

**Public Participation in Strategic Environmental Decisions**  
*(Pre-printed version)*

*Guide for Environmental Citizens Organizations*

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## **Background: New Opportunities for Citizens to Affect Strategic Decisions**

Public participation is a key step to improving our environment. But often it comes too late – or not at all.

New international agreements for Europe and Eurasia are now bringing this improvement to earlier and higher-level decisionmaking. They can make a real difference – for democracy and for the environment.

The *Protocol on Strategic Environmental Assessment* was signed in Kyiv, Ukraine, in May 2003. The Protocol on Strategic Environmental Assessment will commit the states of Europe and Eurasia to including environmental considerations in the most important decisions made by governments and public authorities. The Protocol will achieve this by guaranteeing a uniform minimum set of standards and procedures for the process of strategic environmental assessment. The second major accomplishment of the Protocol is to provide the basis for advancing democracy by including good practices of public participation in the most important decisions made by governments and public authorities.

The ECO Forum, representing environmental citizen organizations and civil society in the negotiations of the Protocol on Strategic Environmental Assessment – SEA – welcomes the Protocol. However, we express our concern that the Protocol is:

- insufficient on policies and legislation, and public participation, and
- silent on access to justice.

Nevertheless, we do believe that the final product can serve as a significant step forward and can be a platform upon which further improvements can be built.

The *SEA Protocol* together with *Articles 7 and 8 of the Aarhus Convention* provides powerful tools for citizens.

### **A. Why Public Participation for the Environment?**

Why do we need public participation in environmental decisionmaking? Why not just leave it to the experts? Some governmental officials believe that public participation takes a lot of time and creates additional burdens.

But democratization of society requires transparency of decisionmaking. Its participation makes the decisionmaking process transparent and public authorities accountable. A decision made with public involvement is more likely to receive support in its implementation.

Public participation also leads to decisions that are better for the environment. The public can bring expertise and knowledge to the process. Public experts may not only criticize mistakes or see negative sides of a plan or program, but also suggest good alternative solutions. They can introduce environmental and sustainability considerations into decisionmaking, which will help to prevent negative impacts on the environment, including health.

## **B. When to Have Public Participation for the Environment?**

Once it has been agreed that public participation is important for the environment, there is still the question of *when* to have it – that is, at what level of decisionmaking. Most experience has been gained at the level of individual, concrete projects. The new international agreements go beyond this, to seek incorporation of the environment and of the view of the public at the higher and earlier stage of planning, development of programs, formulation of policy, and proposal of executive regulations. This is public participation at the *strategic* level.

### **1. Public participation at the project level**

Public participation in *concrete projects* (like building a highway or a new cement plant) has become a regular practice in many countries of Europe due to Environmental Impact Assessment (EIA). Governments often accept public comments in written form or during public hearings, and the outcome of public opinion may be taken into account in decisionmaking. Those requirements make EIA potentially the most powerful and effective tool for public participation in making decisions which have or likely to have negative impact on environment. All countries of the UN ECE<sup>1</sup> region have some sort of EIA processes as a matter of national law – with different methods and degrees of public participation.

EIA is also required in cases of potential environmental impacts across national borders by the Convention on Environmental Impact Assessment in a Transboundary Context (**Espoo EIA Convention**).<sup>2</sup> This requires EIA when the activity of one country is likely to have an effect on the environment of another country. It requires public participation for both the public of the “country of origin” and the public of an “affected country.”

Public participation in the decisionmaking on concrete projects also is required by some *national laws* apart from an EIA process. Such participation is also now required in those countries that have ratified the **Aarhus Convention**, which entered into force in 2002.<sup>3</sup> The Aarhus Convention has a clear procedure on public participation in concrete activities. Article 6 of the Convention requires governments to inform the public at an early stage of environmental decisionmaking about a proposed activity and the nature of the proposed decision or draft decision, and requires the opportunity for the public to participate. Each country must ensure that the outcome of the public participation is taken into account in the final decision. The text of the decision must be made available along with the reasons and considerations on which the decision is based.

### **2. Public participation in plans, programs, policies, and regulations**

It is not enough to have public participation *on the project level*. We need public participation in *plans, programs, policies, and regulations*. This pamphlet describes

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<sup>1</sup> United Nations Economic Commission for Europe.

<sup>2</sup> Signed in Espoo, Finland, in 1991 and entered into force in 1997. See <http://www.unece.org/env/eia>

<sup>3</sup> Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters. See <http://www.unece.org/env/pp>

the new international requirements that will lead to this being accomplished in national legislation throughout the UN ECE region.

