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PUBLIC PARTICIPATION IN DECISION-MAKING AND
ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

Working Group of the Parties to the Convention

Ninth meeting
Geneva, 13–15 February 2008
Item 9 of the provisional agenda

PUBLIC PARTICIPATION IN STRATEGIC DECISION-MAKING

**REPORT OF THE WORKSHOP ON PUBLIC PARTICIPATION
IN STRATEGIC DECISION-MAKING ¹**

Report prepared by the secretariat

1. At their second meeting, the Parties to the Convention adopted a work programme envisaging certain activities on the theme of public participation in strategic decision-making (decision II/7, activity area X). At its sixth meeting, on the basis of a proposal from the Bureau, the Working Group agreed to hold a workshop on public participation in strategic decision-making. The workshop would be organized in consultation with the relevant bodies of the Convention on Environmental Impact Assessment in a Transboundary Context (the Espoo Convention) and its Protocol on Strategic Environmental Assessment (the SEA Protocol) and

¹ This document was submitted after the normal deadline due to the fact that the workshop on which it reports took place after that deadline.

experts from those bodies would be invited to participate. Austria offered to provide financial support for the workshop and Bulgaria to host it.

2. The workshop was held in Sofia, Bulgaria on 3 and 4 December 2007.
3. The workshop was attended by experts designated by 14 States, namely Albania, Armenia, Austria, Bulgaria, Croatia, Denmark, France, Germany, Kyrgyzstan, Latvia, Moldova, Norway, Slovakia, Slovenia and the European Commission.
4. Participants from the following international and regional organizations and instruments attended: the Espoo Convention, the United Nations Development Programme's Rio Conventions Project and the Regional Environmental Center for Central and Eastern Europe (REC).
5. Participants from international non-governmental organizations (NGOs) were: the Digital Informational Network on Environment and Sustainable Development in Central Asia and Russia - "CARNet", Eco-TIRAS International Environmental Association of River Keepers and the International Association for Impact Assessment. Participants from the following national NGOs attended: NGO "Ecohome" (Belarus), the Institute for Ecological Modernisation (Bulgaria), Green Circle (Czech Republic), the National Society of Conservationists/Friends of the Earth Hungary (Hungary), Friends of the Irish Environment (Ireland), the NGO "Independent Ecological Expertise" (Kyrgyzstan), Green Home (Montenegro), Environmental Law Center (Poland), and Environmental Experts Association (Romania).
6. Participants from the Aarhus Centre Georgia (Georgia) and Nick Wates Associates/Communityplanning.net (United Kingdom) also attended.
7. The workshop was opened by Mr. Chavdar Georgiev, Deputy Minister of Environment and Water (Bulgaria). He welcomed the participants and noted that the workshop would provide an opportunity for a broad exchange of different views amongst experts of the Aarhus and Espoo Conventions and the SEA Protocol, and interested NGOs, on how the public can be effectively involved in certain types of strategic decisions.
8. Mrs. Elisabeth Freytag (Austria) chaired the morning session. She thanked Bulgaria and the UNECE secretariat for joining with Austria to organize the workshop. She also welcomed the opportunity for Aarhus Convention and Espoo Convention experts to work together.
9. The afternoon session of the first day was chaired by Ms. Ursula Platzer-Schneider (Austria). On the second day, the morning session was chaired by Mr. Gerhard Stimmeder-Kienesberger (Austria) and the afternoon session by Mrs. Vania Grigorova (Bulgaria), Chair of the Espoo Convention's Working Group on Environmental Impact Assessment.
10. The main focus of the workshop was on the presentation and discussion of case studies of good practice with respect to public participation in various types of strategic decision-making. There were also opportunities for reflection and evaluation. The workshop programme, written presentations and list of participants may be viewed at <http://www.unece.org/env/pp/ppsd.htm>.

11. During an opening session on the legislative and policy background, it was noted that there was now a range of measures containing provisions relating to public participation in strategic decision-making. Under the UNECE these included the Aarhus Convention, the Espoo Convention and its SEA Protocol, the Convention on the Transboundary Effects of Industrial Accidents, and the Protocol on Water and Health. In the European Union (EU), relevant instruments included Directive 85/337/EEC (as amended by 97/11/EC and 2003/35/EC), Directive 2001/42/EC ("the SEA Directive") and the Commission Communication on impact assessment (COM/2002/276 final) as updated in "Better Regulation for Growth and Jobs in the EU" (COM(2005)97 final).

