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Public participation in international forums

SYNTHESIS OF RESPONSES RECEIVED FROM THE SECRETARIATS OF THE UNECE MULTILATERAL ENVIRONMENTAL AGREEMENTS TO THE QUESTIONNAIRE ON THE ALMATY GUIDELINES¹

Prepared by the secretariat

Background

1. This report provides an overview of the experiences of the multilateral environmental agreements (MEAs) hosted by the ECE in addressing the issues covered by the Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums (decision II/4 of the Meeting of the Parties, annex). That is done on the basis of the responses received from the MEAs secretariats to a questionnaire that had been prepared by the Aarhus Convention Secretariat. The questionnaire drew on the consultation process with international forums carried out between June 2006 and July 2007 (available at: http://www.unece.org/env/pp/ppif.html#consultation_2). The ECE MEA secretariats were thus invited to consult their responses during the 2006-2007 consultation process and to provide relevant updates and any additional information they considered relevant.

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This document was not formally edited.

2. The questionnaire sent to UNECE MEAs contained four broad, open-ended questions designed to allow to share such of their experience as they considered relevant. The questions were:

(a) Rules, Procedures and Practices: Does your treaty have any rules, procedures and practices concerning access to information, public participation, and access to justice in environmental matters?

(b) Current and Future Work Plans: Are there any current or future work plans of your MEA that may affect the extent of or modalities for access to information, public participation in decision-making and access to justice in environmental matters?

(c) Challenges: In particular, what kind of challenges, if any, has your MEA encountered with regard to access to information, public participation in decision-making and access to justice in environmental matters (for example, low interest from “the public”, or practical difficulties in managing public participation)? Please provide any additional comments that you think might be useful for Aarhus Convention Parties to bear in mind when considering how to implement their obligation to promote public participation in international forums.

(d) Comments: Please consult answers on your MEA to the 2006 consultation process and provide any comments on the Almaty Guidelines, in view of your treaty’s own processes, activities and particular characteristics.

3. Information was received with regards to the following UNECE MEAs:

(a) Convention on Long-range Transboundary Air Pollution (CLRTAP) and its Protocols

(b) Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its Protocol on Strategic Environmental Assessment (SEA)

(c) Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) and its Protocol on Water and Health.

(d) Convention on the Transboundary Effects of Industrial Accidents (Industrial Accidents)

4. All responses to the questionnaire were prepared and submitted in the name of the secretariats of the MEAs and are available online at:

<http://www.unece.org/env/pp/aarhus/wgp17.html>

5. The following sections synthesize the responses provided by the MEA secretariats to the questionnaire.

(a) The first section provides an overview of responses on the rules, procedures and practices concerning access to information, public participation and access to justice in environmental matters.

(b) The second section provides information on possible reviews of the current or future work plans that according to the MEAs’ secretariats reports may affect the extent of or modalities for access to information, public participation in decision-making and access to justice in environmental matters.

- (c) The third section addresses possible challenges identified by the MEAs secretariats with regard to access to information, public participation in decision-making and access to justice in environmental matters.
 - (d) The final section briefly provides some conclusions in light of the information provided by the MEAs secretariats.
6. Given its purpose to synthesize the responses of the MEAs secretariats this paper provides a snapshot of key issues and should not be regarded as comprehensive or in-depth review. Therefore MEAs may have more detailed rules, procedures and practices, which are not necessarily reflected in the present report. For further information please refer to the original answers by the secretariats.

Rules, procedures and practices

Access to information

7. All MEAs have adopted similar practices with respect to making official (including rules of procedure, provisional agendas, meeting reports and background papers) as well as informal documents publicly available either through the UNECE website or other online databases. Some treaties make explicit reference to access to information² and public awareness³. Most MEAs make draft documents prepared by the secretariat available online.⁴
8. Some MEAs apply certain restrictions with respect to the dissemination of information. In most cases these restrictions apply to the compliance and implementation procedures. For instance, documents related to potential non-compliance by Parties to the CLRTAP Convention submitted to the Implementation Committee for its consideration are available on a password-protected page accessible only by members of the Implementation Committee. A similar password-protected page is being used by the members of the Implementation Committee of the Espoo Convention to discuss papers/working documents prepared by the Committee members (e.g. analyses of cases by Committee curators) or the secretariat for meetings of the Committee (informal documents). For cases pending consideration, a summary is provided by the secretariat on the public web site and the full information becomes publicly available when the Committee has concluded consideration of the case.
9. The Industrial Accidents Convention reported that due to security concerns, information concerning hazardous activities is maintained by the secretariat and access is limited to the competent authorities. Furthermore the national implementation reports submitted by the Parties are treated as confidential.

