



## Economic and Social Council

Distr.: General  
21 August 2012

Original: English

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### Economic Commission for Europe

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

#### Working Group of the Parties

##### Fifteenth meeting

Geneva, 3–5 September 2012

Item 3 (b) of the provisional agenda

**Substantive issues: public participation in decision making**

### Report of the Task Force on Public Participation in Decision-making on its second meeting\*

#### *Summary*

At its second extraordinary session (Geneva, 19 and 22 April and 30 June 2010), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters established the Task Force on Public Participation in Decision-making (ECE/MP.PP/2010/2/Add.1, decision EMP.II/1).<sup>1</sup> The Meeting of the Parties requested the Task Force to undertake various activities in the intersessional period between the fourth and fifth session of the Meeting of the Parties, including to document and share expertise, experience and good practices concerning public participation in environmental decision-making, inter alia, through the organization of workshops, and to present the overall outcome of its work, through the Working Group of the Parties, to the fifth session of the Meeting of the Parties for consideration (ibid., paras. 3 and 4).

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\* This document is submitted late due to the need to receive clearance from some participants on their statements as reflected herein.

<sup>1</sup> Available from [http://www.unece.org/fileadmin/DAM/env/pp/e-mop/ece\\_mp\\_pp\\_2010\\_2\\_add\\_1\\_e.pdf](http://www.unece.org/fileadmin/DAM/env/pp/e-mop/ece_mp_pp_2010_2_add_1_e.pdf).

At its fourth session (Chisinau, 29 June–1 July 2011), the Meeting of the Parties requested the Task Force to explore synergies and possibilities for cooperation with, inter alia, relevant bodies under the Protocol on Water and Health to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (ECE/MP.PP/2011/2/Add.1, decision IV/6, workplan activity V).<sup>2</sup>

Further to those decisions, the present report of the second meeting of the Task Force on Public Participation in Decision-making, which was held in Geneva, Switzerland, from 6 to 8 June 2012, is being submitted to the Working Group of the Parties for its consideration. The meeting was organized as a joint workshop with the Meeting of the Parties to the Protocol on Water and Health, in cooperation with the Ministry of Environment and Forests of Romania and the non-governmental organization Women in Europe for a Common Future.

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<sup>2</sup> Available from

[http://www.unece.org/fileadmin/DAM/env/pp/mop4/Documents/ece\\_mp.pp\\_2011\\_2\\_add.1\\_eng.pdf](http://www.unece.org/fileadmin/DAM/env/pp/mop4/Documents/ece_mp.pp_2011_2_add.1_eng.pdf).

## I. Introduction

1. The second meeting of the Task Force on Public Participation in Decision-making under 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, Switzerland, from 6 to 8 June 2012.<sup>3</sup> The meeting was organized jointly with the Meeting of the Parties to the Protocol on Water and Health to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, in cooperation with the Ministry of Environment and Forests of Romania and the non-governmental organization (NGO) Women in Europe for a Common Future (WECF).

2. The meeting was attended by representatives of the following Governments: Armenia, European Union (EU) (represented by the European Commission and the Permanent Mission of the EU to the United Nations), France, Ireland, Kazakhstan, Republic of Moldova, Romania, Serbia, Slovakia, Tajikistan and Uzbekistan.

3. The Aarhus Centre of Belarus, the European Bank for Reconstruction and Development (EBRD), and the European Economic and Social Committee were also represented.

4. The following NGOs were represented: Armenian Women for Health and Healthy Environment (Armenia); the Centre for Legal Resources (Romania); Earthjustice (Switzerland); EcoEra (Armenia); Eco-Forum of Uzbekistan (Uzbekistan); European Environmental Bureau (Belgium); European Environmental Citizens Organisation for Standardisation (Belgium); Friends of the Earth (United Kingdom of Great Britain and Northern Ireland); Green Alliance (Belarus); International Centre for Environmental Research (Georgia); MAMA-86 (Ukraine); Sustainable Water Network (Ireland); Teta "Khazri" (Azerbaijan); Eco-TIRAS International Environmental Association of River Keepers (Republic of Moldova); WaterLex (Switzerland); and WECF (Germany). Many of the NGOs coordinated their input within the framework of the European ECO Forum.

5. The following academic and business organizations were represented: EuropaBio, the de Borda Institute (United Kingdom), TNS Opinion (Belgium), University of Bordeaux (France) and University of Geneva (Switzerland).

