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Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters

Working Group of the Parties

Twentieth meeting

Geneva, 15–17 June 2016

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 sixth meeting

Summary

At its second extraordinary session (Geneva, 19–22 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, and requested the Task Force to report on its activities through the Working Group of the Parties (ECE/MP.PP/2010/2/Add.1).¹ At its fifth session (Maastricht, the Netherlands, 30 June–1 July 2014), the Meeting of the Parties extended the Task Force's mandate through decision V/2 (see ECE/MP.PP/2014/Add.1 and Corr.1),² setting out additional issues to be addressed by the Task Force.

In accordance with the above mandates, the present document contains the report of the Task Force on its sixth meeting (Geneva, 10–11 February 2016).

¹ Available from <http://www.unece.org/env/pp/emop2010.html#/>.

² Available from http://www.unece.org/env/pp/aarhus/mop5_docs.html.



Contents

	<i>Page</i>
Introduction	3
I. Opening of the meeting and adoption of the agenda	3
II. Obstacles, challenges and good practices in relation to public participation in decision-making	4
A. Identification and notification of the public concerned	4
B. Early public participation.....	6
C. Decisions on proposed activities not listed in annex I to the Convention.....	9
III. Implementation of the Maastricht Recommendations	10
IV. Thematic session on energy-related planning	12
V. Closing of the meeting	16

Introduction

1. The sixth meeting of the Task Force on Public Participation in Decision-making under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) was held on 10 and 11 February 2016 in Geneva, Switzerland.
2. The meeting was attended by representatives of the following Governments: Albania, Armenia, Belarus, Croatia, Denmark, France, Georgia, Greece, Italy, Kazakhstan, Kyrgyzstan, Republic of Moldova, Slovakia, Tajikistan, Ukraine and the United Kingdom of Great Britain and Northern Ireland. A representative of the European Commission was also present.
3. The following United Nations organizations, intergovernmental organizations, international financial institutions, regional environmental centres and Aarhus Centres were represented at the meeting: the European Bank for Reconstruction and Development (EBRD); the secretariat of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention); the Organization for Security and Cooperation in Europe; the Regional Environmental Centre for Central and Eastern Europe; the Regional Environmental Centre for Moldova; and the Yerevan Aarhus Centre.
4. Furthermore, representatives of international, regional and national environmental non-governmental organizations (NGOs) participated in the meeting, many of whom coordinated their input within the framework of the European ECO Forum.
5. An independent expert from Poland also attended the meeting.

I. Opening of the meeting and adoption of the agenda

6. The Task Force Chair, Ms. Loredana Dall'Ora (Italy), opened the meeting.
7. The Task Force adopted its agenda as set out in document AC/TF.PP-6/Inf.1.
8. The secretariat informed participants about two background papers available on the meeting website that had been developed to facilitate the discussions on challenges, obstacles and good practices in public participation in decision-making as well as on energy-related planning.³ Document AC/TF.PP-6/Inf.2 set out selected relevant resources, in particular the *The Aarhus Convention: An Implementation Guide* (Aarhus Implementation Guide),⁴ the Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters (ECE/MP.PP/2014/2/Add.2)⁵ (Maastricht Recommendations), and the 2014 synthesis report on the status of implementation of the Convention (ECE/MP.PP/2014/6).⁶ Background paper AC/TF.PP-6/Inf.3 set out a selection of relevant considerations, findings and reports of the Aarhus Convention's Compliance Committee.

³ Documents for the sixth meeting, including a list of participants, statements and presentations are available from [http://www.unece.org/env/pp/aarhus/ppdm6.html#/.](http://www.unece.org/env/pp/aarhus/ppdm6.html#/)

⁴ United Nations publication, Sales No. E.13.II.E.3, available from http://www.unece.org/env/pp/implementation_guide.html.

⁵ Available from <http://www.unece.org/environmental-policy/conventions/public-participation/aarhus-convention/tfwg/envppppdm/ppdm-recs.html>.

⁶ The synthesis report is available from [http://www.unece.org/env/pp/aarhus/mop5_docs.html#/.](http://www.unece.org/env/pp/aarhus/mop5_docs.html#/)

II. Obstacles, challenges and good practices in relation to public participation in decision-making

9. The Chair opened a discussion that aimed to identify the main obstacles and challenges to effective public participation in all types of decision-making within the scope of articles 6, 7 and 8 of the Convention at the national, provincial and local levels, including barriers to the participation of NGOs, the general public and marginalized groups. The session would also serve as a forum to exchange good practices to address the main obstacles in relation to public participation in decisions on proposed activities not listed in annex I to the Convention, in accordance with article 6, paragraph 1 (b), of the Convention. It was hoped that the discussion would also help to identify further needs in the areas mentioned.