12. The opinion was expressed that in at least some countries there may be strategic decisions within the scope of article 7 and 8 of the Aarhus Convention that do not require an SEA under national legislation, for example those that have a significant effect on the environment but that do not set the framework for development consent, those which "may have an effect on the environment" but whose effect is not "significant" and those aiming to help protect the environment. Poland's laws on strategic decision-making were used as an example to illustrate this point. Examples of Polish plans, programmes and policies that were subject to public participation but for which SEA was not required included its national biosafety strategy, air management plans, noise-combatting programmes, nature conservation plans, emergency plans for hazardous installations, the national strategy for environmental education, and regional programmes for co-operation of authorities with NGOs.

13. In Poland, the public participation processes for plans, programmes, policies, executive regulations and other legally binding rules are the same, notwithstanding their different treatment in articles 7 and 8 of the Aarhus Convention. All draft strategic decisions have to be made publicly available and everyone can submit comments. There are special elaborated procedures for some strategic decisions and specific NGOs may be individually notified and asked to provide comments. Since 2005, Polish law requires an authority preparing a plan or programme to provide "reasonable time-frames" for public participation, with a commenting period that may vary according to the type of decision but is at least 21 days.² At the end of the commenting period, all comments received from authorities, institutions, industry and the public are summarised into a chart indicating whether each comment was accepted or not and giving reasons. The chart is publicly available through the internet.

14. The representative of the European Commission reported on the Commission's experience with SEA in respect of the Operational Programmes 2007-2013 for the Structural Funds. To make their assessment, the Commission had requested to see four key documents in each case: the non-technical summary, the so-called article 9 statement,³ details on monitoring and ad hoc information on public consultation. The representative of the Commission indicated that there were a number of issues arising and challenges to address, notably that some EU Member States had minimalist SEA procedures, whilst others had procedures that were ambitious; that there were a few cases of SEAs being carried out when none was probably required; that in some cases

² It was noted that the EU Water Framework Directive provides for a 6 month commenting period in relation to water management plans.

³ The statement required by article 9, paragraph 1(b) of the SEA Directive.

the SEA had not been finished by the time the Operational Programme was submitted; that sometimes the non-technical summary of the environmental report did not cover all points required in Annex I of the SEA Directive (particularly alternative options including the “zero option”); that impacts were not always quantified; that the required non-technical summaries were often of poor quality, not made available during the public consultation, or did not exist at all (in cases when the full environmental report was short); that environmental authorities were sometimes not properly consulted on the content and/or the results of the SEA process and it was not always clear if their views had been taken into account; that timeframes for consulting the public differed between EU Member States; that EU Member States often allowed only limited participation (e.g. by only posting documentation on the web); and that the statement required under article 9 of the SEA Directive was often vague and general, missing or provided late, and did not always cover all the information required. It was noted that Operational Programmes needed to be revised to take into account the SEA. In respect of monitoring requirements, it was observed that neither significant impacts nor monitoring measures were always clearly identified. The European Commission representative noted that, overall the capacity of environmental authorities to play an important role was a major issue and that awareness-raising was needed for the public in general. It was also noted that the application of the SEA Directive to the Operational Programmes had been a learning experience, as it was its first large scale application.

I. PUBLIC PARTICIPATION IN STRATEGIC DECISION-MAKING WITH RESPECT TO LEGISLATION

15. A representative of Denmark presented the Danish procedure providing for public participation in the preparation of legislation. The public have an opportunity to comment when a bill is presented to the Parliament. There is a special government website for consultation on legislation during its preparation. Information available on the website will include the proposed bill, the period for consultation, the texts from the first, second and third (approval) reading, a list of all official bodies, organizations and NGOs which have been consulted and a summary of the comments received during the consultation. Parliamentary debates are open to the public and are also broadcast. Newspapers and public libraries are used to present new legislation. Bills or other government proposals are required to undergo an environmental assessment if they are expected to have a significant effect on the environment. Environmental effects are defined broadly. Recent examples have included proposed bills regarding taxation, traffic, intensive fish-farming, the use of energy-consuming products, and Bulgaria's and Romania's membership of the EU.