6. Mr. Philip Kearney (Ireland), Chair of the Task Force on Public Participation in Decision-making and Ms. Ana Drapa (Romania), Member of the Bureau of the Protocol on Water and Health, co-chaired the meeting. Mr. Jerzy Jendroska provided expert support as a consultant with respect to the draft recommendations on public participation in environmental decision-making being prepared under the auspices of the Task Force.

## II. Sharing of information and experience and capacity-building

### A. Opening session: setting the scene

7. Mr. Philip Kearney presented a short overview of the basic structure and philosophy of the Aarhus Convention and introduced the draft recommendations on public participation in decision-making being developed under the auspices of the Task Force on Decision-making that would be discussed later in the meeting. Ms. Ana Drapa presented a short

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<sup>3</sup> Documents for the meeting, a list of participants and presentations are available online at: <http://www.unece.org/tfppdm2&pw>

overview of the philosophy and obligations of the Protocol on Water and Health. A representative of WECF introduced the Guidelines to be prepared on public participation under the Protocol on Water and Health. The secretariats to the Aarhus Convention and to the Protocol on Water and Health then gave a short overview of each instrument's public participation requirements.

8. It was noted that the Aarhus Convention granted the public rights, and imposed on Governments and public authorities, obligations concerning access to information, public participation and access to justice regarding environmental matters. Parties had to provide for early and effective public participation, when all options were still open, on decisions to permit certain types of activities and during the preparation of plans, programmes and policies relating to the environment. Parties also had to promote effective public participation during the preparation of executive regulations and other generally applicable legally binding rules.

9. The Protocol on Water and Health was inspired by the Aarhus Convention and put great emphasis on access to information and public participation. The principles of public participation were enshrined in the Protocol text, but no concrete procedure for handling public participation was described. Enhancing public participation in the implementation of the Protocol, in particular when Parties set targets in accordance with article 6, was recognized as a major challenge. Targets to be set under article 6 included, inter alia, targets regarding drinking water quality, the reduction of water-related disease, the performance of water supply and sanitation systems, management of wastewater, the protection of water sources for drinking, bathing and aquaculture and the prevention, control and clean-up of pollution.

10. It was suggested that the step-by-step model for public participation set out in article 6 of the Aarhus Convention might also be a useful tool to apply to public participation in decision-making under the Protocol.

## **B. Challenges in implementing public participation in decision-making**

11. A session on the key obstacles, and possible solutions, to ensuring effective public participation at all levels of decision-making (national, provincial, local) regarding water and health issues heard presentations by civil society representatives on the key challenges to effective participation in their country or region, as well as the presentation of a survey on European attitudes towards water-related issues. The presentations were followed by an open discussion.

### **1. Key obstacles**

12. It was observed that public participation was a major challenge throughout the pan-European region.

13. In many countries, there was a lack of awareness of the water and health situation, as well as of the public's rights and the public authorities' obligations regarding public participation:

(a) National authorities might often not be aware of their obligation to engage the public and disseminate information. They might lack the willingness to organize public participation, which was often seen as a complicated and time-consuming process, difficult to organize, and the outcomes of which were difficult to take into consideration. They frequently did not understand the potential benefits of the public participation process, or that public participation could be cost-effective. In addition, ministries often failed to coordinate between themselves;

(b) The public was often not aware that a public participation procedure was going on, or of its opportunities to participate. Members of the public also might not have the capacity to engage, due to the technical or complex nature of the documentation, limited time, limited access to communication tools like the Internet or television, a lack of literacy or language difficulties or because they belong to a minority or a marginalized group which faced obstacles to participation (for example, women in some societies, or certain ethnic minorities). In addition, some members of the public, including NGOs, might have a negative attitude towards any official initiative, due to previous bad experiences. As a result of those factors, the outcomes of the public participation process might reflect the views of specific groups of highly engaged stakeholders only, without representing the general public.

14. Other significant obstacles included:

(a) The public was not provided with access to all the information relevant to the decision-making, for example, because it was claimed to be a “state secret”, confidential business information or intellectual property. Alternatively, the public might be provided with incorrect information, i.e., disinformation;

(b) Time frames for public participation were often not sufficient to enable the public to participate effectively, for example due to very short periods to examine the relevant documentation or to submit comments. As a rule, all information relevant to the decision-making should be available throughout the entire public participation procedure. Also, access to examine the relevant documentation was often only provided during working hours, which meant that members of the public who worked might be prevented from having access;

(c) Even when the public did participate, a lack of political will often meant that due account was not taken of the outcome of the public participation. That could result in deep frustration and disillusionment for the public concerned, and a loss of legitimacy and acceptance of the final decision;

(d) The culture of valuing public participation was not well settled: public participation was often seen as a costly process, with no return on investment, and the outputs of the public consultation were viewed as “non-expert” recommendations. That view was often exacerbated by decision-makers being predisposed to prioritize economic growth over other considerations, and the accompanying negative attitudes to objectors perceived as standing in the way of such growth;

(e) Finding funds to finance public participation was often a challenge;

(f) With a high turnover of staff in many ministries and public authorities, it was often difficult for the public and NGOs to know to whom they should address their comments to have an efficient input into the decision-making process.