A. Identification and notification of the public concerned

10. The representative of Croatia said that, as a good practice, in Croatia notification was not only done by posting the information on the official websites, but also on notice boards in the lobbies of city administration buildings, in the relevant city district offices and local municipal board offices and in daily newspapers. She outlined the procedure for the organization of public hearings and the submission of opinions, suggestions and objections, and provided statistical data on access to the Internet by age and by employment status. She also detailed how the public and the public concerned were involved in the drafting of different legal acts. A special portal dedicated to public consultation had been established, which provided for continuous communication between the public authorities and the public concerned with regard to all regulations in the process of adoption.

11. The representative of Albania spoke about related best practices and challenges in Albania. She outlined the national legal framework and procedure for conducting public hearings, the practice of the notification of legal acts via websites of the Ministry of Environment, agencies and municipalities, social media, Facebook, local papers and advertising boards. Among existing challenges were developing capacity and strengthening “the spirit” of a democratic decision-making culture. Trainings for authorities on identification and notification procedures had been held in different regions of the country. In addition, a manual on public participation procedures had been developed with support from the World Bank.⁷

12. In the following discussion, a representative of Nuclear Transparency Watch commented on the role of civil society in the dissemination of information, providing concrete recent examples, the good practice of informing relevant NGOs about upcoming decision-making procedures in environmental matters, the usefulness of recommendations contained in the Maastricht Recommendations and the appropriate timing of public hearings, which should not be held at late hours or last too long. A representative of the Forum of Women’s NGOs in Kyrgyzstan specified the need for the institutionalization of women’s groups, capacity-building for those organizations, and a more active involvement of rural women’s organizations in public participation processes. A representative of the NGO Iuventum noted that, as a good practice, all information regarding the decision-making in environmental matters should be posted not only on the official website of the ministries, where the critical comments could be easily removed, but also on the websites of relevant NGOs.

⁷ Available from <http://www.mjedisi.gov.al/al/programi/sherbime-dhe-transparence/transparence-dhe-pjesemarrje>.

13. Mr. Jerzy Jendroška, a member of the Aarhus Convention Compliance Committee participating in the meeting as an independent expert, emphasized that, generally, the public participation process should start with the identification of the public or public concerned and, depending on the specificity of the identified public or public concerned, the Parties should design the most efficient means of notification. In that regard, it should be noted that non-official statistics on access to the Internet usually showed a much smaller percentage of the public had real access to the Internet than was presented in official statistics. Also, according to academic research, young people, who represented the majority of those who used the Internet, usually did not consult official websites of ministries and thus the use of Facebook or other social Internet platforms for notification should be encouraged. Participants should look at the findings of the Compliance Committee, including instances where methods of notification had been found insufficient and the public had not been adequately informed. As a good practice, NGOs having previously expressed interest in certain environmental activities of the central authorities should be informed individually.

14. The representative of EBRD outlined the main pillars of the effective identification and notification of the public and public concerned, with a special focus on the most vulnerable groups. It was necessary to develop a consultation plan (or “public engagement plan”) that met the needs of the public concerned, as well as to publicize the process, to ensure public engagement. The biggest problem was a lack of effort to find out in advance how the public concerned wanted to be consulted, how they wanted to be involved and how they wanted to obtain information. Special attention should be paid to social, economic and cultural factors, which should help to elaborate the most efficient method of notification, such as local radio, free newsletters, village bulletin boards and posters in communities. More resources should furthermore be made available for consultations with groups that might not have a voice, and consideration should be given to the special status and needs of refugees. In that regard, there were also a number of problematic aspects of public meetings or hearings, for example, where certain participants felt unable or unwilling to speak or the discussion was dominated by the developer’s interests. It was necessary to establish a grievance process for workers and for the public, to publicize those processes and to ensure their efficiency and adequate time frames for them.