² See rules of procedure for the Meeting of the Parties to the Water Convention and its Protocol on Water and Health (ECE/MP.WAT/19/Add.1 and ECE/MP.WH/2/Add.1).

³ 1998 Protocol on Persistent Organic Pollutants (article 6) and 1999 Protocol to Abate Acidification, Eutrophication and Ground-level Ozone (Gothenburg Protocol)(article 5).

⁴ CLRTAP does not make drafts of official documents available online.

10. All MEAs are using non-formalized practices to disseminate environmental information including printed or electronic environmental publications (e.g. leaflets, brochures, posters in English French and Russian), press releases, media interviews, workshops, roundtables, and websites. Various announcements and useful material are generally distributed to all stakeholders by e-mail. For most MEAs such practices also include the organisation of side events at the margins of their official meetings.⁵ Social media are also used by the Espoo and Water Convention and the 2014-2015 workplan of CLRTAP also contains an item on the use of social media platforms, as appropriate to raise awareness of the Convention.

Public participation in decision-making

11. All MEAs reported that their rules of procedure address the participation of the public in their processes. However in all cases, some restrictions apply. In particular, a distinction needs to be made between the Bureau, the Compliance/Implementation-related bodies and the governing body of each MEA. The public, including NGOs can generally participate as observers at the official meetings of the MEAs' governing bodies provided they inform the secretariat of their intention to attend a meeting and unless Parties present at the session object. Some MEAs however require that NGOs are qualified in matters covered by the Convention in order to approve their participation.⁶ For some of the other MEAs, a process of accreditation is in place for observers.⁷
12. With regards to public input in meetings, some MEAs allow the public, including NGOs to speak on any agenda item.⁸ The CLRTAP Convention reported that any member of the public can provide written comments on any agenda item without restriction. Advance drafts for various documents produced in the framework of the Espoo Convention's work plan implementation, are also available for comments by Parties and stakeholders, at more than one stages during their preparation, for periods spanning to more than a year. Comments received are taken into account, irrespective of whether they are submitted by Parties or stakeholders. In draft versions available to the public, comments are recorded by way of footnote and the text includes proposed changes in track changes mode.
13. Some MEAs allow the organisation of side events by the public, including NGOs subject to the approval of/agreement with the host country or the Bureau⁹.
14. The public including NGOs are often invited to take an active role in supporting implementation of the programme of work of some MEAs.¹⁰ For example, active participation of NGOs in the implementation of activities under the Water Convention and its Protocol on Water and Health is a long-standing practice. NGOs contributed to the development of the Protocol on SEA. Finally, in the context of the capacity building

⁵ Espoo, Water and Industrial Accidents.

⁶ Industrial Accidents and CLRTAP.

⁷ Industrial Accidents.

⁸ Espoo and Water.

⁹ Espoo and Water.

¹⁰ Espoo and Water.

activities under the Espoo Convention and its SEA Protocol, civil society representatives may comment on drafts regarding various projects and participate in the relevant workshops together with Government representatives.

15. Public participation in decision-making through stakeholder dialogues, virtual/email consultations and discussion forums, social media, capacity building activities and regular web postings are regularly carried out within the framework of the Espoo Convention. The Water Convention reported the organisation of strategic workshops where some NGOs were invited to provide strategic advice at an early stage of the drafting process of the future programme of work.
16. Subject to availability of funds, some MEAs have established a system of financial support to facilitate the participation of NGOs as observers at the meetings of the Parties.¹¹ In some cases this support may be extended to experts and representatives from States outside the UNECE region.¹²
17. With regard to meetings of the Bureaux of the MEAs, they are generally held in close session. In certain cases, these meetings may be attended by experts upon invitation by the Bureau.¹³

Access to justice

18. All MEAs have established a compliance/implementation mechanism (e.g. compliance committee or implementation committee). Only the Implementation Committees of the Espoo and Water Convention and the Compliance Committee of the Protocol on Water and Health hold some of their meetings in open session.
19. With regards to confidentiality, some documents of the Compliance/Implementation Committees remain confidential (e.g. minutes¹⁴, submissions to the Committee¹⁵, reference material¹⁶). For example, in the case of CLRTAP only the report by the Implementation Committee and the draft recommendations become publicly available.
20. The compliance/implementation mechanisms can be triggered by the public only in the framework of the Protocol on Water and Health. The public cannot trigger directly the implementation mechanism of the Water and Espoo Conventions but the Implementation Committees under both instruments may decide to take the initiative and collect information regarding implementation and compliance from various sources including non-governmental organisations. In the case of the Espoo Convention, the Committee based on “profound suspicion of non-compliance” may open a Committee initiative.