**a. The concept of SEA and strategic decisions**

Public participation *before* the stage of concrete projects allows the public to express its views in the planning process (for example, on a national energy plan) before certain types of concrete projects (such as construction of individual nuclear power plants under the plan) becomes inevitable. This early stage is when public comments can actually make a difference – before plans set in motion a train of events with inevitable and unavoidable results.

Public comments on such early or high-level decisions can also address their likely cumulative effects throughout the country or time period covered by them. For example, helping a government forest authority see how its overall forest plans are threatening the existence of a wildlife species can help avert disaster in a way that public comments on just individual timber sales could not do. Public participation in the development of programs, policies, and regulations can also make them more transparent and promote democratic accountability in the process of governing.

**b. Two important legal instruments**

Public participation above the project level is now required by two international legal instruments: the *Protocol on Strategic Environmental Assessment* under the Espoo EIA Convention and *Articles 7 and 8 of the Aarhus Convention*.

At the Second Meeting of the Signatories to the Aarhus Convention (2000), the European ECO Forum (together with the Regional Environmental Centre) proposed the creation of a special Protocol on public participation in plans, programs, policies and legislation under the Aarhus Convention.

In September 2001 the Committee on Environmental Policy of the UN ECE made a decision to develop a Protocol on Strategic Environmental Assessment under the Espoo EIA Convention because the Espoo EIA Convention was already in force at that time, and the Aarhus Convention was not. Further work on public participation in such decisionmaking under the Aarhus Convention was suspended until the conclusion of negotiations on the proposed SEA Protocol.

ECO Forum experts participated in the development of the Protocol and all negotiation sessions, lobbying for a wide scope, including all strategic decisions and strong (“Aarhus-like”) public participation principles and provisions in its text. They were successful sometimes, but lost at other times.

At the 5<sup>th</sup> Ministerial Conference “Environment for Europe” on May 23, 2003, held in Kyiv, Ukraine, 35 countries of the UN ECE region signed the Protocol on Strategic Environmental Assessment (the SEA Protocol) under the Convention of Environmental Impact Assessment in a Transboundary Context (Espoo EIA Convention).

Now that the SEA Protocol is in place, environmental citizen organisations are turning their attention in two directions – toward implementation of the Protocol, and toward a renewed effort to further implement Articles 7 and 8 of the Aarhus Convention.

### C. The SEA Protocol

**“Strategic Environmental Assessment”** (SEA) is a process of evaluation of environmental effects (including health) during the preparation of policies, plans, programmes and legislation (including executive regulations). It should be early, high-level, comprehensive, and participatory. The purpose of SEA is to consider environmental and health factors alongside social, economic, and other matters in strategic decisions.

#### 1. Necessity of SEA

Strategic Environmental Assessment can make sure that environmental and health factors are taken into account in all government planning and policy-making. This pamphlet explains how we can ensure that the environmental and health concerns receive consideration, and that *SEA* is conducted with *public participation*.

- We need to bring environmental and health concerns into the discussion earlier than is happening now (so that all options are still open).
- We need to ensure that decision makers at the highest levels seriously consider environmental and health issues.
- We need to make sure that government officials look comprehensively at the environment and health in all aspects of governmental policy.
- Policy-makers need to involve the public in policy-making processes, make the public aware of this right of public participation and take into account public concerns.

#### 2. Understanding the SEA Protocol

The Protocol on Strategic Environmental Assessment (SEA Protocol) is:

- a new and important international instrument,
- a new step forward in the continuing dialog between government and civil society, and
- a new tool for the public to make strategic decisions more transparent and to prevent or mitigate harm to environment and health.

If your country has signed the SEA Protocol but does not currently have SEA at the national level, under the Protocol it will have to change legislation and to establish an SEA system. You have a chance to improve your country’s planning and policy-

making by lobbying for ratification and implementation of the SEA Protocol and advocating public participation in SEA in your country's new legislation. In the countries where an SEA procedure exists already, it must be made at least as strong as the SEA Protocol, but is permitted to be stronger.

**a. Scope of Protocol**

The scope of the Protocol includes assessment of the impact of *plans and programs* on environment and health. It means that if a country has signed and ratified the Protocol, it is obliged to comply with it and to have an SEA procedure for plans and programs.

ECO Forum lobbied for a wide scope of the Protocol, which would clearly apply the procedure of environmental assessment to all strategic decisions - plans, programs, policies, executive regulations and legislation. Unfortunately we lost this battle. "To the extent appropriate" the Protocol may apply to *policies and legislation* (including parliamentary laws and executive regulations). But what remains in the Protocol nevertheless has substantial value, and any country is free to have *wider* coverage than the minimums provided in the Protocol.