15. The representative of the NGO Instituto Internacional de Derecho y Medio Ambiente (Spain) noted that in general there was no practice of identification of the public concerned in Spain, although there were a few specific provisions in national legislation that required it. If the public concerned wanted to be recognized as such, it had to file an application for such recognition. Most of the time notifications were done only through official journals, but it would also be good to use social Internet platforms, such as Facebook and Twitter. Furthermore, there were also questions in terms of the adequacy of notifications with respect to the clarity of the text and its subject. There had also been insufficient time given for the examination of project documentation and the submission of comments on several projects, such as the “Combined Cycle Power Plant”, the “UGS Project” and the “Wind Farm project”.⁸

16. In the following discussion the representative of Nuclear Transparency Watch noted issues regarding the insufficient time for the submission of comments and the complexity of technical documentation and non-technical summaries, which sometimes presented unrelated pieces of technical information or failed to present relevant technical information to the public in an accessible form. The representative of the Yerevan Aarhus Centre also noted problems with the complexity of technical documentation for the public concerned in

⁸ Information about these projects is available (in Spanish) on the Government’s website — see <http://www.boe.es/>, https://www.boe.es/diario_boe/txt.php?id=BOE-B-2008-225082 and https://www.boe.es/diario_boe/txt.php?id=BOE-B-2015-38956, respectively.

rural areas and countryside. The EBRD representative informed participants about the availability of an alert system on the EBRD website, which provided notification to those who registered regarding all environmental impact assessments (EIAs) related to EBRD projects. There was a requirement that all project-related information had to be published on the EBRD website, in addition to the developer's website, and all EIA documentation had to be published in one of official languages of EBRD.

17. Mr. Jendroška noted that the national legislation of most Parties did not follow the recommendations contained in paragraph 52 of the Maastricht Recommendations (i.e., the legal framework should clearly require that the public concerned be informed in an adequate, timely and effective manner), and also did not differentiate the public participation procedure depending on the character of the project or its territorial scope.

18. Following the discussion, the Task Force:

(a) Took note of the experiences, good practices and challenges shared by presenters from Croatia, Albania, EBRD and the NGO Instituto Internacional de Derecho y Medio Ambiente (Spain), and noted the subsequent discussions and comments from the floor;

(b) Reiterated that identification and notification of the public concerned remained an important issue with a number of challenges;

(c) Agreed to further consider how to determine who were the public concerned and what means to use in their identification and notification, taking into account social and economic factors, such as access to the Internet, cultural aspects and the living environment of marginalized and minority groups, so as to ensure the broadest possible coverage of the public concerned;

(d) Took note of a number of suggestions put forward by participants, including:

(i) To explore the possibility of using NGO networks for effective notification;

(ii) To learn from good practices of using social media platforms, such as Facebook and Twitter, for informing youth;

(iii) To consult potentially affected people about their preferred way of communication;

(iv) To develop "public engagement" plans;

(v) To involve well-known local people in the dissemination of information regarding the upcoming environmental decision-making procedures;

(vi) To ensure that the text of the notification was easily understandable;

(vii) To establish an effective grievance procedure to resolve the public's concerns at an early stage.

B. Early public participation

19. The representative of Slovakia spoke, among other things, about the importance of early public participation in strategic environmental assessment (SEA) and EIA. The national legal framework for public participation in SEA and EIA provided a legal definition of the public concerned and specified the time frames for and the basic principles of public participation at the scoping and screening stages. Documentation related to the EIA and SEA processes was published in electronic form online (www.enviroportal.sk) and was fully available to the public.

20. The representative of the United Kingdom presented the “pre-application process” for projects in England and Wales, which was part of the regime established by the Planning Act 2008.⁹ Pre-application was a vital stage that helped the applicant to identify and resolve issues at the earliest stage, enabled members of the public to influence proposed projects, helped local people to understand the potential nature and local impact of the proposed project and enabled applicants to obtain important information about the project’s economic, social and environmental impacts. Before submitting an application, developers were required to carry out extensive public consultation on their proposals. And before consulting, a developer had to prepare a “Statement of Community Consultation”, setting out how they intended to consult on their proposal, and to make it available for inspection by the public. What constituted a local community should be determined by the scope of each particular project. There was no fixed timeline for the pre-application process; however, usually it lasted around one to two years.

21. Following the presentations, a representative of Nuclear Transparency Watch noted that the age of the public who could participate was restricted to those over 18 years of age in Slovakia. Also, the time limit of 21 days for public participation prescribed in Slovak law could not be upheld as “reasonable” under the Convention in cases involving complicated projects with a lot of documentation. A representative of the Forum of Women’s NGOs in Kyrgyzstan noted the importance of including different categories of the public under the definition of the public concerned, such as local impact and women’s groups. A representative of the Consultation Institute wondered whether a well-developed democratic system of government had an impact on the efficiency, democratic nature or fairness of public participation procedures.

