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

Working Group of the Parties

Sixteenth meeting

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Substantive issues: public participation in decision-making

Report of the Task Force on Public Participation in Decision-making on its third meeting

**Prepared jointly by the secretariats to the Convention on Access to
Information, Public Participation in Decision-making and Access to
Justice in Environmental Matters and the Convention on Environmental
Impact Assessment in a Transboundary Context**

Summary

At its second extraordinary session (Geneva, 19 and 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 (Aarhus Convention) established the Task Force on Public Participation in Decision-making by decision EMP.II/1 (ECE/MP.PP/2010/2/Add.1).¹ The Meeting of the Parties requested the Task Force to undertake various activities in the intersessional period between the fourth and fifth session of the Meeting of the Parties, including to document and share expertise, experience and good practices concerning public participation in environmental decision-making, inter alia, through the organization of workshops, and to present the overall outcome of its work, through the Working Group of the Parties, to the fifth session of the Meeting of the Parties for consideration (*ibid.*, paras. 3 and 4).

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

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I. Introduction

1. The third meeting of the Task Force on Public Participation in Decision-making under the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) was held in Geneva, Switzerland, from 29 to 30 October 2012. The meeting was organized jointly with the Bureau of the Meeting of the Parties to the Protocol on Strategic Environmental Assessment (Protocol on SEA) to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention).

2. The meeting was attended by representatives of the following Governments: Albania, Armenia, Belarus, Belgium, Bulgaria, Czech Republic, France, Georgia, Germany, Greece, Iraq, Italy, Kyrgyzstan, Lithuania, Mongolia, Poland, Republic of Moldova, Russian Federation, Slovakia, Slovenia, Spain, Switzerland, Turkey, Ukraine, Uzbekistan and the European Union (EU) (represented by the European Commission).

3. The Aarhus Centre of Belarus, the Nordland County Council (Norway) and the Regional Environmental Centre for Central and Eastern Europe were also represented.

4. The following non-governmental organizations (NGOs) were represented: the Bureau of Environmental Investigation (Ukraine), Coastwatch (Ireland), Eco-Globe (Armenia), Empowered Groups (Russian Federation), Environmental Pillar (Ireland), Resource and Analysis Centre "Society and Environment" (Ukraine), European Environmental Bureau (Belgium), Friends of the Earth (United Kingdom of Great Britain and Northern Ireland), Institute for National and International Development Initiative PF (Kazakhstan), International Association for Impact Assessment (Portugal), International Investment Centre (Russian Federation), Justice and Environment (Czech Republic), Network on the Public Environmental Interests Protection in the Kyrgyz Republic (Kyrgyzstan), NGO Independent Ecological Expertise (Kyrgyzstan), the Union for Defence of the Aral Sea and Amudarya (Uzbekistan), Women in Europe for a Common Future (Germany) and the World Wildlife Fund (WWF) Russia (Russian Federation). Many of the representatives of NGOs that participated in the meeting coordinated their input within the framework of the European ECO Forum.

5. The following academic and business organizations were represented: EuropaBio, Södertörn University, University College London and University of Bern.

6. Mr. Philip Kearney (Ireland), Chair of the Aarhus Convention's Task Force on Public Participation in Decision-making and Mr. Matthias Sauer, Chair of the Bureau of the Espoo Convention for Protocol on Strategic Environmental Assessment (Protocol on SEA) matters, co-chaired the meeting.

7. Mr. Jerzy Jendroška and Ms. Riki Therivel provided expert support as consultants with respect to the draft recommendations being prepared under the Aarhus Convention and the Protocol on SEA to improve implementation of their respective provisions: (a) the second draft of the Aarhus Convention's draft recommendations on public participation in environmental decision-making; and (b) the Protocol's draft good practice recommendations on public participation in strategic environmental assessment. The first day of the meeting was devoted to discussion on the two sets of draft recommendations. It was noted that following the finalization of the two sets of recommendations they would be published together as a joint publication.²

² Documents for the meeting, as well as the texts of presentations provided by speakers, are available

II. Open consultation on the Convention's draft recommendations on public participation in environmental decision-making

8. The Aarhus Convention co-Chair provided a short overview of the development of the draft recommendations on public participation in environmental decision-making being prepared under the auspices of the Task Force. Participants were invited to provide their comments on the second draft by indicating which paragraphs of the draft they agreed with, which they disagreed with and which paragraphs they did not understand or considered required clarification. They were then invited to discuss in more detail those paragraphs upon which there was some disagreement or lack of clarity as well to provide more general comments on the structure and content of the draft text. They were also reminded about the possibility to send written comments to the Aarhus Convention secretariat by 30 November 2012. The co-Chair indicated that all comments received would be considered during the preparation of the third draft of the recommendations, which would be prepared in advance of the fourth meeting of the Task Force, to be held in Luxembourg on 12 and 13 March 2013.

