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**in Decision-making and Access to Justice**  
**in Environmental Matters**

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**of the Aarhus Convention in international forums**

**NOTE ON THE RULES OF PROCEDURE AND PRACTICES OF THE**  
**STRATEGIC APPROACH TO INTERNATIONAL CHEMICALS MANAGEMENT (SAICM)<sup>1</sup>**

Prepared by the Secretariat of the Aarhus Convention in consultation with the SAICM Secretariat<sup>2</sup>

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<sup>1</sup> This document was not formally edited.

<sup>2</sup> The SAICM secretariat provided input on factual matters and details on existing rules and procedures.

## I. Introduction

1. This note aims to provide a non-exhaustive commentary on the consistency of the procedural rules ('RoP') and practices under the Strategic Approach to International Chemicals Management (SAICM) framework<sup>3</sup> with the Almaty Guidelines on promoting the application of the principles of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) in international forums.<sup>4</sup> The SAICM secretariat was consulted on factual information included in the note.

2. The SAICM framework was adopted by the First International Conference on Chemical Management (ICCM1) on 6 February 2006. Since then, three more International Conferences on Chemicals Management have taken place, specifically in 2009, 2012 and 2015.<sup>5</sup> The objective of SAICM is the achievement of sound management of chemicals throughout their life cycle.

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<sup>3</sup> For more information, see: <http://www.saicm.org/>.

<sup>4</sup> Available online from: <https://www.unece.org/index.php?id=21464>.

<sup>5</sup> See: <http://www.saicm.org/About/ICCM/tabid/5521/language/en-US/Default.aspx>.

## II. Access to information (paras. 19-27 Almaty Guidelines)

### *Description*

3. With regard to proactive information disclosure (paragraph 22 of the Almaty Guidelines), reports and other information produced under SAICM are made available on the SAICM website.

4. While there are no specific contact points for obtaining environmental information (designation of information officers under paragraph 22 of the Almaty Guidelines), general contact information for the Secretariat is available online.<sup>6</sup> Moreover, the contact information for the National, Regional, non-governmental organization (NGO) and inter-governmental organization (IGO) Focal Points is available online. Neither the websites nor other available documents further specify a set of policies or procedures on how to obtain access to environmental information (paragraph 19 of the Almaty Guidelines), nor do they indicate time limits (paragraph 24 of the Almaty Guidelines) or grounds for refusal (paragraph 25 of the Almaty Guidelines).

### *Assessment*

5. The information that is readily available online is comparatively limited under SAICM but this may be caused by the nature of the process. The use of electronic information tools such as clearing houses, databases and registers in the sense of paragraph 21 of the Almaty Guidelines could be explored. The overarching goal should be the widest possible proactive environmental information disclosure.

6. In view of paragraph 22 of the Almaty Guidelines, which refers to the benefit of designation of information officers or contact persons in international forums, it is noteworthy that only the general contact information for the Secretariat is made available. It may be useful to explore the future utility of online publication of instructions on how to obtain information on request (in line with paragraph 4 above), including by designating a responsible contact person from the secretariat, could be of use going forward. However, considering the rather small size of the secretariat there may be no specific need do to so.

## III. Public Participation

### A. Broad public participation (paras. 14 & 30-31 of the Almaty Guidelines)

#### *Description*

7. According to rule 2(d) of the Rules of Procedure, “non-governmental participant” means any accredited international non-governmental organization having activities, expertise and responsibilities consistent with the purpose and objectives of SAICM that has informed the Secretariat in writing in accordance with rule 13 of its wish to be represented at sessions of the Conference, and whose attendance is not objected to by one third or more of the governmental participants present when the Conference considers the request.<sup>7</sup> In accordance with rule 13, these letters must be submitted no later than 24 hours after the opening of the session, including a statement describing the activities, expertise and responsibilities of the NGO and the names of the representatives.