11 Espoo and Water.

12 Espoo.

13 Espoo.

14 Industrial Accidents.

15 CLRTAP.

16 CLRTAP.

Furthermore some MEAs allow the public to submit information for consideration of the compliance/implementation mechanism.¹⁷

Current and future workplans

Current or future plans regarding access to information

21. With respect to the possible development of a communication strategy, the CLRTAP Convention reported that the 2014-2015 work plan includes activities to raise public awareness of the Convention and overall visibility of air pollution issues. In this context, an ad hoc group of experts has been established to work on an Action Plan for the implementation of the Long-term Strategy for the Convention. CLRTAP has also included actions to improve the management of environmental information and has made publicly available information on national focal points.
22. The Water Convention secretariat reported that an analysis on the needs for reporting under the Convention is currently being carried out, in order to examine the possibility of establishing a reporting process in the future. Should the Parties decide to establish such a process then it is expected that it would include requirements on public information and involvement. .
23. The secretariat of the Industrial Accidents Convention reported that the 7th Conference of the Parties (CoP) has requested an evaluation of a possible amendment of the Convention to address a number of provisions and issues, including strengthened rights for the public, in terms of information, public participation in decision-making and access to justice, in line with Aarhus Convention. It is anticipated that the CoP would then prioritize issues at its next, eighth, meeting in autumn 2014 with a view to adopting an amendment at its ninth meeting in autumn 2016.

Current and future workplans regarding public participation

24. Existing measures to facilitate public participation through the provision of financial support were maintained by the MEAs.¹⁸ For instance, stakeholder engagement was promoted by the Water Convention through National Policy Dialogues at the national level and through capacity building events at the regional level.
25. Several secretariats reported on plans to increase stakeholder involvement. In particular,
 - (a) the secretariat of the Industrial Accidents Convention reported on the request by the 7th Conference of the Parties (CoP) (14 - 16 November 2012, Stockholm), to the working group on the development of the Convention to evaluate the possible

¹⁷ Espoo and Water.

¹⁸ Espoo and Water.

amendment of the Convention to address a number of other provisions and issues, including strengthened rights for the public, in terms of information, public participation in decision-making and access to justice, in line with Aarhus Convention (see section above on current and future workplans regarding access to information).

- (b) At its third session the Meeting of the Parties to the Protocol on Water and Health (26-28 November 2013) adopted a decision urging Parties to comply with the provisions related to public participation in the process of target setting, encouraging Parties to involve the public when preparing their summary reports, and inviting Parties to make use of the Guide to Public Participation under the Protocol on Water and Health adopted by the Meeting. National and regional activities to be organized during the triennium 2015-2017 will promote public participation in the implementation of the Protocol, based on this. The programme of work 2015-2017 of the Protocol on Water and Health to the Water Convention includes a new activity on safe and efficient water management, aiming to further involve private sector in activities implemented under the Protocol.
- (c) under the Espoo Convention, development banks have been encouraged to participate in the proceedings, because of the relevance of the Convention in their activities.

Current and future workplans regarding access to justice

- 26. Some MEAs reported on the review of compliance/implementation procedures during the current or future work plans to increase access to information and public participation in the procedure.¹⁹ On the contrary, the Espoo Convention secretariat reported that a possible review of the operating procedures of its Implementation Committee might restrict public participation in Committee meetings.

Challenges

- 27. Due to their technical nature, the proceedings under some MEAs do not attract public interest and as a result it is difficult to identify challenges regarding access to information, public participation and access to justice. For example, only a small number of NGOs have expressed interest or have been accredited to attend meetings in the framework of CLRTAP.