22. The representative of France outlined the current legal system in the country, noting that France wanted to modernize, simplify (“one-stop approach”) and extend the scope of its public participation procedures. Some challenges to improving public participation at an early stage included knowing when such early public participation should be initiated, how the public could be informed of such activities or policies at such an early stage and knowing which activities, plans, programmes and policies should be subject to early public participation. Examples of good practice included entrusting the organization of early notification and consultation to an independent person or entity (e.g., a national commission for public debate/guarantor), asking for complementary independent expertise, the possibility for the public to make not just observations but also proposals, letting the public know how its comments and proposals were taken into account and attaching the outcome of consultations with the public to any potential future public inquiry.

23. The representative of Georgia outlined the existing national legislation and informed participants about the Government’s obligations under the European Union-Georgia Association Agreement. The draft Code of Environmental Assessment provided for early public participation in the screening and scoping stages of EIA and identified different options for the public to express its opinions and concerns. The main challenges to early public participation in Georgia were a lack of public awareness and a lack of capacity to organize public participation processes. To tackle those challenges it was necessary to organize trainings, lectures, consultative meetings and capacity-building for staff responsible for the organization of the public participation procedures.

24. In the following discussion a representative of “Khazer” Ecological and Cultural NGO emphasized that while the public had rights, it had no real means to influence the decision-making process. The representative of the Consultation Institute supported the idea of a neutral, independent person as guarantor, who could ensure that public participation

⁹ The text of the Planning Act 2008 is available from <http://www.legislation.gov.uk/ukpga/2008/29/introduction>.

was conducted fairly, and underlined the need to build the capacity of NGOs and public institutions that could help with the organization of public participation. The representative of Nuclear Transparency Watch also supported the idea of involving a guarantor. The representative of the United Kingdom noted that recommendations of independent experts were a very important element, and a critical part of the consideration of large energy projects.

25. Mr. Jendroška pointed out that, according to the Maastricht Recommendations, consultations should take place before any decision was taken, when the zero option was still available. It was important to prescribe clearly the framework for public participation in tiered decision-making in national legislation, so that the public could be aware what decisions would be taken at which stage. It should be noted that the Convention did not directly require public participation at the screening and scoping stages of EIA and SEA, or a pre-application process, and thus there could be different standards for different countries. Furthermore, the Convention did not contain any provisions regarding the age limit of the participants of the public participation, and until now that issue had not been brought before the Compliance Committee.

26. A representative of An Taisce — The National Trust for Ireland referred to the Paris Agreement and underlined that in respect of climate matters everyone was the public concerned, including future generations. He suggested incorporating climate issues in future Task Force discussions.

27. Following the discussion, the Task Force:

(a) Took note of the experiences, good practices and challenges shared by presenters from Slovakia, the United Kingdom, France and Georgia, and noted the subsequent discussions and comments from the floor;

(b) Admitted that, despite the discussions on the topic, early public participation remained an outstanding issue, and faced a number of challenges, in particular ensuring that participation came early enough when the “zero option” was still available;

(c) Took note of a number of suggestions put forward by the participants, including:

(i) Ensuring effective public participation already at the screening and scoping stages of EIA and SEA, at the stage of the OVOS¹⁰ procedure or at the “pre-application” stage;

(ii) Determining when early public participation should occur in tiered decision-making processes;

(iii) Identifying correctly the subject of the early public participation;

(iv) Notifying the public effectively about the early public participation procedures;

(v) Providing comprehensive information at the earliest stage that allowed for an effective analysis;

(vi) Ensuring that the outcome of early public participation was taken into account;

¹⁰ The OVOS/*expertiza* system is a development control mechanism followed in many countries of Eastern Europe, the Caucasus and Central Asia. The Aarhus Convention Compliance Committee has held that the OVOS and the *expertiza* should be considered jointly as the decision-making process constituting a form of EIA procedure (see ECE/MP.PP/C.1/2013/9, para. 44).

(vii) Exploring the possibility for the public to provide not only comments, but also concrete proposals;

(d) Stressed the importance of further considering the issue of early public participation, taking into account the challenges highlighted during the discussion and learning from the good practices presented.

C. Decisions on proposed activities not listed in annex I to the Convention

28. Mr. Jendroška presented the genesis and legislative history of article 6, paragraph 1 (b), of the Convention, which referred to decisions on proposed activities not listed in annex I. There had been limited experience in the practical implementation of that provision. The Aarhus Implementation Guide and the Maastricht Recommendations contained more detailed explanations on how the provision should be implemented. It was important to establish a clear mechanism through national legislation to facilitate the implementation of article 6, paragraph 1 (b). He suggested some of the main features of such a mechanism, as well as tools for the identification of activities that might fall under article 6, paragraph 1 (b), and a possible list of such activities. The Compliance Committee had found¹¹ that the outcome of the respective EIA screening process was a determination under article 6, paragraph 1 (b), of the Convention. The speaker also brought to the participants' attention the language of the provision, which required that the proposed activity "may have a significant effect on the environment". In this context, he highlighted the importance of the criteria which determine whether the activity may have a significant effect on the environment, and referred to the appendix III of the Espoo Convention and annex III of the EIA Directive¹². He also noted that the Aarhus Convention did not require that the "significant effect on the environment" should be an adverse effect; therefore, activities that might have a significant positive effect on the environment also fell under article 6, paragraph 1 (b). Finally, Mr. Jendroška spoke about the practical application of article 6, paragraph 1 (b) in the countries of the European Union.