8. Next to “non-governmental participants”, certain commenting phases are open to a wider category of “stakeholders”. The Overarching Policy Strategy, paragraph 2, provides in that regard: “The main stakeholders in the Strategic Approach are understood to be Governments, regional economic integration organizations, intergovernmental organizations, non-governmental organizations and

<sup>6</sup> See: <http://www.saicm.org/ContactSAICMSecretariat/tabid/5501/language/en-US/Default.aspx>.

<sup>7</sup> Extract from Report of the International Conference on Chemicals Management on the work of its second session, Resolution I/1: Rules of Procedure of the International Conference on Chemicals Management.

individuals involved in the management of chemicals throughout their lifecycles from all relevant sectors, including, but not limited to, agriculture, environment, health, industry, relevant economic activity, development cooperation, labour and science. Individual stakeholders include consumers, disposers, employers, farmers, producers, regulators, researchers, suppliers, transporters and workers.”

### ***Assessment***

9. Based on rule 2(d) of the Rules of Procedure, the persons that may participate are limited to certain members of the public, namely to non-governmental organizations having activities, expertise and responsibilities consistent with the purpose and objectives of SAICM. While paragraph 31 of the Almaty Guidelines allows to restrict access to certain members of the public concerned where “this is necessary and unavoidable for practical reasons”, efforts should be undertaken to ensure that “agencies” and “bodies” representing the member of the public who are, or are likely to be, most directly affected (see paragraph 30(a) of the Almaty Guidelines) have a chance to participate.

10. Moreover, other measures should be explored to allow for the participation of members of the public that do not fulfil the observer criteria. The stakeholder definition appears to be wide enough to encompass a broad approach to members of the public. Accordingly, measures for enabling participation by these stakeholders should be explored, such as forums and dialogues open to members of the public, webcasting of events and general calls for comments, including on selected issues (see paragraph 33 of the Almaty Guidelines). The involvement of stakeholders in the intersessional process is already a positive example in this regard (see paragraph 17 below).

11. Concerning the accreditation procedures applied, information on how to participate for NGOs could be made more clearly available on the website (paragraph 31 of the Almaty Guidelines).<sup>8</sup> This information should be included in conjunction with information about relevant upcoming meetings or, constitute a general category.

## **B. Modalities of public participation (paras. 29 and 32-37 of the Almaty Guidelines)**

### ***Description***

#### ***International Conference on Chemicals Management (ICCM)***

12. Plenary sessions of the ICCM are held in public unless the governmental representatives decide otherwise (rule 41 of the Rules of Procedure). Exclusion from sessions on agenda-setting is allowed (rule 3.2 of the Rules of Procedure); but otherwise general inclusion is provided for (rules 7 and 8 of the Rules of Procedure). Venue and date chosen with NGO participation (rule 5 of the Rules of Procedure). All participants may make motions and proposals (rules 28 and 29 of the Rules of Procedure), with voting being limited to governmental representatives. Relevant information and meeting documents for each session of the ICCM are made available online.

13. SAICM further functions over a number of intersessional processes between the ICCMs:

- i. Periodic reviews

14. The ICCM undertakes periodic reviews of SAICM based on reports from stakeholders (paragraph 24 of the Overarching Policy Strategy).<sup>9</sup> For the last intersessional period, ICCM 4 had requested the Secretariat to prepare a progress report on the achievements, strengths and weaknesses of SAICM implementation for the period 2014-2016. The Secretariat issued an online survey to that end, which allowed stakeholders to provide their input on selected questions via an online response mechanism.<sup>10</sup>

<sup>8</sup> Ibid.

<sup>9</sup> See: <http://www.saicm.org/Implementation/Reporting/tabid/5462/language/en-US/Default.aspx>.

