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### Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

#### Fourth session

Chisinau, 29 June–1 July 2011

Item 4 (e) of the provisional agenda

**Substantive issues: public participation in international forums**

### Report on the sixth meeting of the Task Force on Public Participation in International Forums

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## I. Introduction

1. The sixth meeting of the Task Force on Public Participation in International Forums, established by the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), was held in Geneva on 23 February 2011.
2. The meeting was attended by experts designated by the Governments of Armenia, Belgium, Croatia, France, Georgia, Italy, Kyrgyzstan, the Republic of Moldova, Ukraine and Uzbekistan. The European Union (EU) was also represented.
3. The secretariat of the United Nations Framework Convention on Climate Change (UNFCCC) and the Regional Environmental Centre for Central and Eastern Europe were also represented. The secretariats of various United Nations Economic Commission for Europe (UNECE) multilateral environmental agreements also took part — i.e., for the Protocol on Water and Health to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention), the Convention on the Transboundary Effects of Industrial Accidents (Industrial Accidents Convention) and the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention). The Chair of the Task Force on Public Participation in Decision-Making (Ireland) also attended.
4. The following non-governmental organizations (NGOs) were represented: CEE Bankwatch (Poland); ECO-Tiras International Environmental Association of River Keepers (Republic of Moldova); *École des parents et des éducateurs* (EPE)(Belgium); Florozon Center for Environmental Democracy (the former Yugoslav Republic of Macedonia); Green Dossier (Ukraine); Greenpeace International (Netherlands); Organic Agriculture Association (Albania); Rio+20 NGO group/UNFCCC youth consortium (Finland); Women in Europe for a Common Future (WECF) (Germany); and Environmental Management Law Association and The Access Initiative (EMLA & TAI Europe) (Hungary).
5. International financial institutions present were the European Investment Bank and the European Bank for Reconstruction and Development.
6. The academic and business organizations which participated were Opole University, the University of Massachusetts and EuropaBio (Switzerland).

## II. Adoption of the agenda

7. The Task Force adopted its agenda, as set out in the informal document available on the Task Force web page (<http://www.unece.org/env/pp/ppif.htm>).

## III. Consultation process undertaken during the intersessional period

8. The secretariat presented the draft text for the publication mandated by the Task Force. The draft had been produced as a result of the public participation in international forums (PPIF) consultation process carried out in the preceding intersessional period. All of the underlying material was available on the Convention website.<sup>1</sup> Approximately 50

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<sup>1</sup> <http://www.unece.org/env/pp/ppif.htm>

international forums had taken part in the consultation process, which had been carried out from mid-2006 to mid-2007, culminating in an international workshop attended by representatives of international forums, government, academia and civil society.

9. It was noted that the publication drew together many of the experiences in promoting public participation in international forums identified during the consultation process. In doing so, it was hoped that the publication would provide a user-friendly reference for those interested in an overview of many of the leading good practices in the area.

10. The Task Force welcomed the document, agreed that it required further work and called upon countries and stakeholders to provide comments and more examples. Although it was noted that examples should also come from beyond the region, there was a wish to see more regional examples included. It was agreed that possible comments should be provided by participants by 10 March 2011 and thereafter the text should be finalized by the secretariat in consultation with the Chair and published as an official document for the fourth session of the Meeting of the Parties (29 June–1 July 2011), with a website version which could be updated as necessary. The title of the document was agreed as “Good Practice and Challenges for Public Participation in International Forums”. A revised introduction would emphasize the value of innovative approaches as well as the need for political will in promoting public participation in international forums.

#### **IV. Case studies on public participation in international forums**

11. The secretariat presented an online compendium of case studies available on the Convention website,<sup>2</sup> and thanked all contributors.

12. The Task Force welcomed the compendium and agreed that additional cases should be added as available and asked the secretariat to seek to keep the site “alive”.