## 2. Possible solutions

15. It was observed that many of the more procedural obstacles identified above could be addressed relatively simply. For example, sufficient time could be allocated at the outset for the public participation procedure to ensure it could be carried out with reasonable time frames for each stage; statutory exemptions to disclosure of information could be interpreted narrowly, bearing in mind the public interest in disclosure, and confidential business information could be redacted, with the rest of the document made available; summaries of important but complex documentation could be provided; and contact persons for the public participation procedure could be well publicized on the public authorities’ website and kept up to date. The public could also facilitate its participation by organizing itself and thus making it easier for the Government to deal with.

16. In order to reduce public disillusionment and increase public acceptance towards the final decision, the public should be engaged in a realistic, honest and transparent manner from the outset. Real opportunities for the involvement of the public should be identified, where the public could have a genuine influence. Authorities should be prepared to acknowledge openly the political and structural constraints they faced. They should also clarify the roles and responsibilities between and within the agencies involved in organizing the public participation. It was important to develop an understanding of the benefits that good public participation could deliver, within both the political and executive branches of government.

### **C. Specific issues related to public participation in the implementation of the Protocol on Water and Health**

17. The first half of the session on specific issues related to public participation in the implementation of the Protocol on Water and Health opened with a presentation on raising awareness of the Protocol. It was followed by a panel discussion on public participation in the setting of targets under the Protocol, after which there was an opportunity for open discussion on the issue of target setting. Two presenters then shared lessons learned from other international bodies, namely the Aarhus Convention and United Nations human rights bodies, with respect to involving the public in the process of national reporting. The comments and recommendations set out in the following paragraphs emerged from the presentations and discussions.

18. The Protocol's provisions related to public participation included the consultation of the public in the process of setting targets for the standards and levels of performance and in the development of water management plans to promote the achievement of the targets. The public should also be involved in the assessment of progress and the preparation of reports under the Protocol. Members of the public also had the possibility to make communications to the Compliance Committee on cases of alleged non-compliance with the Protocol, which the Committee was then required to deal with.

19. The respective obligations of the Government, NGOs and civil society in general for public participation in the implementation of the Protocol were not always well understood. National training sessions for government officials, awareness-raising campaigns for the public and guidelines dedicated to public participation under the Protocol could all help to prepare officials and the public to engage in constructive public participation in the future. Governments should start such trainings and awareness-raising already during the process of accession to the Protocol and continue them throughout its implementation.

20. Public participation under the Protocol should be organized at the regional, national and local levels (as mutually reinforcing consultations), but should also integrate a cross-sectoral dimension, considering that in the framework of the implementation of the Protocol the sectors of water, health, environment, agriculture, economy, finance, construction, etc. should be involved. There was a need to bridge intersectoral language barriers, between the general public, stakeholders from different sectors and the various ministries.

21. Official focal points under the Protocol had the important responsibility to provide relevant information regarding the Protocol to the public. It was also important to ensure that the public had clear points of reference for requests for information in the different administrations, in particular within the environment and health ministries.

22. Public participation had been very low in the first reporting exercise under the Protocol. Successful examples from the implementation of the Aarhus Convention and in the context of United Nations human rights bodies could provide suggestions as to how the

public could be effectively and efficiently involved in reporting, in accordance with article 7 of the Protocol.

23. Through disseminating proposed targets, target dates and the relevant programme of measures as much as possible to the broader public, better involving the public in the decision-making process under the Protocol (both in the target-setting process and the elaboration of the programme of measures) and taking into account public and stakeholders' opinion in the elaboration and further revision of the targets and programme of measures, the following improvements could be expected:

- (a) The targets/measures set would be better adapted to the field situation and the needs of the population;
- (b) Social acceptance of the targets would be enhanced;
- (c) The programme of measures adopted would be more likely to be efficiently implemented;
- (d) The cost-effectiveness of the measures would be increased.

24. In the second half of the session, summarized below, participants broke into smaller groups to identify the main challenges and develop recommendations on public participation under the Protocol on Water and Health with respect to four themes: defining and identifying the public which should participate; notifying the public; gathering the public's views; and taking the outcomes of public participation into account.