Challenges regarding access to information

- 28. The secretariats identified several challenges with regards to access to information. Some reported that the Parties did not consider access to information as a high priority²⁰ and that there were no rules or policy concerning access to information in place.²¹

19 Industrial Accidents.

20 Industrial Accidents.

21 Industrial Accidents.

29. Concerns regarding public disclosure of information and data were also mentioned as a factor reducing access to information.²²
30. Additional constraints regarding access to information included language barriers²³, lack of resources to translate documents²⁴, lack of infrastructure for data generation²⁵, analysis and dissemination²⁶ and limited staff resources to disseminate information²⁷. Technical problems may also prohibit information from being easily disseminated. Some MEAs reported for example, server problems which did not allow material being sent by e-mail to reach stakeholders in Eastern Europe, Caucasus and Central Asia.²⁸ Another limitation is caused by the lack of capacity to webcast meetings of Parties, Working Groups or, as appropriate, the Compliance/Implementation mechanism.²⁹

Challenges regarding public participation

31. Limited financial resources to ensure wide public participation were identified as a common challenge for most of the MEAs.³⁰ This problem was particularly emphasised by MEAs which highly depend on the voluntary contributions of Parties to carry out their work programmes and which are currently facing budgetary cuts.³¹ As a result they are often not in a position to offer financial support to facilitate the participation of NGOs at their meetings.
32. Some MEAs stressed the lack of interest³² along with limited capacities for effective participation of the public, including NGOs.³³
33. In some cases there are no rules or procedures for effective public participation while the later remains a low priority for the Parties.³⁴
34. The responses to the questionnaire also demonstrated that it is difficult to verify whether a member of the “public” including NGOs actually represent the public concerned or an organisation relevant to the MEA’s work.³⁵

22 Industrial Accidents Convention and the Protocol on Water and Health contain explicit provisions on confidentiality.

23 Industrial Accidents.

24 Water and Industrial Accidents.

25 Industrial Accidents.

26 Industrial Accidents.

27 Water.

28 Espoo.

29 Espoo.

30 Espoo, Water, Industrial Accidents.

31 Espoo.

32 Industrial Accidents and CLRTAP.

33 Espoo and Industrial Accidents.

34 Industrial Accidents.

35 Water and Industrial Accidents.

35. Other relevant challenges reported by at least one Convention included: lack of clarity of rules on public participation³⁶, language barriers³⁷, concerns regarding the public dissemination of information relevant to meetings³⁸, difficulties in identifying the public concerned³⁹ and in facilitating participation of marginalised groups⁴⁰, insufficient timeframes to enable effective public participation⁴¹ and finally limited staff resources to disseminate material describing opportunities for public participation⁴².

Challenges regarding compliance/implementation mechanisms

36. The responses to the questionnaire illustrated a lack of political will from Parties to promote public participation in compliance/implementation review in some of the MEAs.⁴³
37. Another common theme was the lack of public interest and/or lack of awareness of opportunities to be involved in compliance/implementation review.⁴⁴ For instance, despite the possibility for the public to submit a communication to the Compliance Committee of the Protocol on Water and Health, no communication had been received as of February 2014.
38. In two cases limited financial resources to involve the public including NGOs in compliance/implementation review were recognised as important constraints.⁴⁵ In the case of the Protocol on Water and Health, the lack of funds and secretariat resources to support the Compliance Committee also limits the number of meetings held each year.
39. Some MEAs reported that they had no legal basis for public participation in compliance/implementation review.⁴⁶

36 Industrial Accidents.

37 Industrial Accidents.

38 Industrial Accidents.

39 Industrial Accidents.

40 Industrial Accidents.

41 Industrial Accidents.

42 Water.

43 Industrial Accidents and CLRTAP.

44 Water and Industrial Accidents.

45 Espoo, Water and Industrial Accidents. The Water Convention mentioned that no request for financial support has been received from the public including NGOs to participate in compliance/implementation review under its Protocol on Water and Health.

46 Industrial Accidents and CLRTAP.

Conclusions

40. The responses received from the MEAs secretariats show diversity with regard to the extent to which the rules, procedures and practices of each MEA address and promote the principles of access to information, public participation and access to justice. Similarly, the understanding of potential challenges may also vary from one MEA to other.
41. In relation to rules and procedures, some MEAs make explicit reference to access to information and public participation whereas others reflect the concerns of the Parties regarding confidentiality of data and information most notably in relation to the compliance/implementation review. However, at the same time, some practices of certain MEAs seem to keep in step with the spirit of the Guidelines.
42. In relation to the challenges identified by the MEAs, limited financial resources were highlighted as being important in reducing opportunities for public participation. In addition, public participation in compliance/implementation review has also been a matter of low priority. Finally, the lack of public awareness of opportunities for participation and the low interest from the public in the procedures of certain MEAs is noteworthy.
43. Some of the challenges, such as awareness raising and facilitating the involvement of interest groups, are also picked up in the current and future workplans of some MEAs.