*What kind of plans and programs* are the subjects of the Protocol? The Protocol covers those:

- that are likely to have significant environmental, including health, effects;
- that are prepared for agriculture, forestry, fisheries, energy, industry, including mining, transport, regional development, waste management, water management, telecommunications, tourism, town and country planning or land use and that set the framework for future approvals of projects;
- other plans and programs likely to have significant environmental effects

***Case study: Comprehensive Planning of the Naissaar Island, Estonia<sup>4</sup>***

Planning and strategic environmental assessment (SEA) were undertaken in 1995-1997 for Naissaar Island, Estonia, which had been occupied by a Soviet army base. The whole territory of the island belonged to the Nature Park but re-privatisation of illegally seized land to former owners had already been begun. A number of areas had been severely polluted (with oil products and heavy metals).

Those participating in the SEA process included future land-owners, associations of scientists, entrepreneurs, professional societies, unions, movements, and other private or legal persons.

A **first public meeting** was held with representatives of district and commune authorities, land-owners of the area, and representatives of other interested

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<sup>4</sup> The example was provided by Jiri Dusik, The Regional Environmental Center for Central and Eastern Europe, and adapted by the author of the pamphlet.

parties to discuss strengths, weaknesses, opportunities, and threats involving of the island. The meeting also discussed development objectives and environmental objectives for future development of the island.

At a **second public meeting** (with working groups), the planning process and SEA process were introduced, various development alternatives of the comprehensive planning were described, and their potential environmental impacts were commented upon. Representatives of the interested parties participated in conducting a “matrix analysis,” as a result of which the vision of the public concerning the environmental impacts of the alternatives was presented.

A **third public meeting** was held, at which the draft version of the planning proposal was introduced to participants. Both positive and negative environmental impacts and their mitigation measures were described. Comments and proposals of representatives of the public concerning mitigation measures were presented and discussed.

In accordance with the Act on Planning and Building the proposal was put on public display for four weeks, together with the EIA report. During this time, it was possible to submit comments concerning the planning. - the views presented during the public display period were taken into account in the final proposal.

Planning and environmental assessment proceeded hand-in-hand, as shown in this table:

<b>Planning</b>	<b>Environmental Assessment</b>	<b>Public Part.</b>
Preparatory activities, development of work schedule	Preparatory activities, development of work schedule	Information on the initiation of planning/SEA
Development strategy Baseline-data and investigations Development objectives	Environmental aspects of the strategy Environmental investigations Environmental objectives	1 <sup>st</sup> Public discussion
Development of five planning alternatives	Scoping of key impacts for each alternative, Draft matrices for public discussion, Final matrices after additional studies	2 <sup>nd</sup> Public discussion (working groups) on draft matrices
Draft planning proposal	Preparation of SEA report on preferred alternative (draft planning proposal)	3 <sup>rd</sup> Public discussion to review mitigation measures
Planning proposal	SEA report	Public display and consideration of the comments by the public

One of the most important and successful elements of the process was public participation. Timely and early informing of the public enabled to avoid the arising of conflicts, find new creative solutions and receive information concerning the preferences of interested parties and inhabitants. Good organization of the public involvement process made it possible to avoid the situation in which changes would need to be made in the planning implementation stage.

Officials of the local government considered the process of development of

the planning highly useful and informative and they were also of high opinion of the rational use of both time and material resources throughout the process. The fact that SEA was carried out in parallel to the development of the planning considerably facilitated the process of approval of the planning and decision-making.

### **b. Early stage and screening**

The SEA Protocol calls for application of SEA at an early stage of decisionmaking. What does *early stage* mean? It means during *preparation* of plans and programs, rather than when they are already prepared and adopted.

Countries must determine whether certain types of plans or programs (using criteria set in the annex III to the Protocol or on case-by-case examination) are likely to have significant impact on environment, including health. This early stage is called *screening*.

According to Article 5 of the Protocol, during this stage Parties must have consultations with environmental and health authorities. Furthermore, to the extent appropriate, Parties *shall endeavour* to provide *opportunities for the public concerned to participate in screening*. This may not be a large window for public participation. Opportunities are only for the public concerned (a group to be identified by the government) and only if the government actually decides to provide such opportunities. However, Article 3 of the Protocol states clearly that it provides only a minimum, not a maximum. Parties may establish stronger provisions for public participation in screening in national legislation. And the public may try to use this opportunity even if some may claim that it has a mostly recommendatory character.

If a country comes to the conclusion that a certain plan or program does not require SEA, it must make this conclusion and its reasons publicly available by various means, including electronic media.

### **c. Scoping**

The next stage of SEA procedure is *scoping*. During this stage the public authority in a country has to determine what kind of information should be included in an environmental report. During scoping the decisionmaking authority has the obligation to consult with environmental and health authorities and should endeavour to provide *opportunities for the public concerned to participate* (Article 6).

