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Subject: Comments on draft Aarhus Convention Recommendations on Public Participation in Decision-making in Environmental Matters

Dear Mrs Behlyarova, *Dear Ella,*

I am writing to you to provide our comments and textual suggestions regarding the draft recommendations on public participation.

Commission services welcome that a number of issues have been clarified in accordance with the comments made by the EU and its Member States. The text became more user-friendly and transparent due to these modifications.

It needs to be emphasized once again that the current document cannot be regarded as a vehicle for enlarging the scope of application of the Aarhus Convention. Important steps have already been taken in clarifying this topic, especially by way of introducing the foreword and clarifying the relationship between the Implementation Guide and the Draft Recommendations. It would be useful if further reference was made to the aim of the document, namely to give guidance on best practices (toolbox of best practices). Member States should have a possibility to choose, within the framework set by the Aarhus Convention.

The wording of the recommendations should also be carefully chosen, as in some cases it addresses the question of compliance or non-compliance, whereas based on the Aarhus Convention this is the privilege of the Compliance Committee. In choosing the appropriate formulation it is important to take into account that the text is not a Compliance Committee finding, but rather a collection of recommendations based on good practices for Member States.

Consistency is to be ensured between the Recommendations and any similar document, in particular with the SEA Protocol's Good Practice Recommendations on Public Participation in Strategic Decision-making, hereinafter: SEA Recommendations¹. Following these general considerations, we also have some detailed comments on the draft recommendations:

1) The recommendations aim at a high standard that might be difficult to accomplish in certain cases. Therefore, we would suggest to consider the recommendations also from a feasibility perspective, while taking into account the obligations arising from the Aarhus Convention. In this regard we would suggest to re-phrase

- point 49, by using the term, "...should, **as appropriate**, provide...",
- point 50 of the draft, as it uses the expression should, while referring to best practices in the subsequent indents. It is proposed to use the term "**inter alia** should be ensured:",
- point 61, considered to convert it into a best practice recommendation, rather than using the word, "should".

2) It should also be considered, as the main aim of the document is to share good practices, that some more examples and best practices are introduced in order to have a toolbox of methods to better involve the public in the decision-making processes. The authorities can take over such practices, in accordance with their national legal frameworks.

3) It would be useful to mention the potential role of mediators, for instance linked to point 77.

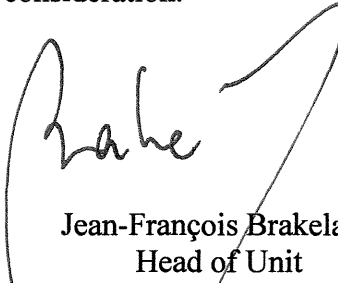
4) As regards point 86 – on the recommendation to make all information available in the decision-making procedure -, the wording of the Aarhus Convention should be followed, in order not to avoid losing important information (i.e article 6 para 6).

5) On point 97 as regards the recommendation of taking due account of all concerns, not only environmental concerns during decision-making, there is need to provide examples to indicate what topic would not be considered as "environmental". It would be useful to indicate that even the economic analysis needs to have at least an indirect link to the environment.

6) As regards recommendations on articles 7 and 8, there should be a clearer distinction between the different sets of requirements applied under articles 6, 7 and 8. In our view the current formulation could lead to misunderstandings and unclear obligations under points 130 and 136.

Thank you in advance for taking these comments into consideration.

Encl.



Jean-François Brakeland
Head of Unit

¹ http://www.unece.org/pp_in_strategic_dm.html