#### **V. Future work**

13. The Task Force considered the decision on promoting the application of the principles of the Convention in international forums (AC/WGP-13/CRP.1),<sup>3</sup> and noted that the Working Group of the Parties would oversee the work on PPIF in future. Some participants commented that, although they had wished the Task Force would continue, the decision would set up a more cost-effective manner to carry on with the work. Some participants expressed their concern about the allocation of resources to PPIF, and emphasized that Parties still had to work in that area. They pointed out that the establishment of a possible new task force in future could be interesting to discuss in due course, if needed.

14. The Task Force discussed what topics would be important for the Working Group of the Parties to address in the future, including to (a) strengthen actions at the national level, through increasing cooperation between countries’ respective Ministries and other Government authorities; (b) organize joint activities under the Aarhus Convention with other international forums; and (c) provide advice to other interested forums. It was also anticipated that more in-depth work with the international financial institutions would be beneficial.

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<sup>2</sup> <http://www.unece.org/env/pp/ppif.compendium.htm>.

<sup>3</sup> Documents are available at: <http://www.unece.org/env/pp/wgp.htm>.

15. The Chair noted those points and thanked the Task Force for their inputs now and over the life of the Task Force. The Task Force had shown what was possible, had made significant practical progress, and had opened up new fields for the work under the Aarhus Convention.
16. Participants thanked the current and past Chair of the Task Force and France for its leadership in that area of work.

## Annex

### **Chair's summary of workshop on making the Aarhus Convention work in international forums**

**Prepared by the Chair of the Task Force with the assistance of the secretariat**

#### **I. Introduction**

1. A workshop was held on 23 and 24 February 2011 in Geneva, back to back with the sixth meeting of the Task Force on Public Participation in International Forums, during which Parties, NGOs, representatives of interested international forums and other experts shared their experiences of promoting the application of the principles of the Aarhus Convention in international forums.<sup>4</sup> The workshop included a mixture of presentations and open discussion, and was organized around four sessions covering (a) preparations for the United Nations Conference on Sustainable Development in 2012 in Rio de Janeiro (Rio+20); (b) the UNECE multilateral agreements challenges in public participation; (c) progress within the United Nations Framework Convention on Climate Change (UNFCCC) Conferences; and (d) the role of third parties in promoting the Aarhus Convention, in particular, the international financial institutions (IFIs).

2. Opening the workshop, the Chair noted that the high-level segment of the fourth session of the Meeting of the Parties to the Aarhus Convention and its declaration would be dedicated to the role of the Aarhus Convention in promoting sustainable development and would provide an input to Rio+20, and that the present workshop would feed into that process. The experience of the Task Force was relevant both to the content of Rio+20 and to the preparations of Governments along with NGOs in the run-up to that Conference, drawing on UNFCCC experiences. Indeed, the previous Task Force workshop, held in July 2010, had enabled Parties to contribute to reconsideration of UNFCCC rules regarding observer status and public participation. It was also highlighted that Principle 10 of the 1992 Rio Declaration had led directly to the establishment of the Aarhus Convention, and that current official documents for Rio+20 underlined that public participation was essential for achieving sustainable development. The lessons from the implementation of the Aarhus Convention would be significant in reviewing the institutional arrangements for sustainable development, including the importance of legally binding regional instruments, such as the Aarhus Convention. The inclusion in the workshop of a session on the international financial institutions' role in promoting compliance with the Aarhus Convention was also important for the Rio+20 context.

#### **II. Rio plus Aarhus — 20 years on**

3. The first session was dedicated to promoting the principles of the Aarhus Convention at Rio+20. Participants discussed various ways of promoting the Principle 10 of the Rio Declaration, and praised the Convention as an effective tool for making public participation a reality in the region and a source of inspiration for other countries. Many

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<sup>4</sup> The agenda of the workshop and the text of the presentations delivered are available at: <http://www.unece.org/env/pp/ppif.htm>.

ideas were discussed concerning how Parties to the Aarhus Convention could organize their national preparations and share their experiences with Governments from other regions in the run-up to Rio+20, through, for example, bilateral cooperation or collaborating with the host country.