#### **1. Defining and identifying the public which should participate**

25. The public involved in decision-making under the Protocol should come from a variety of different stakeholder groups in order to represent the collective voices of society. NGOs had the capacity to represent some of the collective voices of the public and to channel public views. However, in addition to the highly engaged environmental stakeholders that regularly worked with the Government, stakeholders with different views (from the industrial or mining sectors, farmers, etc.), as well as the general public, should be included. In defining the public which should participate, one should:

- (a) Take care that some stakeholders did not disproportionately influence the perceived public opinion (for example, powerful NGOs);
- (b) Find a balance between stakeholders with knowledge and technical experience (specialists) and the broader public (non-specialists);
- (c) Plan for the involvement of the public at different complementary levels (local, regional and national), as well as cross-sectorally;
- (d) Pay special attention to including minorities and marginalized groups.

#### **2. Notifying the public**

26. In order to efficiently inform the public about the public participation process, information on the target-setting process should be published on the Internet and regularly updated. The official websites of ministries could be used, though it was noted that such websites were sometimes only used by NGOs working closely with the Protocol. Such websites could also be used to post draft legislation and by-laws, ideally early in the process of decision-making. The public council within ministries (for example, ministries of environment or health) could be an effective vehicle through which to disseminate information, to notify the public, and to involve the public in the decision-making processes. At the local level, notice boards of public authorities, public hearings and the establishment of a team of health, environment and youth representatives to lead the

promotion could all be effective ways of notifying the public. The engagement of the mass media was a very effective way to raise awareness. Cooperation with Aarhus Centres might also be a further way to reach the public.

### **3. Gathering the public's views**

27. In gathering the public's views, the first step was to inform the public to whom in the administration public comments should be submitted. Next, it was important to create an atmosphere of trust for NGOs to speak openly, taking into consideration that NGOs could indeed facilitate the organization of the public participation process but could not replace the government in that role. Complementarity between different public consultations should be looked for in order to ensure that comments were collected from all relevant stakeholders. The establishment of special information resource centres could facilitate the information flow between local communities and authorities. As well as written comments, other means to collect the public's views might include public hearings, workshops, e.g., with local government, social networks (which were thought to be very effective to collect views of people who did not visit official websites), a dedicated telephone hotline and a dedicated section on the website. Government representatives might need training in communicating with the public and/or facilitators could be used.

### **4. Taking the outcomes of public participation into account**

28. Political will and the political process needed to be conducive for genuine public participation. The public's input during the public participation process should have a clear influence on the final decision. Through its participation, the public might share information that had not been previously available to the authorities. In addition, the public's views might be an important prior source of feedback on whether the implementation of the foreseen decision would be feasible in practice. Public authorities should report back to the public on how their views and comments had been considered and the extent to which they had been accepted, together with the reasons for that. That would allow for a better acceptance and implementation of the decision.

## **D. Building non-governmental organization capacity and strengthening civil society to enhance public participation**

29. A session on developing the capacity of civil society/NGOs, public authorities and service providers to enhance public participation discussed both structural and practical tools for that purpose.

### **1. Structural tools to facilitate effective public participation**

*Proposed guidelines on access to information and public participation for private companies undertaking public services*

30. Private companies undertaking public services, such as water supply or waste treatment might often come within the definition of "public authority" in article 2, paragraph 2 (c), of the Aarhus Convention. EBRD suggested that guidance was needed for such companies on how to meet their obligations under the Convention. EBRD would be interested to work together with the Aarhus Convention in the preparation of such guidance, which might be in the form of a fact sheet or short booklet. It was proposed that the draft guidance would be prepared through a consultative process, in the English and Russian languages. EBRD would circulate the finished product to private sector water and sanitation companies among its contacts and would also share the guidance with other international financial institutions.

*Multi-option decision-making — the Modified Borda Count*

31. It was observed that the traditional two-option approach to decision-making had a number of weaknesses. For example, it was adversarial, not participatory (i.e., the question asked would often become the answer), and very imprecise (i.e., the two options often did not reflect the true complexity of the issue in question). A more inclusive approach, and one that might be better suited to the type of decision-making envisaged in article 6 of the Aarhus Convention, would be multi-optional decision-making. One model of multi-option decision-making was the Modified Borda Count. In that model, participants helped formulate multiple possible options (not limited to two options) and engaged in the discussions regarding all the possible options. All relevant ideas were included in the options. Each participant then voted, numbering all options from their preferred option (the highest number) to their least preferred option (the lowest number). Once the total points for each option were tallied, the option(s) with the highest total number of points was the winner. Each participant thus had the incentive to state his/her compromise options; the model could thus be a catalyst for consensus.