#### ***Case study: SEA Waste Management Plan of the Plzen Region, Czech Republic<sup>5</sup>***

The Waste Management Plan of the Plzen Region provides detailed arrangements for implementation of the national waste management plan and examines and selects possible specific projects for waste management in the

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<sup>5</sup> The example was provided by Jiri Dusik, The Regional Environmental Center for Central and Eastern Europe, and adapted by author of the pamphlet.

region. It was decided to conduct strategic environmental assessment (SEA) in parallel to the planning process.

The SEA team (comprising of mainly waste management experts) regularly met with the planning team and closely follows the planning process. The focus was not on developing simply a separate SEA document but rather on providing input into various stages of the planning and into comparison of alternative scenarios within the plan.

Various alternatives and impacts were considered and put before the public, in part through posting on a Web site. Public participation was organised by a local NGO (hired by the proponent, the Plzen Region) as a combined public participation process that would serve both the planning and the SEA process. Identification and notification of the public were provided through three means:

- Web page with announcement of the planning process (including SEA) which provided background documents and old and current versions of the plan
- permanent special e-mail address to gather comments (this email address was linked to the planning team)
- regional stakeholders notified using targeted mailing

The SEA was presented in a quite understandable form so that it was easy to follow the logic of the assessment. A regional public “scoping” workshop was held in 2002, which drew about 50 participants. Its purpose was to review the proposed alternatives and SEA approach and methodology. A comparison of four alternatives of the plan was then made publicly accessible on a Web site, so that it could be reviewed through a public workshop in February 2003.

Evaluation of responses and comments revealed that participating experts and public were interested both in the proposed plan and the SEA process.

#### **d. Environmental report**

The *environmental report* is a document which identifies, describes and evaluates the likely significant environmental, including health, effects of implementing the plan or program.

#### **e. Public participation**

Article 8 of the Protocol is dedicated to public participation in SEA. It requires each Party to ensure *early, timely and effective public participation* in SEA of plans and programs. To achieve this goal Parties must:

- make the draft plan or program and environmental report available for public timely, using electronic and other appropriate tools;
- give the public the opportunity to express its opinion on the draft within a reasonable time frame;

- ensure that all arrangements for informing the public and consulting the public concern are publicly available.

Parties must take into account comments received from public and environmental and health authorities in the decision to adopt a plan or program (Article 11).

#### **f. Public in other countries**

The public in other countries may also have the right to participate. If implementation of a plan or program is likely to have a significant *transboundary effect* on the environment, the Party preparing the plan or program has to notify the Party that is likely to be affected, as early as possible, with an indication of a reasonable time for transmission of comments. If the affected Party wishes to enter into consultations about such effect and measures for its prevention or mitigation, consultations take place before adoption of the plan or program, and the affected Party has an opportunity to present its opinion. The public concerned in the affected country has to be informed and given an opportunity to present its opinion on the draft plan or program. This is a rather strong provision and opportunity for public to participate.

#### **g. Monitoring**

Finally, each Party must *monitor* the significant environmental, including health, effects of implementation of certain plan or program and make its results available for the public.

#### **h. Policies, regulations, and legislation**

At the beginning of negotiations the draft Protocol covered all strategic decisions – plans, programs, policies, executive regulations and legislation. Later, the scope of the Protocol was narrowed to plans and programs. It means that the SEA procedure and all provisions of the Protocol apply fully only to plans and programs. Softer language of Article 13 suggests each Party “*to endeavour to ensure that environmental, including health, concerns are considered and integrated to the extent appropriate in the preparation in its policies and legislation.*” . . . This means that the procedure established for plans and programs, including public participation, may be used for environmental assessment of policies and legislation, but it is not mandatory for the Parties. Some countries already established SEA of policies.

This was one of the reasons for frustration of civil society which hoped to strengthen language and provisions of public participations in strategic decisions of the SEA Protocol in comparison with Article 7 and 8 of the Aarhus Convention, and it is not any stronger. This is also one reason why civil society is now turning its attention back to the Aarhus Convention, which *does* have requirements for public participation in such decisions.

