list of activities and criteria for public authorities to determine which projects fall under this exemption. This is overly prescriptive for inclusion in a legal framework and will not be possible in practise; each case must be judged on its own merits and it would not be possible to design a legal mechanism to assess these instances; this goes significantly beyond the requirements of the Directive.

**Paragraph 49** – requires the legal framework to provide for repeated notifications of the public where there is doubt that public received information or where complaints have been received from the public. Again, it is recommended that this should not require legislation, that the text be changed to recommend that such details are included in guidelines / good practice provisions.

**Paragraph 50/51** – these paragraphs list alternative ways of informing the public which is a practical example of good practice, however, the wording should be modified so that it is clear that the document is not requiring these, rather than suggesting them as good practice, i.e. ‘ensured’ should be amended to ‘recommended, where economically feasible,’ in recognition of the potentially significant cost implications of some of these recommendations, which may divert scarce funds away from other public participation activities.

**Paragraph 57** – prescribes a legal framework that sets out how “reasonable time-frames” for public participation are determined. This again is too detailed for the legal framework but more appropriate to good practice / guidelines.

**Paragraphs 59 – 63 and text box on page 19** refer to the legal framework setting out the time-frames for public participation; includes a choice for legal framework to allow flexible approach but to specify maximum and minimum time frames. As above, this is overly detailed for a legal framework and goes beyond the requirements of the Directive, where it is sufficient to provide for flexible approach and include details in a good practice document / guidelines.

**Paragraph 64 (a)** -This is overly prescriptive and should be amended to reflect that “it is recommended that there should be at least one stage...”

**Paragraph 68** – “Guidance to assist prospective applicants to identify the public concerned ... should be incorporated into the legal framework” – not for legal framework, for guidelines / good practice.

**Paragraph 72** – states that all information relevant to decision-making should be provided “to all expert opinions relevant to the decision-making”. Ireland questions the practicality of this suggestion given the difficulty in establishing who is an expert in a particular field and identifying all such experts. It is therefore recommended that the text be modified to read

that “proper public notification procedures to be followed and relevant information be provided to experts (or others) who request it under these procedures.”

**Paragraph 74** – should be amended to reflect that “it is best practise, that, in addition to the full original documentation, non-technical...etc.”

**Paragraph 76(a)** – this is not feasible in all cases as not all buildings are public buildings; should be amended to reflect this.

**Paragraph 78** – recommends that there should be no charge to the public for accessing information relevant to the public participation process and “in particular, no charges for requesting or conducting a search”. Access to information on the environment is covered by Article 4 of the AC – this goes further than Article 4 by giving the public access to search for documents and / or access to environmental information free of charge. Qualify with “There shall be no charge to access information relevant to the decision making. Other information that the public may consider to be relevant is subject to Article 4.”

**Paragraph 80** – Ireland requests rationale for recommendation that copies of documents be made free of charge in the case of particularly sensitive issues or where the volume of documentation is large and will therefore cost more to the public authority to provide.

**Paragraph 86 & 87** - there should be recognition in these recommendations that public bodies can have a responsibility to verify information prior to making it publicly available.

**Paragraph 91(a)** – this goes beyond the requirements of the Directive and this should only be recommended as best practice, not a requirement.

**Paragraph 92** – states, inter alia, that “the public is not required to provide evidence as to its sources”. While it does clarify that it may assist public authorities in their decision-making if sources are provided, it would seem to significantly weaken the input of the public if they do not provide sources and on this basis, Ireland requests that this text be deleted.

**Paragraph 95 & 96** – Add “As best practice, it is recommended that ...” at the start of both paragraphs.

**Paragraph 98(a)(iv)** – suggest inclusion of “in so far as practicable” before “...participants who have not pre-registered...”

Paragraph 99(c) – should be amended to say, “outside business hours, where practicable,” as this may not always be feasible.

**Paragraph 105** – evidence of taking account of public participation – document states that legal framework should prescribe what is included in the statement of reasons; again this is

overly prescriptive for inclusion in the legal framework and beyond the requirements of the Directive.

**Paragraph 108 & 109** – legal framework may include a requirement that public authority reply individually to each submission; while Ireland recognises that text says “may”, it suggests that this suggestion be removed. 109 is too prescriptive; needs to be amended to make a recommendation rather than a judgement on a future process.

**Paragraphs 111 and 112** go beyond the requirements of the AC – AC requires only prompt information re the decision and that the decision be made available to the public. The other factors listed here cannot be considered, as stated in the draft documents as amounting “to a failure to comply with the requirements of article 6, paragraph 9”

### **Section III and IV**

Ireland reiterates its comments regarding the references to legal framework in these sections (see paragraphs 131 and 137) and requests that the word legal be removed.