*Proposal for a South Caucasus Public Centre of Excellency on Water and Health*

32. The International Centre for Environmental Research (Georgia) was currently working to establish a Regional Water Excellency Centre for countries of the South Caucasus. The Regional Water Excellency Center was intended, inter alia, to raise awareness of water-related issues and environmental protection among the public and public officials, as well as international obligations and best practices regarding them; to encourage the cross-border exchange of information, including best practices; to enable fast and efficient cross-border coordination of activities, including policy dialogue and emergency response; and to enhance communication between South Caucasian stakeholders and their European counterparts and international partners.

## 2. Practical techniques to facilitate effective public participation

*Public participation in the development of River Basin Management Plans — Romania*

33. Romania's Ministry of Environment and Forests had developed River Basin Management Plans for its 11 river basins through public participation procedures that had been carried out between 2007 and 2009, in accordance with article 14 of the EU Water Framework Directive.<sup>4</sup> The River Basin Committees had been the main units responsible for the development of each plan. The development of each plan had begun with a stakeholder meeting. Brochures and leaflets had been disseminated to raise awareness of the process and relevant information, including the draft plan, had been posted on the Water Basin Administration's websites. Extensive public meetings, both at the river basin and national level, had been held throughout the development of the plan, some of them organized jointly with a national environmental NGO. The results of the meetings had been disseminated through the media. Questionnaires had been disseminated electronically and by regular mail in order to gather public input and the results had been incorporated into the draft plans. In 2009, all 11 plans had been approved by the River Basin Committees, and then synthesized into a National Management Plan, which had been further subjected to strategic environmental assessment before approval. Lessons learned included the need to dedicate significant human and financial resources to the public participation process and to carefully coordinate the international, national and river basin levels.

<sup>4</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for the Community action in the field of water policy.

*Public participation in the development of a regional health and environment plan — France*

34. Some of the lessons learned from the preparation of the Regional Health and Environment Plan 2009–2013 of the Provence-Alpes-Côte d’Azur region of France included the importance of using multiple media, such as newspapers, Internet, social media, local radio and television, to reach the public. It was useful to have well-trusted public figures whom the public identified with a particular issue to front the public participation process. Similarly, having a logo that symbolized the process, as well as a user-friendly website and a Facebook page, all increased public awareness of the project and promoted the public’s active participation. It was very important to involve the public from the beginning, to communicate with them regularly, to organize open meetings and to truly be willing to incorporate their input in the final plan. While developing the plan through public participation took time, the public gained a better understanding of the difficulties of policymaking and had greater confidence in the outcome.

*Public participation in decision-making on water issues — Belarus*

35. Some recent examples of public participation in decision-making on water issues in Belarus included:

(a) The publication by an NGO of a practical guide for ecologists on the management of the Western Dvina River Basin, including how to educate and involve the public in its management;

(b) A public campaign to address the disposal of obsolete pesticides near a river in the city of Verkhnedvinsk, which had resulted in the establishment of a working group comprising representatives from the Ministry of Natural Resources and Environment, the public and other stakeholders. As a result, an action plan had been developed to address the issue;

(c) The development of an action plan to address pollution of the Chernitsa River.

*Public participation on decision-making on water and health in Armenia*

36. Armenian Women for Health and Healthy Environment was to start a joint project with WECF to raise public awareness and understanding of water-related health risks. The project would also organize a regional conference to share experiences and contribute to the further implementation of the Protocol on Water and Health. Armenian Women for Health and Healthy Environment would also contribute to a national project on target setting under the Protocol, through raising public awareness about the Protocol, as well as through the development of recommendations on the target-setting process, based on the outcomes of NGO consultations. It was suggested that the Protocol should be included as a cross-cutting issue in sustainable development strategies at all levels and that funding should be specifically allocated for public participation.

*Public participation on decision-making on water and health in Uzbekistan*

37. It was noted that NGOs could make an important contribution to increasing public awareness of integrated water resources management (IWRM), especially because the positive aspects of IWRM were sometimes not fully understood by the public. NGOs could also help to promote a culture of rational water use and encourage media attention on water and health issues. NGOs could also play an important role in the development of public policy, laws and regulations regarding water and health, as well as the development of action plans and mechanisms for their implementation and monitoring. A good example of public participation in the implementation of IWRM were water users associations, which

allowed for water management functions to be decentralized to the lowest possible level, and joint public-private water control structures, such as a water committee operating at the river basin level.