29. The representative of the United Kingdom presented examples of the practical implementation of article 6, paragraph 1 (b), such as projects involving small electric lines, and outlined two different types of legislation, for big projects and for small ones, such as those governed by the Town and Country Planning (Environmental Impact Assessment) Regulations 2011.¹³ He wondered what the appropriate trigger for the engagement of article 6, paragraph 1 (b), was and whether the application of the Habitats Directive¹⁴ or other European Union directives should be considered the appropriate trigger. He also challenged the notion that activities that were subject to a requirement for an environmental permit should also automatically fall within article 6, paragraph 1 (b).

30. In the following discussion, the representative of the European Commission asked whether and in what way article 6, paragraph 1 (b), influenced public participation requirements in the context of appropriate assessments pursuant to the Habitats Directive. The representative of Nuclear Transparency Watch questioned the way in which Parties

¹¹ Compliance Committee findings on communications ACCC/C/2010/45 and ACCC/C/2011/60 (United Kingdom) (ECE/MP.PP/C.1/2013/12) and ACCC/C/2010/50 (Czech Republic) (ECE/MP.PP/C.1/2012/11).

¹² Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.

¹³ The text of the Regulations is available from <http://www.legislation.gov.uk/ukxi/2011/1824/made>.

¹⁴ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

determined whether projects would be likely to cause a “significant adverse effect on health or the environment”, as set out in paragraph 21 of annex I to the Convention. A representative of Green Dossier drew attention to the environmental situation in the southern part of Ukraine, where significant territory had been abandoned due to the occupation of Crimea. That had resulted in the uncontrolled cultivation of sunflowers, which had a significant impact on the environment and hence should be subject to article 6, paragraph 1 (b). Mr. Jendroška noted that article 6, paragraph 1 (b), established “an obligation of efforts”. Parties should prove that there is a procedure or mechanism at the national level to determine whether the activity might have a significant effect on the environment.

31. Following the discussion the Task Force:

(a) Took note of the experiences, good practices and challenges shared by Mr. Jendroška and by a presenter from United Kingdom, and noted the subsequent discussion and comments from the floor;

(b) Noted that article 6, paragraph 1 (b), did not provide a fully defined list of activities and that its application was therefore rather challenging, in particular with regard to issues such as:

- (i) The criteria for identification of the proposed activities not listed in annex I;
- (ii) The determination of the “significant effect on the environment” of the proposed activity;
- (iii) The criteria for the assessment of the significance of the effect at the national level;
- (iv) The evaluation of the degree of certainty of the significant effect;
- (v) The identification of those responsible for undertaking the determination;
- (vi) The involvement of the public in the determination of the significance of effect;
- (vii) Whether States should undertake to develop a procedure or guidelines for the assessment of the significance of the effect on the environment at the national level;

(c) Stressed the importance of further considering the issue and to promote the implementation of article 6, paragraph 1 (b);

(d) Encouraged Parties to report on the application of article 6, paragraph 1 (b), in national implementation reports.

III. Implementation of the Maastricht Recommendations

32. The Chair invited participants to share good practices and experiences in the implementation of the Maastricht Recommendations and to discuss existing challenges to their implementation. A survey on the topic had been undertaken prior to the meeting in order to facilitate the discussion.

33. A member of the Aarhus Convention secretariat, presenting the survey results, noted that implementation challenges were mainly connected to the need to translate the Recommendations into national languages and to distribute them to public officials, NGOs and the private sector at national and subnational levels, as well as to organize trainings on their use. There was also an absence of mechanisms for raising awareness about the Recommendations among segments of the public that were difficult to reach, such as

vulnerable and/or marginalized groups. The speaker also presented good practices on the promotion of the Maastricht Recommendations shared by Parties.