<sup>10</sup> See: <http://www.saicm.org/Resources/SAICMStories/SAICMprogressreport/tabid/6061/language/en-US/Default.aspx>.

ii. Regional meetings

15. Paragraph 26 of the SAICM Overarching Policy Strategy establishes regional meetings to review progress, provide guidance on implementation, and enable technical and strategic discussions.<sup>11</sup> Regional meetings are open to participation of non-government participants, and financial support for qualifying organizations has been made available. For instance, for the regional meetings in early 2018, ten organizations from the African region and eight organizations from other regions received financial assistance.

iii. Calls for information

16. Based on an initiative of ICCM 4, the Secretariat has collected further information from the focal points (see above) regarding SAICM implementation collated in the form a tracking table covering the period until 14 October 2016.<sup>12</sup> The results of this exercise have not been made available yet.

iv. Intersessional process on post-2020

17. ICCM 4 initiated an intersessional process to prepare recommendations regarding SAICM beyond 2020.<sup>13</sup> Three meetings are envisaged as part of this process, of which two have already taken place. Information and working documents for these meetings have been made publicly available, and non-governmental participants took part in the meetings. Moreover, in July 2017 inputs were collected from all stakeholders, and in November 2017, a paper with proposals and objectives to support the 2030 Agenda for Sustainable Development was subject to comments from stakeholders as well.<sup>14</sup>

Bureau

18. The Bureau of SAICM consists of state representatives elected in accordance with rule 14 of the Rules of Procedure.<sup>15</sup> Based on rule 15 paragraph 3 of the Rules of Procedure, four NGOs representing the sectors of health, industry, trade unions and public interest groups shall be elected by representatives of these groups present at the ICCM. In accordance with rule 15 paragraph 2, these four NGOs may participate in Bureau meetings, unless the Bureau decides that all or part of the meeting shall be held only with governmental representatives.

Subsidiary bodies

19. In accordance with rule 42 of the Rules of Procedure, meetings of subsidiary bodies shall be held in public unless the COP or the subsidiary body itself decides otherwise. In accordance with rule 23 paragraph 1 of the Rules of Procedure, the ICCM may establish subsidiary bodies after consulting non-governmental participants. Non-governmental participants should also be consulted prior to the election of chairs and vice-chairs (rule 23 paragraph 2(b)-(c) of the Rules of Procedure).

20. The Open-ended Working Group was established at the second session of the ICCM by way of resolution II/6.<sup>16</sup> Two meetings of this Working Group have so far taken place (in 2011 and 2014), and meeting reports and other relevant documents from each meeting have been made available on the SAICM website.<sup>17</sup>

<sup>11</sup> See: <http://www.saicm.org/Implementation/Reporting/tabid/5462/language/en-US/Default.aspx>.

<sup>12</sup> See: <http://www.saicm.org/Implementation/Towards2020/tabid/5499/language/en-US/Default.aspx>.

<sup>13</sup> See: <http://www.saicm.org/Beyond2020/IntersessionalProcess/tabid/5500/language/en-US/Default.aspx>.

<sup>14</sup> See: <http://www.saicm.org/Beyond2020/IntersessionalProcess/Commentsonobjectivespaper/tabid/6233/language/en-US/Default.aspx>.

<sup>15</sup> Extract from Report of the International Conference on Chemicals Management on the work of its second session, Resolution I/1: Rules of Procedure of the International Conference on Chemicals Management.

<sup>16</sup> See: <http://www.saicm.org/About/OEWG/tabid/5465/language/en-US/Default.aspx>.

<sup>17</sup> See: <http://www.saicm.org/About/OEWG/OEWGmeetings/tabid/5984/language/en-US/Default.aspx>.

**Assessment**

21. According to paragraph 29 of the Almaty Guidelines, public access may only be restricted if there is a reasonable basis to exclude participation according to transparent and clearly stated standards that are made available in advance, if possible. The openness to non-governmental representatives at the ICCMs, Bureau meetings and meetings of the Open-ended Working Group are positive examples in this regard.