*Outreach to marginalized people*

38. Practical tools to reach out to marginalized people used by WECF included:

(a) Participatory rural appraisals, which aimed at the participatory engagement of all members of a rural community, in particular marginalized groups, in the development of actions and/or plans;

(b) Participatory hygiene and sanitation transformation, which sought to involve rural communities that were not yet organized in defining their own priorities for disease prevention;

(c) Water safety plans, which trained youth to undertake ongoing monitoring of the water supply system;

(d) Trainings for local NGOs on how to participate at the international level, including providing them with opportunities to participate and speak at meetings of international forums;

(e) The creation of democratic institutions, such as water users' unions/Eco-San Clubs.

39. It was highlighted that the most appropriate tools for outreach to marginalized groups would depend on the particular thematic issue, but each should incorporate a gender element. It was important to rely on local expertise, and to create a setting that enabled the equal participation of women, youth and other marginalized groups.

### **III. Open consultation on the Aarhus Convention's draft recommendations on public participation in environmental decision-making<sup>5</sup>**

40. Participants were invited to provide their comments on the first draft of the recommendations on public participation in environmental decision-making being prepared under the auspices of the Aarhus Convention's Task Force on Public Participation in Decision-making. Participants were invited to indicate which paragraphs of the draft they agreed with, which they disagreed with and which paragraphs they did not understand or considered required clarification. They were then invited to discuss those paragraphs upon which there was some disagreement or lack of clarity, as well as to share any more general feedback they might have on the structure or content of the first draft. They were also reminded about the possibility to send written comments to the Aarhus Convention secretariat by 2 July 2012. The Chair indicated that all comments received would be considered during the preparation of the second draft of the recommendations which would be prepared in advance of the third meeting of the Task Force, to be held as a joint event with the Protocol on Strategic Environmental Assessment on 29 and 30 October 2012.

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<sup>5</sup> A first draft of the Aarhus Convention's recommendations on environmental decision-making is available from [http://www.unece.org/fileadmin/DAM/env/pp/ppdm/Draft\\_Recommendations\\_on\\_PPDM\\_31.05.2012.doc](http://www.unece.org/fileadmin/DAM/env/pp/ppdm/Draft_Recommendations_on_PPDM_31.05.2012.doc).

## **IV. Parallel session on the Aarhus Convention**

### **A. Public participation in product-related decision-making**

41. Experts heard presentations on, and then had the opportunity to discuss, challenges and opportunities regarding public participation on various topics relevant to product-related decision-making. Topics discussed included product standardization, sustainable production and consumption, and the regulation of chemicals and manufactured nanomaterials used in products. Experts also discussed how the provisions of the Aarhus Convention might apply to decision-making in that area. It was agreed that there was a need for further examination of how the Aarhus Convention could support more effective public participation in product-related decision-making.

#### **1. Product standardization**

42. With respect to product standardization, it was noted that there was an absence of systemic NGO input into product standardization at the national level, and participating NGOs were largely outnumbered by industry counterparts. To ensure a more balanced stakeholder participation, NGO focal points should be designated at the EU and national levels (of the EU member States, currently only Germany and the United Kingdom had such NGO focal points). Given that standardization processes typically lasted between three to seven years, there was a need for financial assistance to support the participation of civil society representatives in a process of such a long duration. Such assistance might potentially come from public sources or by “taxing” private sector representatives. Standards bodies should also reduce the remaining barriers to public participation. For example, fees for participation in standards bodies should be eliminated (there were no participation fees for NGOs in the United Kingdom, Denmark and France). In addition, the transparency of the standardization process at both the EU and national levels should be improved, allowing access to key information such as upcoming meeting dates, meeting participants, agendas and draft documents at both the EU and national levels. The public could also play a greater role in market surveillance by ensuring that adopted standards were being complied with in practice.

#### **2. Sustainable production and consumption — eco-design**

43. A more positive experience with public participation on product-related decision-making was reported with respect to eco-design at the EU level. Like product standardization, eco-design was also a long process, generally lasting four to five years. However, it was reported that there was good access to information at the EU level, with NGOs being on the same e-mail list to receive electronic information and documentation at the same time as government representatives and other stakeholders. NGO representatives were also given the floor to speak during consultations. However, while NGO representatives had a genuine opportunity to be heard at the EU level, it was noted that that was not necessarily true at the national level. Consumer and environmental NGOs were currently running a project to monitor compliance in certain industries, but a great deal more work could be done to involve the public in monitoring at the national level to ensure that products did indeed respect the eco-design requirements. For that, however, more resources were required.