4. Presentations were made by France, by The Access Initiative and by Women in Europe for a Common Future. France first set the global context, explaining the Rio+20 focus on addressing the green economy and poverty within the sustainable development framework. A number of preparatory processes were taking place globally and opportunities for different interest groups to provide input now and immediately prior to the Conference were planned. A consensus was already beginning to emerge on the shape of a new, green economy.

5. France then explained the all-inclusive public participation process which the Government had embarked upon in preparation for Rio+20. The public engagement process had been launched by the President in 2007 under the “*Grenelle de l’environnement*” process and on a scale never seen before. The principles included inclusiveness, equality and no pre-conceived prepared outcomes. It included national and foreign international NGOs and academics into a dedicated Rio+20 Committee established under the National Committee for sustainable development and the *Grenelle de l’environnement*. Importantly, that Committee was co-chaired by the Minister of Foreign Affairs and the Minister of the Environment. Other key ministers were also involved, such as the Minister for Agriculture and the Minister for Finance. All key players would be included in the French delegation to Rio, including civil society. In addition, live feedback would be given and all written contributions would be available online.

6. The representative for Women in Europe for a Common Future gave an NGO perspective of preparations and challenges for Rio+20. Among key issues highlighted were the opportunity for major groups to be involved at any stage; the need for capacity-building to ensure that participation was meaningful; and the availability of financing to guarantee the means to participate. In addition, it was noted that public participation was not always enshrined in general rules and in particular that speaking rights at international forums should be improved for civil society — often their interventions were only allowed at the end of a session. Finally, to ensure representativeness, there was also a need for guidelines on how major groups were structured, including on elections, rotation, etc.

7. The Director of The Access Initiative (TAI) reported on activities to strengthen the application of Principle 10 of the Rio Declaration. He expressed the view that Rio+20 should be dedicated to the actual implementation of Principle 10 as part of the governance discussions. Three options were outlined for strengthening the implementation of Principle 10: accession of non-UNECE countries to the Aarhus Convention; a global convention; or, regional conventions. The Aarhus Convention had proved to be a good model and was open to non-UNECE countries. A global convention was in danger of resulting in a “race to the bottom”, but regional conventions could be tailor-made, fully involve the relevant countries and benefit from elements of the Aarhus Convention model. The experience of the Aarhus Convention could act as a guide, but leave room for others to build their own conventions.

8. Participants agreed that the most important aspect was to implement Principle 10 across the world and that the modality of such implementation might vary depending on local circumstances. During the discussion, it was noted that any initiative for a global convention would need to be supported also by developing countries. There was a view that initiatives for regional conventions should come from countries of those regions. The Aarhus Convention could be one model and could share its experience. Parties to the Aarhus Convention could approach other Governments in the lead up to Rio+20 and share with them their experience with the Convention. The Aarhus Convention should not be promoted aggressively as the one solution; however, it should serve as an inspiration for

others. Also, some uneasiness was expressed that Europe appeared to be taking a strong lead but it was not clear if they had that mandate from the rest of the world. Parties to the Aarhus Convention could provide Rio+20 with information on what they had achieved, both in regulations and in practice, so that the Convention could be presented and its achievements considered

9. There was a view that the Meeting of the Parties could address the issue of possible regional legally binding instruments through the declaration.

10. It was also suggested that, since the inception of Principle 10, the nature of stakeholder engagement was very different and that it was therefore time to start considering a second generation of rights and responsibilities.

11. In concluding remarks to the first session, the Chair noted that the workshop had expressed interest in the possibility of twinning initiatives and other bilateral cooperation initiatives as a way for Aarhus Convention Parties to share their experience with other Governments. In particular, there was an important role for Aarhus Parties to liaise with other Governments and organizers of Rio+20 and, in particular, with South Africa as the host country for the United Nations Secretary-General's High-level Panel on Global Sustainability, which would report at the end of 2011 and have a key role in preparations for Rio+20, and with Brazil, as the Government providing the venue.