22. Concerning paragraphs 32 and 36 of the Almaty Guidelines, the involvement of non-governmental participants in the agenda-setting and the election of officers is a positive point. Furthermore, the proactive online publication of information and working documents pertaining to meetings and processes is consistent with the Almaty Guidelines pertaining to disclosure of “documents relevant to the decision-making” (paragraph 34). Moreover, non-governmental representatives appear to also be allowed to speak at all meetings and also make motions and proposals which is positive as well.

23. As regards paragraph 37 of the Almaty Guidelines, non-governmental representatives generally have no right to vote on any decisions. However, the various commenting periods and other opportunities for non-governmental representatives to participate in the inter-sessional processes provide good mechanisms through which to take due account of their input. This kind of measures should be kept up in the future, in particular those open to all stakeholders.

**C. Capacity-building and financial assistance (paras. 17-18 and 38-39 Almaty Guidelines)**

**Description**

24. In accordance with paragraph 19 of the Overarching Policy Strategy, capacity-building is supported by the Quick Start Programme (QSP), which is voluntary, time-limited fund supported by UNEP.<sup>18</sup> Educational videos and certain publications. are published online.<sup>19</sup> National, Regional, NGO and IGO Focal Points have been appointed, which can also assist in building capacities.<sup>20</sup> Regional activities (see paragraph 15 above) can further be useful to build regional capacities.

25. Concerning paragraph 39 of the Almaty Guidelines, financial assistance has been made available for non-governmental organizations to participate in regional meetings (see paragraph 15 above). No similar mechanism appears to currently exist to support the travel and subsistence costs of non-governmental representatives to facilitate their participation in meetings of the ICCM and of subsidiary bodies.

**Assessment**

26. As regards paragraph 38 of the Almaty Guidelines, in particular the regional activities can serve as a good capacity-building initiative. The Secretariat should continue to explore these activities, including relevant online tools, in order to reach a broad audience of stakeholders.

27. The provision of financial assistance to organizations attending the regional meetings is a good practice. Possibilities for funding should continue to be explored, in particular from the side of governmental participants in SAICM, and relevant information made available.

<sup>18</sup> See: <http://www.saicm.org/Implementation/QuickStartProgramme/tabid/5523/language/en-US/Default.aspx>.

<sup>19</sup> See: <http://www.saicm.org/Resources/SAICMStories/Cochairsummarycallforinput/tabid/5918/language/en-US/Default.aspx>.

<sup>20</sup> See: <http://www.saicm.org/Implementation/FocalPoints/tabid/5461/language/en-US/Default.aspx>.

## **D. Review Procedures (para. 40 of the Almaty Guidelines)**

### *Description*

28. No specific review procedure relating to application of the rules of the SAICM regarding access to information and public participation appears to have been established.

### *Assessment*

29. Some situations in which review procedures could be of use in the work of SAICM are (a) denial of access to environmental information and (b) refusal by the Secretariat of an NGO to be recognized as a non-governmental representative. Whether or not any or all of these situations in fact require a review mechanism will depend on the practice of SAICM and should be ascertained in a participatory process, which is inclusive of observers.

## **IV. Conclusions**

30. Overall, it does not appear that there is a problem with environmental information disclosure under the rules of procedure and practice of SAICM. While registration for non-governmental participants could be clearer, public participation modalities for non-governmental participants are very good, with various measures aimed at facilitating their effective participating. Other stakeholders are consulted on specific documents in the intersessional process, which is a good practice that should be further expanded. To further improve the overall practice, the following measures could be considered:

- Explore whether to designate contact points at the Secretariat to handle requests for environmental information related to certain subject areas;
- Provide clearer information on the website on how non-governmental participants can take part in meetings and become engaged in the process;
- Continue efforts to keep as many intersessional processes and consultations open to stakeholders, rather than limiting them to “participants”;
- Continue to encourage provision of financial support by Governments to non-governmental participants lacking the financial means to attend meetings of SAICM;
- Consider whether the creation of specific review procedures to deal with cases of refusals of access to information requests or accreditation of non-governmental representatives would be useful.

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