#### **3. Chemicals and manufactured nanomaterials in products**

44. With respect to governance of chemicals in products generally, it was observed that chemicals regulation was an extremely complex interwoven area and it was very difficult

for the public, including specialized NGOs, to monitor, let alone engage in, all the different relevant processes.

45. With respect to public participation in decisions regarding manufactured nanomaterials, it was observed that, while in 2010 there had been approximately 1,300 products on the market claiming to contain nanomaterials, there was a complete absence of regulation of nanotechnology. As such, there was currently no decision-making process for the public to participate in. That meant that nanomaterials were being included in consumer products without any regulatory oversight as to whether they were safe for the environment or human health. There was not even an agreed definition of nanomaterials. There was a need for early informed public participation in a transparent and participatory decision-making procedure. Since manufactured nanomaterials had very different properties than the source material from which they were derived, they should be regulated as new materials. There should also be clear labelling of products containing nanomaterials. Bearing in mind the lessons learned from the regulation of chemicals and genetically modified organisms, a precautionary approach was needed, including a ban on nanomaterials in consumer products until they were shown to be safe. It was noted that a number of reports to date, for example the 2008 report by the United Kingdom's Royal Commission on Environmental Pollution,<sup>6</sup> had called for broad public discussion and a precautionary approach to nanomaterials. There was also a need for more access to information regarding nanomaterials, in particular peer-reviewed research into the possibly negative effects of manufactured nanomaterials, and for appropriate risk assessment methods and equipment to test for nanomaterials in products. Products containing manufactured nanomaterials should be tracked throughout the entire product life cycle, as some manufactured nanomaterials might exist in the environment indefinitely.

## **B. Future development of the Aarhus Convention with respect to public participation in decisions on specific activities**

46. The session on the future development of the Aarhus Convention with respect to article 6, on public participation in decisions on specific activities, opened with a presentation on relevant recent developments in EU legislation. Such developments included:

(a) The new Seveso III Directive<sup>7</sup> on control of major-accident hazards involving dangerous substances would replace the Seveso II Directive,<sup>8</sup> inter alia, to strengthen the provisions relating to public access to safety information and participation in decision-making and access to justice and improve the way information was collected, managed, and made available to the public;

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<sup>6</sup> United Kingdom, Royal Commission on Environmental Pollution, twenty-seventh report, *Novel Materials in the Environment: The case of nanotechnology* (London, The Stationery Office, 2008), Available from [http://webarchive.nationalarchives.gov.uk/20110112040753/http://www.rcep.org.uk/reports/27-novel%20materials/documents/NovelMaterialsreport\\_rcep.pdf](http://webarchive.nationalarchives.gov.uk/20110112040753/http://www.rcep.org.uk/reports/27-novel%20materials/documents/NovelMaterialsreport_rcep.pdf).

<sup>7</sup> Directive of the European Parliament and of the Council of 26 June 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC.

<sup>8</sup> Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances.

(b) The EIA Directive<sup>9</sup> was currently under review, inter alia, to improve areas identified as weaknesses, including with respect to the screening procedure, public participation, quality of the environmental impact assessment (EIA) process and EIA transboundary procedures. The review would also address coordination between the EIA and other EU directives and policies and international instruments, and update the Directive to take account of emerging environmental challenges, to remove obsolete categories of projects and add new ones, to clarify the project definitions and to review the thresholds;

(c) There was currently a proposal for an oil rig regulation<sup>10</sup> on oil drilling and extraction activities. At the present stage it was intended to address both individual projects and plans, including safety emergency plans. It had not yet been decided whether oil exploration activities would be covered.

47. Participants then discussed other issues that should be borne in mind in the future development of article 6, as set out below.

### **1. Emerging activities/technologies not listed in annex I (article 6, para. 1 (a), and annex I)**

48. A number of activities/technologies with potentially significant environmental effects had emerged since the Convention had been adopted and should be addressed. For example:

(a) *Hydraulic fracturing for shale gas*. It was observed that paragraph 12 of annex I (extraction of natural gas where the amount extracted exceeds 500,000 cubic meters/day) was not sufficient, because fracturing came before the actual extraction of gas, and its environmental impacts (water usage, contamination of groundwater and surface water, air pollution, seismic effects) would occur irrespective of the amount of gas ultimately extracted;

(b) *Intensive dairy farming* (in contrast, intensive pig and poultry farming were covered by paragraph 15 of annex I of the Convention);

(c) *Nanotechnology* (see para. 45 above). It was suggested that decision-making on nanomaterials should be addressed in a similar manner as decisions on genetically modified organisms under the Convention.