16. A representative of Eco-TIRAS presented a procedure of the Moldovan parliament which gives the public internet access to draft laws received by the Parliament, a right to send comments by e-mail to Parliamentary Committees, including the Committee on Environment, for at least 15 days after the publication of draft laws and, for those who send comments, a right to participate in the relevant Committee sessions. Eco-TIRAS commented that, despite Moldova's 1996 law on environmental expertise and EIA which requires that all draft laws relating to the environment should be subject to state ecological expertise, many draft laws are presented to the parliament without environmental evaluation. Eco-TIRAS stated that, in these cases, NGOs have

used the parliamentary procedure as a tool to provide input on draft laws. Eco-TIRAS considered that the parliamentary procedure was useful but noted that there were a number of challenges. These included the fact that the majority of Moldovan environmental NGOs do not check the parliamentary website nor comment on draft laws. Also, the extent to which public comments are taken into account varies, this being ultimately up to parliamentarians. Eco-TIRAS commented that despite these difficulties, the public had used the procedure to challenge several governmental drafts, e.g. one which would have led to the lowering of the protective status of nature reserves, that were later rejected by Parliament.

II. PUBLIC PARTICIPATION IN STRATEGIC DECISION-MAKING IN SPECIFIC SECTORS

17. A representative of Bulgaria presented Bulgaria's legal framework for public participation in strategic decision-making, including the requirements for public participation in decision-making on plans and programmes. In this regard, it presented case studies regarding its regional plans for development and the national programme for ports development (2006-2015). It observed that, whilst there was a legal framework in place, experience to date indicated that the public had so far not been particularly interested to participate in strategic decisions at the national or regional level as compared with the local level and that specific, topic-oriented meetings were preferred. In response to a question on whether the lack of participation was due to a lack of interest or a lack of capacity, the representative of Bulgaria remarked that NGOs were active and it therefore appeared to be more the former.

18. A representative of Norway presented a case study regarding the SEA for the regional land use plan for the development of wind energy in the county of Rogaland. The plan designated "yes/no/maybe" zones for the location of wind farms and laid down planning guidelines for local land-use plans at the municipal level and sectoral planning at all levels. The SEA was integrated into the planning process and the plan itself. The participatory process included disseminating information in local newspapers and on the internet, two public hearings, two meetings with the "reference group" (the authorities concerned and relevant interest groups) and ad hoc meetings with municipalities throughout the planning process and with NGOs and developers in the final decision-making process. Norway remarked that challenges encountered included the fact that the reference group was too large to allow for in-depth discussions and that holding two reference group meetings was insufficient, although available resources did not allow for more. In addition, public participation could have been given greater emphasis at an early stage in the planning and assessment process as this would have helped to clarify attitudes, especially those of developers and energy companies, towards the proposed "no-zones". In the event, ad hoc meetings were organised later in the process to address this issue.

19. A case study of the SEA for the 2007 Vienna waste management plan was presented. It was noted that the planning and SEA process were completely integrated. Three types of public were identified and given different tasks in the process: first, the most affected authorities and interest groups, known as "the SEA and planning team", were responsible for producing the draft plan and SEA environmental report via six roundtable workshops held over a period of one year; second, the other interested authorities and interest groups acted as a "feedback group" and were

consulted on the interim results through a one-day feedback workshop; third, the views of the broader public on the draft plan and SEA environmental report were invited via the website of the waste management authority, a public display held for eight weeks at three different locations and announcements in two daily newspapers (which also referred to the website and the public display).