#### **| Case study: Energy Policies of Slovakia<sup>6</sup>**

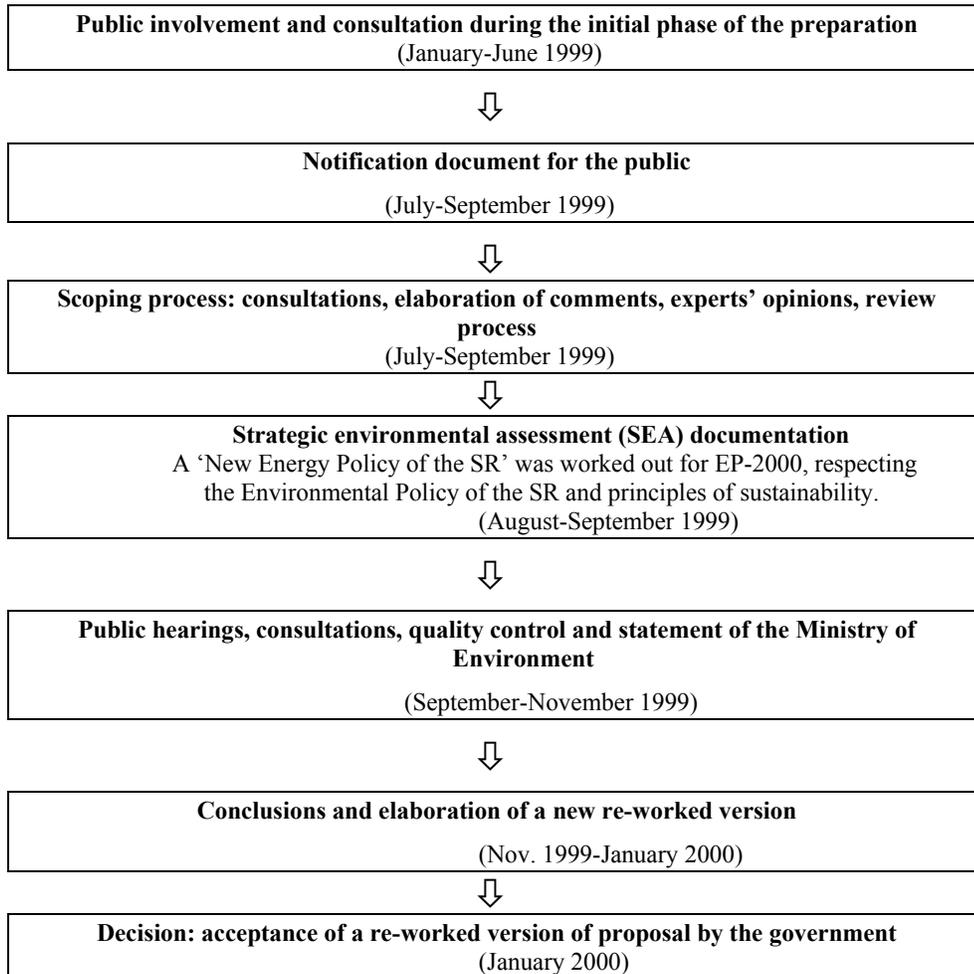
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<sup>6</sup> Example was provided by Jiri Dusik, The Regional Environmental Center for Central and Eastern Europe, and adapted by the author of the pamphlet.

In 1995 a simple strategic environmental assessment (SEA) was applied for energy policy for the Slovak Republic.<sup>7</sup> Between August 1996 and September 1997 a SEA process was applied to the subsequent version of the energy policy.

After the elections in 1998 the new government decided to prepare a new energy policy. In 1999 the SEA process was applied to the proposal of a new energy policy. The SEA process included a high level of active public participation. The entire energy policy was adopted by the Slovak government in January 2000.

The SEA process consisted of the following steps:



#### **D. The Aarhus Convention**

Although NGOs supported preparation and signature of the Protocol on Strategic Environmental Assessment, civil society must put a renewed focus on Articles 7 and 8

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<sup>7</sup> On the basis of Article 35 of the National Council of the Slovak Republic Act No. 127/1994 on Environmental Impact Assessment ('EIA Act').

of the Aarhus Convention in coming years. The Aarhus Convention has provisions on public participation in *plans, programs, executive regulations (and other legally binding norms), and policies* in Articles 7 and 8.

These two articles demand even more in terms of public participation than the SEA Protocol, and apply also to matters not covered by the Protocol. Now, when we have both – the Aarhus Convention and SEA Protocol – it is useful to compare them to see what is covered in terms of public participation in strategic decisions. The scope of the SEA Protocol is narrower than Articles 7 and 8 of the Aarhus Convention.

### 1. Public participation in preparation of plans and programs

Article 7 of the Aarhus Convention requires:

*“each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programs relating to the environment, within a transparent and fair framework, having provided the necessary information to the public... To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.”*

Article 7 of the Aarhus Convention covers *all plans and programs* “relating to the environment.” These might be plans or programs having either adverse or positive affect on environment. Article 7 is not limited to ones with “significant” effects.