### **III. Closer to home**

12. The second session of the workshop was dedicated to promoting the principles of the Aarhus Convention in the UNECE environmental agreements. The Chair recalled that the Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums stressed the importance of PPIF in the context of the UNECE treaties. In adopting the Almaty Guidelines (ECE/MP.PP/2005/2/Add.5), by its decision II/4, the Meeting of the Parties had recommend their application by all Parties and recognized that Parties might take a phased approach to the application of the Guidelines, with special emphasis being given to UNECE environmental treaties. The workshop heard presentations from the secretariats of three of the UNECE multilateral agreements (the Espoo Convention, the Industrial Accidents Convention, and the Protocol on Water and Health to the Water Convention).

13. The workshop concluded that, although the provisions of those three agreements foresaw engagement of the public, a lack of public mobilization and presence was a challenge. Lack of public interest might be because the public assumed they were to be informed, but were not really involved in decision-making. Parties and the secretariats needed to make clear to the public what input was needed, and what output was expected from engaging in public participation. Also, when issues were complex or not really "tangible", as were risk and safety, and water and health, capacity-building was needed for both civil society and the authorities. Another matter was the need for close inter-ministerial cooperation among all relevant authorities and involvement of the national focal points of the Aarhus Conventions to advise on how the public should be involved. In that regard, Armenia shared its national experience on applying multilateral agreements in the country.

14. During the presentations and the open discussion that followed, the following suggestions were made by the participants:

(a) With regard to the Water and Health Protocol to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes it was suggested to:

- (i) Enhance public participation in decision-making on water and health;
  - (ii) Make use of the Protocol's framework and the processes of setting targets to focus, in depth, on public participation in decision-making on water and health;
  - (iii) Develop trainings/workshops/exchanges of experience on how to organize public participation in setting targets and develop manuals/specific recommendations on public participation to implement the Protocol.
- (b) With regard to the Convention on the Transboundary Effects of Industrial Accidents it was suggested to:
- (i) Exchange good practice and experience on public involvement in the Convention's work;
  - (ii) Identify possible reasons for limited participation and formulation of recommendations to address it;
- (c) With regard to the Espoo Convention it was suggested to:
- (i) Address any transparency issues in bilateral/multilateral cooperation under Espoo;
  - (ii) Strengthen public participation provisions in the Espoo Convention;
  - (iii) Ensure public access to meetings by addressing possible financial constraints;
  - (iv) Ensure access by the public to the procedure for review of compliance (Implementation Committee), especially for the Protocol on Strategic Environmental assessment.

15. In concluding remarks on the second session, the Chair observed that some of the areas covered by three UNECE Conventions related to areas which had less of a tradition of public involvement. For instance, issues such as risk management and safety considerations were quite new concepts for many. So also were water-related health issues, although water in the context of environmental impacts had a greater history of public participation. Bringing together different ministries could therefore help with knowledge exchange and capacity-building.

16. At the national level, effective implementation would require strengthening the capacity of Aarhus Convention national focal points at local level, to network with the national focal points of other Conventions. Some ministries, for instance those related to health and risk management, have had little contact with the Aarhus Convention in relation to public participation relating to safety/increased risk exposure.

#### **IV. Bearing the fruit**

17. The third session was dedicated to discussing promoting the principles of the Aarhus Convention within the UNFCCC Conferences, looking in particular at progress made in the lead up to, during and after the sixteenth UNFCCC Conference (Cancun, 29 November–10 December 2010). The Chair reported on the progress which had been made since the last PPIF workshop in June 2010, and speakers from Italy, from the UNFCCC secretariat and from the UNFCCC youth consortium, as well as from the floor, exchanged views on progress and remaining challenges.