20. Lessons learned from the SEA process for the Vienna waste management plan included the fact that different types of the public need different methods for effective public participation; active cooperation with the most affected interest groups throughout the entire process is crucial; consulting the broader public on draft plans and environmental reports often occurs too late and is insufficient for effective public participation at strategic planning levels; transparency builds trust – many of the comments received were integrated into the final draft plan or environmental report and all comments and means of consideration were documented in the environmental report. The roundtable workshops allowed for extensive exchange of knowledge and viewpoints, including new ideas and innovative solutions and enabled consensus to be reached at each stage of the SEA and planning process, making for greater acceptance of the plan and easier implementation. However, the roundtable process needed to be started early as it took time and required team building. It was important to create an unbiased team involving representatives of all affected interest groups who were willing to cooperate and to work for common results. It was reported that the feedback workshop for other interested authorities and interest groups was a good way to further involve interested authorities and organizations at a stage when the plan was still flexible, while keeping the SEA and planning team small. In respect of the broader public, it was remarked that they were not always interested in strategic planning processes when it was not clear whether they were personally affected. Eight weeks was considered a sufficient period for public displays.

21. A representative of Armenia presented a case study on the public participation process in the development of its draft Water Code. Following publication, the draft Water Code had been sent to interested NGOs, ministries and Members of Parliament and public hearings were organized, to which international organizations like USAID and the World Bank were also invited. Due to the urgency of the issue and the fact that NGOs were not in favour of the draft Code, the matter had been referred to the Parliament for parliamentary hearings. A number of challenges in the process were identified, including that the appropriate “public” were not identified, participating NGOs had different levels of knowledge and experience, the timeframe for public involvement was rather limited and the involvement of the public may not have had significant influence on the outcome. The Armenian representative remarked that it might have been helpful if the public had designated specialists to represent them on particular issues.

III. PUBLIC PARTICIPATION IN STRATEGIC DECISION-MAKING REGARDING POLICIES

22. France presented a case study on the public debate on transportation policy in southern France (2025 to 2050) which took place from March to July 2006. Public debates are generally used in France in respect of large infrastructure projects and since 2003, such debates have taken place on more than thirty different projects. The public debate on transportation policy in

southern France was unusual as it concerned a policy, rather than a project. Two ministries, the Ministry for Ecology and Sustainable Development and the Ministry for Infrastructure, Transport and the Sea, were involved and the final decision was taken jointly by the two ministries. At the heart of the debate was how to meet increasing transport needs in the region, which includes one eighth of France's territory and one fifth of its population, while respecting France's international environmental commitments.

23. Following consultations with the representatives of the three districts involved, full documentation had been prepared. This included prospective analyses about oil prices, the environment and traffic flows twenty and fifty years hence and proposed a number of possible actions. The Commission in charge of the public debate organized about forty public meetings in cities from the three main districts. Half of the meetings discussed specific topics, the other half focused on the districts themselves. A citizens' working group, composed of volunteers, was set up, a paper was published, and the public could provide their comments via a web site. Challenges encountered during the process included the differences in culture between the two ministries involved and the difficulty of organizing a public debate over such a vast territory. Compared to the usual public debates about projects, participation was lower, but those who did take part were well-informed. There was little participation by young people. The public debate showed that the underlying issues of concern were somewhat different than previously thought. At the end of the debate, the commission summarized the comments, without expressing an opinion and the two ministries took their decision based on this report. Elements of their decision included, inter alia, not to build a new highway but rather to improve the use of existing transport facilities and to proceed with projects on alternative means of transportation, particularly fluvial transport. The decision remains unquestioned. The newly elected government has organized the "Grenelle Debate on Environment", which takes the results of this public debate to a national level.

24. The electronic discussions of the NGO Digital Informational Network on Environment and Sustainable Development in Central Asia - "CARNet" were also presented as a successful case study on public participation in policy-making. CARNet aims to strengthen and enhance public awareness and participation in sustainable development policy-making particularly through the use of new information communication technologies. CARNet's work focuses on Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan and the Altay Republic of the Russian Federation. It provides a bilingual internet portal, the "Central Asia and Russia Environment and Sustainable Development Network", www.caresd.net, as a basis for information exchange and the integration of CARNet's member activities. The portal contains more than 13,000 pages of environmental and sustainable development information and analysis in Russian and English. There is a daily update of information and the website receives more than 5,000 different visitors and over 35,000 requests per month. CARNet also organizes and hosts electronic discussions on particular themes and on legislative drafts. The electronic discussions are moderated and the outcomes are reported and disseminated. Thematic discussions to date have included discussions on, inter alia, problems of irrational land management and soil degradation in agriculture of Central Asia, integrated management of water resources as a basis to prevent conflicts in Central Asia and gender aspects of sustainable development and environment.