By contrast, the scope of the SEA protocol covers only *certain plans and programs* (according to the list of sectors), which have significant adverse affect and which require SEA. Only plans and programs for future development consent listed in the annexes are covered by the Protocol. This means that opportunity for public participation in the SEA Protocol is narrower than in Article 7 of the Aarhus Convention.

The SEA Protocol, as described above, has some level of public participation in screening, scoping, decision-making, in transboundary SEA. The relevant Article 7 of the Aarhus Convention does not contain a separate procedure for public participation, but Article 7 states that the procedure set in article 6, paragraph 3, 4, 8 (informing the public, early public participation, and taking due account of the outcome of participation) “shall be applied” to preparation of plans and programs.<sup>8</sup>

#### **Case Study: Detailed Urban Plan and a SEA for the Beach Area of the City of Varna, Bulgaria<sup>9</sup>**

Until recently, Bulgarian legislation provided for – public participation in plans only at a public hearing for announcing the plan and to hear the results from the SEA after both of them are ready. There was no explicit

<sup>8</sup> Public Participation in Strategic Decision-making. Paper prepared by the Secretariat of the Aarhus Convention in consultation with the Bureau to the Convention. P.5. <http://www.unece.org/env/pp/>

<sup>9</sup> Case study presented by Lyudmil Ikonov, IAIA, Bulgaria, and adapted by the author of the pamphlet.

requirement for the general public to be involved in the planning process itself.

A new Ordinance on the SEA was adopted in Bulgaria in 2003, stipulating a procedure for involving the general public at an early stage of the planning process. Despite these provisions, the local authorities do not always find it so easy to involve the general public in the development of urban plans and their SEA.

In a recent planning process in Varna, Bulgaria, run as a pilot project (the “Detailed Urban Plan and SEA”) two groups of people had different reasons to “talk” to the public: 1) the city administration; and 2) the SEA team of experts.

The city administration wished to promote its urban development policy by a timely announcement of its vision of the future development of the coastal zone; by getting feedback from the public about their vision of the coastal zone and about the planning process; and by gaining public support for the decisions incorporated in the Detailed Plan.

The SEA experts had entirely different interests in “talking” to the public. Their interest was to identify the main environmental concerns of the citizens; to identify the purposes, the goals and the intentions of the different public sectors related to the beach zone; and to get creative ideas for future use of the environmental resources and concrete technical solutions of existing environmental problems.

There have been insufficient provisions for public participation in the development of urban plans and their environmental assessments in Bulgaria and a lack of experience among the local authorities in involving the public in such processes.

The Varna SEA process worked:

- To complement the official process of development of the Detailed Urban Plan and the SEA process;
- To include all stakeholders in the decision-making process;
- To try alternative ways, different from those provided by the Bulgarian legislation, for involving the public in the development of urban plans.

The process included the following major steps:

- Identification of the stakeholders (7 groups of stakeholders were identified);
- Selection of methods and techniques for approaching and involving the public in the decision making and in the SEA process (12 different methods were used);
- Approaching the public - the “seven different times” concept was used;
- Analyses of the information acquired (done by specialists on the basis of specially prepared Terms of Reference);

- Decision on the SEA report made by the Competent Authority (including the supplement to the report made on the basis of the information feedback obtained from the public).

Twelve different methods and techniques were used for approaching and involving the public in the decision making on the Detailed Urban Plan of the Beach Area in Varna and in the SEA process:

- 1) Public opinion poll (350 interviews on the basis of a 4-page questionnaire);
- 2) Telephone enquiries;
- 3) Public meetings;
- 4) Articles in the press;
- 5) TV information about the results of the public meetings;
- 6) Staffed display of the Urban Plan, the SEA Report and other relevant materials;
- 7) Press announcements about the public meetings and about the staffed display of materials;
- 8) Radio announcements about the public meetings and the staffed display of materials;
- 9) Written invitations for an expert workshop;
- 10) Expert workshop;
- 11) Staffed telephone lines;
- 12) Non-staffed displays of the Urban Plan Concept and of the SEA main findings;

Almost all the methods that were used proved to be quite efficient and created excellent results. They provided opportunities for the general public to participate meaningfully in the decision-making process for the Detailed Urban Plan and in the infrastructure planning by giving comments and suggestions, and expressing its demands. The SEA team and the city authorities provided information to the general public about the procedure for the development of the Detailed Urban Plan, the SEA and the Infrastructure Planning. Important feedback was obtained from the citizens which was extended to the competent authorities who were responsible for approving the Detailed Urban Plan and the SEA.