49. It was observed that further activities and technologies having significant environmental effects would inevitably emerge over time, and attention should be given to how the Convention might most efficiently and effectively address public participation in decision-making on such activities.

### **2. Decisions, other than permitting decisions, which may yet have a significant environmental effect (article 6, para. 1 (a), and article 6, para. 10)**

50. Concern was expressed that, while article 6, paragraph 1, of the Convention addressed public participation with respect to the decision that permits the activity, many

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<sup>9</sup> Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997, Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 and Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009.

<sup>10</sup> Proposal for a regulation of the European Parliament and of the Council on safety of offshore oil and gas prospecting, exploration and production activities COM(2011)688 final — 2011/0309 (COD). Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0688:FIN:EN:PDF>.

other decisions, e.g., siting decisions, decisions on the choice of technology and archaeological discharge certificates, were not themselves currently subject to public participation and might effectively be determined by the time public participation on the permitting decision took place.

51. Likewise, decisions that were taken subsequent to the permitting decision might in practice not be subjected to public participation, yet might have a significant environmental effect, for example, pollution permits.

### **3. Proposed activities not listed in annex I which may have a significant environmental effect (article 6, para. 1 (b))**

52. It was observed that more focus was needed on how article 6, paragraph 1 (b), was being implemented in practice. With respect to the mandatory determination of whether a proposed activity was subject to article 6, paragraph 1 (b), it was observed that Parties could make that determination in different ways. For example, the EIA Directive envisaged that EU member States might make such a determination through (a) a case-by-case examination; or (b) thresholds or criteria set by the member State; or both (a) and (b).<sup>11</sup> In making the determination (whether on a case-by-case basis or according to thresholds or criteria), the selection criteria set out in annex III had to be taken into account.<sup>12</sup> The determination had to be made available to the public.<sup>13</sup>

53. There was a call for the determination required under article 6, paragraph 1 (b), to be itself undertaken through a transparent and participatory process, including the possibility for the public to challenge the determination made under that provision.

### **4. Notifying the public concerned (article 6, para. 2)**

54. Concern was expressed over the lack of a control mechanism, especially in the case of projects proposed by public authorities themselves, to ensure that the full public concerned had been notified, including those known to be against the project.

### **5. Early public participation, when all options are open (article 6, para. 4)**

55. Strong concern was expressed that public participation during an EIA procedure might come too late to ensure effective public participation when all options were still open. That meant that the public had to have opportunities to participate before the proposed location was selected, the land purchased, the construction plans drawn up, etc.

### **6. Access to all information relevant to the decision-making (article 6, para. 6)**

56. Concern was expressed that, despite the requirement for the public to have access to “all information relevant to the decision-making”, the exemptions to disclosure in article 4 were being misused, in particular on the grounds that the requested documentation was a “state secret” or the intellectual property of a third party.

57. In addition, to be able to participate effectively, the public concerned had to be able to understand the documentation. That might require project proponents to translate the information relevant to the decision-making into the languages used by the public concerned (e.g., the affected foreign public in a project with transboundary impact, national minorities who did not understand the language in which the documentation was written).

<sup>11</sup> EIA Directive, article 4, para. 2.

<sup>12</sup> *Ibid.*, para. 3.

<sup>13</sup> *Ibid.*, para. 4.

**7. Taking due account of the outcome of the public participation (article 6, para 8)**

58. It was submitted that a significant change of mindset was needed with respect to what “taking due account” of the outcome of public participation should really mean, so that the outcome of the public participation became the basis of the decision itself — i.e., that it was determinative. While that was clearly challenging to many existing governance structures, it was in fact the essence of the Convention. In contrast, what often happened at present was closer to tokenism, where the outcome of the public participation was “considered” and then the project went ahead anyway, albeit possibly with some minor changes.

**V. Parallel session on the Protocol on Water and Health**

**Drafting group on guidelines/manual for involving the public in decision-making under the Protocol**

59. The experts of the drafting group on the guidelines for involving the public in decision-making under the Protocol on Water and Health met in a parallel session held on 8 June 2012. The parallel session was co-chaired by Ana Drapa (Romania) and WECF. During the session, experts discussed the draft outline for the guidelines, reviewed and adopted the structure of the document, and agreed on its objectives, target groups and main messages. They also agreed on a draft workplan to develop the guidelines and a possible distribution of work.

**VI. Closure of the meeting**

60. The Chair thanked speakers and participants for the valuable contributions, and the secretariat for its support and closed the meeting.

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