IV. PUBLIC PARTICIPATION IN STRATEGIC DECISION-MAKING AT THE LOCAL AND NATIONAL LEVEL

25. The preparation of a masterplan for Aylesham in south-east England was presented as a case study on public participation in strategic decision-making at the local level. Aylesham is a small town in a former coal mining region which suffered decline after the mine closed in the 1980s. In 2002, national, regional and local agencies formed a partnership with the intention of developing the town and it was decided to produce a masterplan to guide development by the private sector. Following the preparation of background materials, two “enquiry by design” workshops were held. The first workshop was a hands-on sessions held over four days allowing small groups of professionals and non-professionals to work creatively together to develop proposals. The second workshop was a plenary session that included presentations, debate and the refinement of proposals. The draft masterplan was then presented at a public meeting and sent to every household together with a short summary and a questionnaire. A staffed exhibition was maintained for five days to present design ideas to the public and to elicit reactions in an informal manner. The masterplan was then revised to take into account the various input received from the public. The consultation process resulted in a change in the public mood: the development came to be seen as an opportunity rather than a threat and over 80% of the public supported the plan.

26. It was observed that people of different ages, gender, backgrounds and culture invariably have different perspectives and it is important to ensure that a full spectrum of the community is involved. This may be more important than involving large numbers. Wherever possible, community planning activities should be based physically on location as this makes it much easier for everyone to bridge the gap from concept to reality. People are able to participate more effectively if information is presented visually rather than in words, e.g. by using graphics, maps, illustrations, cartoons, drawings, photomontages and models wherever possible. It was noted that further useful principles, methods and case studies on community planning are available on the website, <http://www.communityplanning.net>.

27. The “Participate! Decide! Win!” project of the NGO “Green Home” (Montenegro) was presented as a second case study of public participation in strategic decision-making at the local level. The project aimed to encourage the participation of citizens in the drafting of a regulation on organization, physical planning and the protection of green urban areas for the municipality of Danilovgrad in Montenegro. The project was carried out between January and July 2006 and included, inter alia, a questionnaire seeking local people’s views about the most important problems and possible solutions regarding the protection of green areas; a working group which included the municipal authority, various local authorities, NGOs and a school to draft the regulation; the creation of a mailing list network to provide information exchange on Aarhus Convention issues and ongoing events; a media campaign and a one-day clean-up “My Park” and tree-planting; and six public debates involving approximately 500 citizens. It was observed that building cooperation between local government, institutions, citizens, media, and NGOs was very important to assist information sharing and participation. Also, the public’s positive experiences in having their views taken into account led to more active participation and positive project experiences could be modelled and transferred to other municipalities.

28. In respect of public participation in strategic decision-making at the national level, the new rural development programme for Hungary was presented as a case study. In 2006, the Hungarian Ministry for Agriculture and Rural Development was planning a plan and programme for the European Agricultural Fund for Rural Development and, under EC and Hungarian law, a SEA was required. The National Society of Conservationists/Friends of the Earth Hungary agreed to organize the public participation procedure for the SEA. The public participation process was carried out over a three-month period with 30 days for comments on the environmental report. All documents were posted on the Society's website and sent by mail in paper form or on CD if requested. People could also request email notifications when new documents were posted on the website. At the start of the commenting period, an advertisement was placed in a large national newspaper and press releases were issued at various milestones in the process. Personal invitations to participate were sent on two occasions to more than 100 organizations, including NGOs, by e-mail. The public was able to send comments electronically or by regular mail and there were open meetings in two cities. An "SEA Forum" including authorities, scientific bodies, environmental and agricultural NGOs was organized, with access to working documents. The public's comments were considered by both the SEA expert team and the Ministry.

29. It was reported that the process received widespread and active public interest and the SEA team took into account 95% of the comments received. Challenges identified included, inter alia, the potential for a conflict of interest situation for the Society in carrying out this role and a lack of official feedback from the Ministry as to how they incorporated the SEA findings and recommendations into the programme, particularly given that the programme underwent significant changes after the SEA was carried out.