This pilot project tested and verified the effectiveness of several alternative ways for involving the public in the development of a detailed urban plan and an SEA of a very sensitive zone (both in environmental and in social context) in a well developed middle-sized East European city (400,000 inhabitants). Many useful results were achieved, coupled with definite benefits for the city administration, for the local politicians, for the developers and for the SEA team of experts, including:

- High level of public awareness;
- Significant public interest (more than 500 people attended the public hearing of the SEA; Report and 15 newspaper articles had been published);
- Public support for the planning process and confidence in the urban planning decisions;
- Demonstration of important practical linkages between the Aarhus Convention and the Espoo Convention/SEA Protocol;

- Technical alternatives for building the coastal infrastructure (drinking water supply and sewer system) and for utilizing the geothermal mineral waters, suggested by the public;
- *The Transverse Bypass Method* – an engineering solution for coping with the beach erosion and for increasing the total beach area in the urban coastal zone, suggested by the public.
- Public involved not only in the development of the urban plan and its SEA, but also in the subsequent Implementation of the plan.

## 2. Public participation in policies

The Aarhus Convention covers *all* policies relating to the environment, and no requirement for a significant effect is included.<sup>10</sup> The SEA Protocol covers only *policies* likely to have a *significant effect* on the environment, including health, and it applies only to the extent appropriate.

### *Example: Regulation on Public Consultations , Ukraine*

The Cabinet of Ministers of Ukraine recently prepared a regulation on broad public consultation. Its aim is to create organizational and legal mechanisms of public participation in the process of formation and realization of state policy by executive authorities.<sup>11</sup> The draft regulation was made publicly available on the governmental Website on September 30, 2003, for public comment.<sup>12</sup> (This commenting process itself is an implementation of the concept of public participation.)

According to the draft regulation, public discussion will be mandatory for programs of activity of the Cabinet of Ministers, and for draft legislative and normative acts concerning citizens' rights, their freedoms, and interests. Methods of public consultation will be chosen by the governmental authority. Among possible methods are the following: open public debate in mass media (radio, TV), public hearings, round tables, conferences, seminars, direct telephone "hot lines," conducting sociological surveys, and simply monitoring of mass media.

The regulation provides that public discussion and different opinions should be taken into account in decision making. Results of public discussions, the final decision, arguments on which it based, and analysis of rejected alternatives shall all be made publicly available.

## 3. Public participation in preparation of executive regulations

<sup>10</sup> Ibid. P.6

<sup>11</sup> Regulation on Procedure of Conducting Consultations with Public on the Matters of Formation and Realization of State Policy by Central and Local Bodies of Executive Power with the goals to implement the Decrees of the President of Ukraine "On Preparation of Proposals for Ensuring Glasnost and Openness of Activities of Governmental Authorities" (on May 21, 2001) and "On Additional Measures Ensuring Openness in Activities of Governmental Authorities" (on August 29, 2002).

<sup>12</sup> <http://www.kmu.gov.ua/control/newsnpd/projects>

Article 8 of the Aarhus Convention provides:

“Each Party *shall strive to promote effective public participation* at an appropriate stage, and while options are still open, during the preparation by public authorities of *executive regulations and other generally applicable legally binding rules* that may have a significant effect on the environment.”

The public should be given the opportunity to comment on the draft. The result of the public participation should be taken into account as far as possible.

The SEA Protocol takes a soft and narrow approach toward *regulations and legislation*. It contains essentially no procedural requirements here. The procedure established in the SEA Protocol for plans and programs might be used by Parties – to the extent appropriate – for preparation of policies and legislation, or it might not be. Furthermore, the Protocol covers only legislation that is likely to have a significant effect to the environment, including health.<sup>13</sup>

Article 8 of Aarhus Convention, on the other hand, clearly covers public participation in executive regulations and generally applicable legally binding normative instruments.<sup>14</sup> Article 8’s procedures for public participation are less detailed than in Article 6 for public participation in concrete activities, but Article 8 does state that the following steps should be taken:

- a sufficient time-frame for effective public participation ;
- publication of draft rules or making them publicly available in other ways;
- an opportunity for public to comment draft directly or through representative consultative bodies;
- public participation must be taken into account as far as possible.

These are actually quite substantial steps that can open up the process of adopting executive regulations to significant public participation.

## **E. Implementation of the SEA Protocol and the Aarhus Convention: Role of Civil Society**

### **1. Implementation of the SEA Protocol**

Civil society can start playing an important role in implementation of environmental assessment (including public participation) at the strategic level in three ways:

- demanding the use of strategic environmental assessment at the national and local levels in their countries;

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<sup>13</sup> The term “legislation” is not determine in the Protocol, therefore, it may be interpreted broadly, including laws, adopted by parliaments, and regulations of executive authorities.