18. The UNFCCC secretariat reported on improvements made to facilitate public participation at the Cancun Climate Conference, in particular in the face of understaffing in relation to the increase in the number of observers and public willingness to participate:

there were very few personnel dealing with observers and they were mainly hired on a temporary basis. Constituencies for grouping stakeholders had therefore been established, enabling civil society groups to be granted proper recognition and speaking rights. That positive move had followed lessons from the 2009 Copenhagen Conference and inputs from the Aarhus Convention PPIF workshop of June 2010. Many of the suggestions from the earlier workshop had been taken up by the UNFCCC secretariat and the Subsidiary Body for Implementation would meet in June 2011 to discuss additional needs with representatives of civil society.

19. A representative involved in the UNFCCC youth constituency shared their concerns, underlining the need for yet more flexibility regarding registration and participation rules and practices and calling for further improvement in collaboration with civil society. The importance of civil society engagement by Governments in the national run-up to international events was also stressed and Parties to the Aarhus Convention had important experience to help that process. On that point, the Italy demonstrated its national work in engaging civil society in preparations for international events on climate change, which included many modalities, such as consultations with civil society on preparing a national position and having NGOs in the official delegation.

20. Specific issues raised and suggestions made during the third session were:

(a) The need to focus on effective public participation at the core of the negotiations — and not on the creation of parallel processes;

(b) Civil society should be fully involved in the workshops and bodies established under the Cancun Agreements;

(c) Tripartite discussions between the secretariat, the host country and civil society were essential in the run-up to international conferences;

(d) The issue of costs to NGOs needed to be addressed, including costs related not only to travel, but especially to accommodation, renting of office space and organization of side events;

(e) For effective and efficient public participation civil society needed to be present at the right time and in the right place where decisions were being shaped;

(f) As a general rule, all meetings should be open to observers;

(g) Submission of inputs and intervention in the negotiations should be allowed from civil society to facilitate more effective participation;

(h) Increased use of webcasts and publication of official transcripts were important for better access to information;

(i) There should be freedom of peaceful demonstration with no censorship of messages by the secretariat;

(j) The appropriate sanctions for misbehaviour needed to be agreed in a democratic way;

(k) There should be a rapid and transparent appeal process open to NGOs on decisions over exclusions/restrictions of stakeholder engagement;

(l) Stakeholders should have legal status through implementation of the mechanism established under the Kyoto Protocol;

(m) Stakeholders should be allowed to participate in the appeal procedures on the Clean Development Mechanism Executive Board decisions, and be fully involved in the new bodies: the Transitional Committee of the Green Climate Fund and the Adaptation Committee.

21. In concluding remarks to the third session, the Chair noted that UNFCCC was faced with the difficult issue of a high number of participants and requests, and that it deserved an appropriate answer, negotiated in a close relationship with the host country. He encouraged Parties to act on their own side to approach host country Governments in future, namely, South Africa, so that they could share their views on the practical arrangements for observers. He also mentioned the call for a more flexible interpretation of United Nations rules in UNFCCC processes, a field where the Aarhus Convention had gained experience.

22. Looking forward to the next meeting of the Convention's Subsidiary Body for Implementation (SBI) in June 2011, the Chair recommended that Parties could encourage the SBI to liaise with the Aarhus secretariat to share experience. Although that particular meeting would only deal with meeting arrangements, the Chair suggested SBI could encourage all Parties to implement public participation in the run-up to the meeting in South Africa, at their national level.

## **V. International financial institutions — new promoters of compliance**

23. The fourth workshop session was dedicated to promoting the principles of the Aarhus Convention in the processes and projects of third parties, including IFIs, and aimed to identify what role third parties, such as banks and donors, should play when involved in projects or activities in countries that had ratified the Aarhus Convention. Panel members from IFIs, government, NGOs and academia spoke on a range of challenges and good practice approaches in the area, proposing tools to improve practices and making suggestions to key groups, including IFIs, donors and the private sector.