34. The representative of the NGO Ecohome (Belarus) spoke about good practices in and obstacles to the implementation of the Recommendations in Belarus. Paragraph 7 (c) of the Recommendations (ensuring awareness of the public and the authorities of possibilities for the public to participate in decision-making and the procedures to be used) was not addressed through the national legislation, and the implementation of paragraph 7 (h) (ensuring awareness of how to appeal or contest a decision) faced challenges. Paragraph 40 (b) (regarding the time frame for the measurement of threshold values) was applied in law enforcement practice in Belarus. The recommendations contained in paragraphs 124 (clear obligation to take due account of the outcome of public participation) and 135 (regarding the provision of information to the public on the final decision) had still not been introduced in the national legal system. Referring to paragraph 184 (on the evaluation of whether a proposed executive regulation or law might have a significant effect on the environment), he recognized the existence of good practice and also noted that there had been positive legislative changes regarding public participation in Belarus. Research on public participation had also been done by the Green Network and European Transformation Centre in 2014–2015.¹⁵

35. In the following discussion concerns were expressed by the representative of the Regional Environmental Centre for Central and Eastern Europe, who suggested considering the possibility of making the Maastricht Recommendations more accessible (interactive digital version, simplified text, friendlier format) for the public and the business sector. Representatives of Croatia and the Yerevan Aarhus Centre shared good practice in promoting the Recommendations, as did the representative from An Taisce — The National Trust for Ireland, who encouraged civil society to circulate the Recommendations using innovative and different media resources.

36. The Task Force:

(a) Thanked the secretariat for the organization of survey on the use of the Maastricht Recommendations and for presenting its results;

(b) Took note of the experiences shared by the NGO Ecohome (Belarus), and the subsequent discussions, comments and suggestions from the floor regarding the promotion of the Maastricht Recommendations;

(b) Noted that the Maastricht Recommendations had been developed as a tool to help the Parties in the organization of effective public participation in decision-making in environmental matters and therefore it was important to promote them widely in countries;

(c) Recognized that first steps for the use of the Maastricht Recommendations had already been taken by many the Parties, but that more efforts should be made to reach out different target groups;

(d) Encouraged Parties to raise awareness on the Maastricht Recommendations, including by translating them into national and local languages, and distributing them among all target groups dealing with public participation at the national and subnational levels, including the public authorities, NGOs, operators, the private sector and the general public, by using the most effective tools, not limited to the posting of information on the website of the ministries or Aarhus Centres.

¹⁵ The research is available (in Russian) from <http://greenbelarus.info/library/praktika-uchastiya-obshchestvennosti-v-processe-prinyatiya-ekologicheskikh-znachimyh-resheni-0>.

IV. Thematic session on energy-related planning

37. The Chair opened the thematic session on energy-related planning, which aimed at discussing challenges and sharing experiences with regard to public participation in energy-related planning.

38. The representative of the European Commission presented environmental assessment procedures for energy infrastructure projects of common interest, outlining the legislative background and the specificities of permit granting for energy-related projects and some of the relevant European Union environmental laws, in particular the EIA Directive¹⁶ and the latest amendments.¹⁷ The recommendations and requirements for effective public participation included early planning, early public participation, “road-mapping” and scoping of assessments, early and effective integration of environmental assessments and of other environmental requirements, and cross-border cooperation. He detailed the different stages of the EIA procedure in European Union law and drew attention to the specific information which should be provided by developers. He also noted new modalities for the consultation stage. Those included the requirement to inform the public electronically and by public notices; the requirement to make relevant information electronically accessible to the public through at least a central portal or easily accessible points of access at the appropriate administrative level; and the establishment of reasonable time frames for the different phases of the decision-making. The recent amendment to the EIA Directive had also introduced a “one-stop shop” approach for the approval of projects and a new requirement that the summary of the results of the consultations and the information gathered, as well as how those results have been incorporated or otherwise addressed, had to be made available to the public.

39. The representative of Italy presented the public consultation process regarding amendments to the market mechanism for the promotion of energy efficiency (so-called “Conto Termico”) in the light of the Convention’s requirements. He outlined different aspects of the market mechanism and the relevant legislation. He informed about the guidelines for the public consultation which had been made publicly available on the website of the Ministry of Economic Development. Italy had fulfilled its obligation under article 7 of the Convention: it had provided for reasonable time frames for participation; the early involvement of the public; and had ensured that due account was taken of the outcome of the public participation. However, it remained less clear how the comments would be handled and how they would be taken into account in the subsequent decision-making process. The Ministry for the Environment, Land and Sea would continue monitoring those aspects. In relation to bio-fuels, the review of the applicable law was taking place without open public consultations, but with the involvement of representatives of business and industries of the relevant sector, as envisaged by paragraph 167 of the Maastricht Recommendations. The Italian Ministry for the Environment, Land and Sea was not the entity responsible and accountable for that process; nevertheless, the Ministry would take adequate information measures in order to update the Task Force on developments in that regard.