<sup>14</sup> This may be interpreted broadly, including laws and executive regulations.

- pushing for ratification of the SEA Protocol within their countries;
- helping implement the SEA Protocol internationally.

**a. National Implementation of SEA**

Strategic environmental assessment already exists in many countries. Most countries of Eastern Europe, Caucasus, and Central Asia have requirements for so-called *ecological expertisa* (expert environmental review) and these requirements apply to all important government decisions that may affect the environment. In other countries of Central and Eastern Europe the EIA system applies to important government decisions such as plans, programs, legislation, and even policies. In the European Union some countries have already been using strategic environmental assessment for many years, while others must now start doing so because of European Union Directive of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.

Civil society can help make SEA a tool for both environmental protection and public participation by taking these steps:

- monitor national implementation of SEA.
- begin insisting on the public's right to participate in preparation of specific plans, programs, policies, executive regulations and legislation that it learns about.

**b. National Ratification of the SEA Protocol**

36 countries of the 55 UN ECE countries have signed the SEA Protocol. The next step is ratification and modification of legislation to conform to the Protocol.

NGOs could:

- conduct workshops for promotion of SEA, explanation of its procedure and benefits, and the benefits of ratification of the SEA Protocol;
- start lobbying for ratification of the SEA Protocol (or signature, where this has not yet occurred)
- participate in changing legislation in their countries where an SEA procedure exists – to bring it into compliance with the SEA Protocol;
- participate in drafting and commenting on new legislation in the countries where SEA is to be newly created;
- start capacity-building for the implementation of the SEA Protocol.

**c. Participation in International Processes**

Civil society must continue to play an active role in the international processes involving the SEA Protocol, including the Meetings of Signatories, Working Groups, Task Forces, and preparation of guidance documents. For example, NGOs could:

- exchange information and experience of countries with advanced SEA systems for collection and dissemination of good practices;
- participate in preparation of UN ECE's Implementation Guide for the SEA Protocol;

## **2. Implementation of the Article 7 and 8 of the Aarhus Convention**

Articles 7 and 8 of the Aarhus Convention are ready to be implemented now. They already contain the necessary obligations of the Parties. They require that:

- each Party make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programs (Article 7);
- each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment (Article 7).
- each Party strive to promote effective public participation in preparation of executive regulations and other legally binding norms (Article 8).

Civil society can take specific steps at the national and international levels to promote implementation of public participation in plans, programs, policies, executive regulations and legislation.

### ***a. At the National Level***

What can and should be done? NGOs can:

- organize workshops and seminars to discuss the possibility of and obstacles to public participation in plans, programs, policies, executive regulations and legislation
- evaluate and lobby for necessary changes in national legislation;
- collect and disseminate good practices in this field;
- insist on the right to participate in commenting on plans, programs, policies, or executive regulations, using Articles 7 and 8 and relevant provisions of national legislation;
- institute legal actions in national courts against specific government actions where plans, programs, policies, or executive regulations are

adopted without compliance with the requirements of Articles 7 and 8 or national legislation.

- bring well-documented examples of non-compliance to the attention of the Compliance Committee of the Aarhus Convention, through a complaint filed with the Secretariat of the Convention.

***b. At the International Level***

The Working Group of the Parties to the Aarhus Convention will discuss at its meeting in Geneva, on October 23-24 what are the next steps.<sup>15</sup> It will then recommend that the Second Meeting of the Parties make a decision.

Possible steps include:

- Enhancing public participation in preparation of plans, programs, policies, executive regulations and legislation by collection and dissemination of good practices, conducting workshops/seminars, preparing publications on the issue, including handbook of good practices; sharing experience through electronic means; education and empowerment of public, etc;
- Preparation of guidelines on public participation in strategic decisions (through intergovernmental negotiation or by a group of experts); assistance for Parties to implement Articles 7 and 8 of the Aarhus Convention;
- Development of a new Protocol or an amendment of the Convention.

Civil society can play a role in all of those options, whatever the Second Meeting of the Parties will decide (in May 2004).

NGOs should participate in preparation of guidelines, amendments to the Convention or a new Protocol, and intergovernmental working groups and expert task forces.

**F. Conclusion**

Two separate international instruments contain important provisions toward a common goal – to enhance public participation in strategic decisions and promote good governance. Citizens and civil society have opportunities to make significant changes in the ways that their countries handle environmental problems. What is needed now is to begin to take actions that will make the promises of the SEA Protocol and Aarhus Articles 7 and 8 a reality.

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<sup>15</sup> It will discuss possible options that were prepared by European ECO Forum and the Regional Center for Central and Eastern Europe for the Second Meeting of Signatories in July 2002 (CEP/WG.5/2000/10)