V. PANEL DISCUSSION

30. The closing session of the workshop included a panel discussion in which four panellists shared their personal reflections on the matters discussed during the workshop. Such reflections included that:

(a) Legislation is very important as it underpins a minimum standard. Excessively detailed legislation at the international level may in fact be counter-productive as it is necessary to maintain flexibility as well. In some countries, legislation is in place but its implementation is weak.

(b) The various international instruments dealing with public participation in strategic decision-making should, wherever possible, be harmonized. They do not need to be highly prescriptive, but at least should require a minimum standard. Recommendatory approaches such as "shall use best endeavours" are of dubious value and are difficult to apply in practice.

(c) The methods of participation must be tailored to the specific issue and level. It is easier to involve the community at the local level. Public participation at the regional or national level requires greater time, effort, resources and planning.

(d) It is a paradox that decisions at the highest levels have the least prescriptive requirements for public participation under the Convention, even though they have the most far-reaching effects.

(e) Identification of the public is an important part of the process and the public authority needs to carry out adequate preparation in this regard, e.g. by maintaining a database of NGOs and stakeholders that should be invited to participate. Maintaining open-ended lists of people who have expressed their wish to be notified is useful.

(f) Capacity building is important, both for public authorities and for NGOs. It is best to tie capacity building to a particular planning process, e.g. a Local Environmental Action Planning (LEAP) process or Water Framework Directive planning. Trainings, guidance materials and methodologies are important as are pilot projects and grants, which allow NGOs and municipalities to work together with the involvement of other authorities and experts.

(g) NGOs also need to be proactive. They should be ready to be involved when such opportunities arise. NGOs in EECCA countries are increasingly organizing themselves and designating particular people to focus on particular topics. This allows for greater continuity and the development of expertise.

(h) The internet is an increasingly important tool both for disseminating environmental information and for obtaining public comments; however it is not a complete solution. The public must have the necessary access and skills to use the internet. Thus, other information dissemination and consultation techniques are needed in every public participation process, particularly tools that people are familiar with.

(i) It is important to recognise the diversity of approaches to public participation. It may be helpful to see them as a menu with different possible methods. It may be useful to find a way to consolidate this diversity in a practical way.

(j) Factors underlying a successful public participation process include the motivation and the social competences of both those organizing and those taking part in the processes. Authorities and decision-makers may be more motivated to carry out an effective public participation process if the process can be seen to provide clear benefits, e.g. less work in the long-term, less conflict and a better public image. For members of the public, their motivation to participate is increased if the process makes sense, has the promise of making a difference and is fun. The social competences required of those carrying out the process include communication skills and the ability to deal with conflict and strong emotions. It is necessary to build a culture of respectful communication and to take due account of comments. Those carrying out the process should remember that most members of the public participating will be giving up their spare time to do so.

(k) The expertise of those running the process is crucial to ensure the quality of the process and it is recommended that authorities involve professionals to run the public participation process. Best practice would be to have independent facilitators that can manage the process in a fair and impartial way.

(l) There is an assumption that public participation generally leads to better decisions for the environment. However, if those participating do not favour an environmental approach, this may not always be so.

(m) Resources (financial, human, and technical) are necessary to secure public participation and should be budgeted for.

(n) The workshop has been valuable as a bridge-building exercise in two respects: first, between Aarhus Convention and Espoo Convention experts; and second, between those involved in the more the legalistic discussions at the international level and those involved in the design and practical application of public participation methods and procedures, such as those described in the case studies discussed during the workshop.

(o) The case studies of good practice collected in the workshop compendium and discussed during the workshop were useful and it is important to continue to gather and disseminate further examples of good practice. An expanded compendium of best practices in public participation in strategic decision-making, made publicly available through the internet and otherwise, would be helpful, as would another workshop on the issue in the future.

31. Before closing the workshop, participants were invited to take part in a short exercise to evaluate how useful they had found each of the case studies discussed during the workshop.

32. After thanking the Government of Austria and the UNECE secretariat for their roles in organizing the workshop, Austria for providing a large part of the funding, the interpreters for their work and the participants for their active participation, Ms. Grigorova closed the workshop.