40. The representative of the Aarhus Centre of Belarus outlined the national legal system and presented the Resolution of the Council of Ministers of the Republic of 23 December 2015 No. 1084 “On approval of the Republic of Belarus Energy Security Concept”. Citizens could take part in various stages of the EIA of the energy facilities,

¹⁶ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment.

¹⁷ Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU.

when issuing integrated environmental permits for energy facilities and during the public environmental expertise of energy projects. Public participation during the preparation of strategic documents, however, remained challenging. Communications had been made to the Compliance Committee regarding the energy facilities in Belarus. In that connection, recommendations contained in decision V/9c of the Meeting of the Parties on compliance by Belarus (see ECE/MP.PP/2014/2/Add.1), the Aarhus Implementation Guide and the Maastricht Recommendations, as well as international and national practices, had all been used to amend the legislation.

41. In the following discussion, a representative of Nuclear Transparency Watch noted possible risks of the simplified procedure presented by European Commission for the effectiveness of the public participation, and the necessity of including reasonable alternatives in the public participation procedures in Belarus, such as energy strategies based on the development of energy efficiency and renewable energy sources. A representative of Green Dossier suggested more widely involving NGOs in the development of environmental legislation in Belarus.

42. The representative of Armenia outlined the relevant international and national legislation and legal regulations in the energy sector. She presented examples of the national public participation procedure in energy-related planning, and identified the main challenges, such as disagreement between the local population — which valued the possible social and economic benefits from energy-related projects — and NGOs — which were concerned about negative environmental consequences from those activities. Notification was effective; however, early notification was not provided for in the legislation. With regard to the construction and operation of hydropower stations, public awareness of the potential consequences of the projects, as well as of the possibilities for participation in the decision-making, remained at a low level. The body responsible for the public participation procedure was obliged to consider the proposals and comments received, which were summarized in the minutes of the hearing, including the obligatory video recording of the hearings.

43. The representative of the Consultation Institute gave an overview of the situation with regard to energy-related projects in United Kingdom. The relevant legislation was the Planning and Energy Act 2008,¹⁸ which had some possible drawbacks. The speaker also presented the AarhusCheck,¹⁹ an online tool which allowed developers to make general assessment of their compliance with the public participation requirements of the Convention. He also emphasized the importance of efficient cross-border cooperation in large energy-related projects.

44. The representative of the European ECO Forum spoke about the decision-making on the construction of new nuclear facilities in Ukraine. The main challenges in that process had been a lack of public participation, limited access to judicial review and the absence of the integration of environmental concerns in the final decision permitting the project's development. "Expertise" (i.e., State ecological expertise), according to the current legislation, was done by private organizations. The public was not involved in that process and the expertise report did not require approval by the State authority. The report was not made publicly available, since it was protected by intellectual property rights and could not be challenged in the courts since it was issued by a private company. The opinion of the public concerned was not duly collected and considered in the decision-making on the construction of nuclear power reactors. The final decision of the parliament on the construction on nuclear power plants could also not be challenged through the courts.

¹⁸ Available from <http://www.legislation.gov.uk/ukpga/2008/21/contents>.

¹⁹ Available from <http://tcitoolbox.com/>

45. In the following discussion the representative of the Yerevan Aarhus Centre noted the negative environmental impact of numerous small hydropower stations. The representative of the Regional Environmental Centre for Central and Eastern Europe mentioned a project in Ukraine that aimed to improve the effectiveness of public participation in decision-making on energy-related projects. A representative of the Forum of Women's NGOs in Kyrgyzstan suggested that the BRIC²⁰ countries should join the Global Partnership for Effective Development Cooperation. The representative of the NGO Iuventum noted the fundamental lack of information sharing and solidarity, and emphasized that in the case of the construction of a nuclear power plant the public concerned could include a very large audience.

46. The representative of Nuclear Transparency Watch presented the experience of public participation in energy-related planning in different countries. There were often problems related to the quality of the documentation and procedural problems in public participation during SEA, namely, too short time frames for the public to participate; an absence of hearings or other participative formats; a lack of reporting on how the outcome of the public participation was taken into account; a lack of sufficient detailed alternatives; and a lack of a sufficiently detailed overview of the impacts of nuclear energy. He also identified procedural problems in public participation during EIAs, e.g., related to the time frames for public participation; early public participation; the format of the hearings; consideration of the public's comments; uncertainty concerning the EIA procedure; dealing with uncertainties in information within EIA procedures; highly technical non-technical summaries; an absence of alternatives to the project, including the "zero option"; an absence of an assessment of severe accidents with substantial emissions of radioactive substances; a lack of data on fuel chain emissions; and sufficient inclusion of radioactive waste management. There were also problems with access to justice regarding decisions on energy-related issues, in particular related to absence of standing under article 9, paragraph 2, of the Convention, and article 9, paragraph 3, in the case of SEA procedures; no provisions allowing for the direct applicability of the Convention; the absence of the effective injunctive relief foreseen under article 9, paragraph 4; long-term and high cost court procedures; and a lack of implementation of court rulings.