24. It was noted that banks could themselves be a tool for promoting compliance with the Convention, through ensuring that the projects they funded were developed and implemented in accordance with the Convention's provisions. In that sense, banks might be considered to be environmental decision makers, but clarity was needed on how far they could go in asking for compliance and then refuse to fund projects because of non-compliance. Moreover, how could banks make sure that there was meaningful public participation? In response, the European Bank for Reconstruction and Development extended an invitation to the Convention secretariat to open up a dialogue to identify tools needed by IFIs for checking compliance with requirements at the project level and to develop guidance required for public utilities projects on obligations under the Aarhus Convention.

25. Specific points raised during the fourth session were:

(a) Obligations under the Aarhus Convention were the commitment of a Government, not a private company;

(b) Projects financed by IFIs had to comply with relevant regulatory requirements;

(c) If the client is private, the IFI was not negotiating with the State — the legal relationship was with the company;

(d) Banks supported a variety of international agreements and programmes and reflected that in their policies;

(e) Information provided to banks in confidence could only be released with the owner's permission;

(f) The differences in practice between IFIs in terms of information disclosure on their websites, reflecting resource issues and the principle of client responsibility;

(g) Specific challenges for public participation included: differences between Government and IFI consultation periods; lack of guidance for public service providers on their obligations under the Aarhus Convention; ensuring that consultation was meaningful; and operating with bodies and within countries which were not signatories to the Aarhus Convention.

26. The representative of CEE Bankwatch underlined once again the important role of IFIs in promoting the Aarhus Convention among borrowers, through application of principles, standards and procedures. It was proposed that IFIs could be treated as decision makers in environmental matters, since they decided whether or not to grant finances to projects and the environmental consideration (environmental assessment or environmental appraisal), was an integral part of their decision-making process. A number of suggestions were made for IFIs, including:

- (a) Greater transparency of, and access to, IFIs environmental deliberations;
- (b) Disclosure of all environmental information held by IFIs — unless exceptions to disclosure applied, as stated in the Aarhus Convention;
- (c) Summaries or transcripts of IFIs governing bodies' deliberations related to the environment should be made publicly available;
- (d) Parties should ensure relevant authorities were fully aware of how their obligations under the Aarhus Convention related to procedures with IFIs.

27. How some of the foregoing challenges could be met on the national level was outlined by presentations from Georgia and from a legal expert from Poland. It was noted that Governments preferred to work with donors and IFIs who had public participation procedures already built into their policies. That increased effectiveness, avoided conflicts and provided for more successful project implementation. Georgia outlined their existing Guidelines for Government Officials and the Public, and their Green Initiatives and Capacity-building Initiative for Local Banks, and the Government's role in coordinating information exchange and meetings with NGO participation.

28. The example of the application of the EU Environmental Impact Assessment Directive in Poland was presented. Lessons from that experience were proposed as a means for promoting compliance in all Aarhus Convention Parties, including:

- (a) That funding schemes could contribute to wider understanding and application of good practice, by refusing to fund projects which had not addressed requirements of the Environmental Impact Assessment Directive (or the Aarhus Convention);
- (b) That direct reference to concrete provisions of directives (and conventions) worked better than reference to general principles or to domestic laws (where they were weak);
- (c) That the Aarhus Convention's articles 6 and 7 were both precise themselves and, additionally, well interpreted by the Compliance Committee to provide a sufficiently clear legal basis for implementation;
- (d) That the need for applicants to refer directly to the Aarhus Convention would promote awareness and proper implementation regardless of gaps in domestic legislation.

29. In concluding remarks on the workshop, the Chair welcomed the interest that IFIs had expressed for undertaking common and collaborative work with the Aarhus Convention secretariat, and for setting standards globally and not only for one institution. He also stressed the impact of the IFIs pressure on the private sector and the public authorities, in comparison with how the EU regulations had influenced all public and private practices in

Poland. Finally, he encouraged IFIs to adopt a very proactive attitude towards the requirements of public participation, including in providing human resources for implementation of and follow up to those requirements within the projects they financed.

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