47. Secretary to the Espoo Convention secretariat presented recent developments in the preparation of good practice recommendations on the application of the Espoo Convention to nuclear energy-related activities. She informed participants about the survey organized to collect good practices and identify existing challenges and the next steps to finalize the document.²¹

48. In the following discussion the representative of the United Kingdom welcomed the development of good practices for public participation on energy-related issues, referring to national legislation regulating public participation in energy-related areas. The representative of the Regional Environmental Centre for Central and Eastern Europe said that the Maastricht Recommendations should be used for nuclear decision-making. A representative of the NGO Iuventum emphasized that United Nations human rights bodies should strengthen their collaboration with with the Aarhus Convention secretariat, citing the example of collaboration on the recent report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes. A representative of An Taisce — The National Trust for Ireland drew attention to the report "Local populations facing long-term consequences of

²⁰ i.e., Brazil, Russian Federation, India and China.

²¹ ECE/MP.EIA/WG.2/2016/5/INF.12, available from <http://www.unece.org/index.php?id=40431#/> (unofficial documents tab).

nuclear accidents: lessons learnt from Fukushima and Chernobyl”, published on the website of Nuclear Transparency Watch.

49. The Task Force:

(a) Took note of the experiences, good practices and challenges shared by presenters from the European Commission, Italy, Belarus, Armenia, the Consultation Institute, the European ECO Forum, Nuclear Transparency Watch, and the Espoo Convention secretariat, and the subsequent discussions and comments from the floor;

(b) Recognized that energy-related planning was a complex, multi-tiered decision-making process, which was often non-transparent and politicized, with a significant effect on the vast number of people within the same state or across the borders, as well as for the current and future generations;

(c) Noted that ensuring effective public participation in such decision-making was indisputably of the utmost importance;

(d) Examined specific examples of public participation in energy-related planning in relation to such projects as nuclear power stations (construction of new reactors), electric power plants, small electric power plants, hydropower plants, small-scale hydropower projects, biofuels and renewable energy facilities;

(e) Noted the concerns expressed by NGOs that often energy-related planning witnessed obstacles to effective public participation. In their view these included the unbalanced presentation of the social and economic benefits in contrast to possible negative environmental consequences from energy-related projects; the absence of early public participation during the elaboration of strategic documents and when a zero option was still possible; an absence of understanding by the public of all the stages of decision-making procedure; a lack of timely assessment of ecological safety requirements; a lack of timely assessment of the full chain of environmental impacts; a lack of assessment of toxic wastes already at the stage of construction; a lack of comprehensive assessment of consequences in case of severe accidents; the complexity and length of technical documentation and not easily understandable non-technical summaries; insufficient time frames for the examination of available documentation and the submission of comments; a lack of effort to duly consider comments; a possible negative effect on the efficiency of public participation under accelerated permit granting; and difficulties in challenging energy-related planning decisions in national courts;

(f) Noted good practices presented by Parties and stakeholders, and encouraged their further development and promotion, namely:

(i) The elaboration and publication of manuals for public participation procedures;

(ii) “Roadmapping” of the overall public participation process;

(iii) Establishment of effective cross-border cooperation;

(iv) Involvement of the public at the screening and scoping stages of EIA;

(v) Preparation of a description of the reasonable alternatives for public scrutiny;

(vi) Provision of access to information via a central portal or easily accessible points of access;

(vii) Early publication of the list of potential projects in the energy sector, and further development of Internet tools such as “AarhusCheck”;

(g) Encouraged the Parties to eliminate obstacles to effective public participation in energy-related planning, balance economic benefits and environmental consequences during the energy-related planning and implement good practices at the national and local levels.

V. Closing of the meeting

50. The Task Force agreed the key outcomes of the meeting and requested the secretariat, in consultation with the Chair, to finalize them (see AC/TF.PP-6/Inf.4). The Chair thanked the speakers, those who had provided written statements in advance of the meeting, all Parties that had provided responses to the survey on the use of the Maastricht Recommendations, the participants, the secretariat and the interpreters, and closed the meeting.