III. Open consultation on the Protocol's draft recommendations on public participation in strategic environmental assessment

9. The Protocol on SEA co-Chair introduced the draft good practice recommendations on public participation in strategic environmental assessment (SEA) being prepared under the Protocol on SEA. The consultant, Ms. Therivel, presented the draft recommendations and outlined the written comments on the recommendations received from focal points and stakeholders of both the Protocol on SEA and the Aarhus Convention before the meeting. Participants then provided their feedback on the structure and the content of the draft.

10. The meeting agreed that the title of the draft recommendations should refer to "strategic environmental assessment" and not to "strategic decision-making". The meeting also concluded that the language of the subsequent draft recommendations should be revised so as to establish a clear distinction between the Protocol on SEA's provisions on public participation that were legally binding for the Parties and the recommended good practice. Furthermore, participants suggested including more practical examples of good, and possibly also of bad practice, in the recommendations, and agreed to provide case studies or examples of the practice in their countries to the secretariat. Those examples would be included in the draft and/or made available on the website of the Protocol on SEA.

11. Participants stressed the importance of continuing the close coordination and collaboration between the Aarhus Convention and the Protocol on SEA in the further preparation of the two sets of recommendations, so as to ensure that they supplemented and were aligned with each other.

12. Participants were given the possibility to send further comments on the Protocol on SEA's draft recommendations to the Espoo Convention secretariat by 15 November 2012. The Chair indicated that all comments received would be considered during the preparation of the second draft to be submitted for consideration by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment at its second meeting (Geneva, 27–30 May 2013).

on the web page for the meeting (http://www.unece.org/pp_in_strategic_dm.html).

IV. Sharing of information and experience

13. The second day of the meeting was devoted to the sharing of information and experience. Obstacles and challenges to effective public participation in strategic decision-making and in SEA were examined, as well as good practices and innovative tools to address them. Participants also shared concerns of Parties and stakeholders with respect to the implementation of the Protocol on SEA and articles 7 and 8 of the Aarhus Convention.

A. An overview of key challenges to ensuring effective public participation in strategic environmental decision-making and assessment

1. SEA and public participation — some strategic thoughts

14. Ensuring effective public participation in strategic environmental decision-making and in SEA facilitated the exchange of knowledge, introducing new perspectives and opening up options that might not have been considered before. In the course of the discussions, the participants noted a number of similarities and differences with respect to the provisions on public participation of the Aarhus Convention and the Protocol on SEA. Several participants also referred to relevant provisions of the EU SEA Directive.³ In general terms, it was noted that the SEA Directive and the Protocol on SEA were consistent with each other, as the Directive had heavily influenced the negotiations of the Protocol.⁴ However, there were also a number of important differences between them, including their geographical coverage and application to policies and legislation (for further discussion on the differences between the Directive and the Protocol, see paras. 28 and 29). Similarities and differences between the Aarhus Convention and the Protocol on SEA observed by participants included:

(a) The Protocol on SEA provided for early, timely and effective opportunities for public participation in SEA of draft Government plans and programmes and, to the extent appropriate, also of policies and legislation. The Espoo Convention, in turn, provided for extensive public participation in the evaluation of the likely environmental impact of proposed activities in a transboundary context. In contrast, the Aarhus Convention addressed public participation in decision-making as a right in itself. In addition, the Aarhus Convention's provisions on public participation had a wider reach, including public participation with respect to policies and legislation as well as to plans and projects;

(b) Both instruments required timely public participation;

(c) With respect to the information required to be provided to the public, the Protocol on SEA was quite specific, requiring an environmental report to be provided, whereas the Aarhus Convention required the "necessary information" to be provided;

(d) Both instruments required that the outcomes of the public participation be taken into account. While the Aarhus Convention required the decision, together with the reasons and considerations on which it was based, to be published, the Protocol on SEA expressly required that when a plan or programme was adopted the public had to be informed of how the results of the public participation had been taken into account;

³ Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.

⁴ The consistency of the EU Directive and the Protocol is illustrated by the EU instrument of approval of the Protocol, which declared that the EU had already adopted legal instruments covering matters governed by the Protocol.

(e) The general requirements contained in article 3 of the Aarhus Convention were considered to serve an important role, for example, its requirements that officials and authorities raise the public's awareness of their rights under the Convention and assist and facilitate their exercise of those rights. Concern was expressed, however, that the requirements of article 3 were often overlooked by Parties.

15. In comparison to public participation with respect to environmental impact assessment (EIA), it was observed that public participation in strategic environmental decision-making and in SEA had to cope with a higher level of uncertainty and a lower level of detail. It thus required different techniques and approaches, for example, qualitative rather than quantitative approaches. In addition, the public concerned with the decision-making was likely to differ from those concerned with decision-making on specific projects — e.g., one might expect more involvement from NGOs than non-experts and laypersons. It was observed that in contrast to decision-making on specific projects, the broader scope of SEA, and the more abstract nature of strategic environmental decision-making, meant that public authorities needed to be much more active in reaching out to engage the public, as members of the public might not automatically see the decision-making's relevance for them.

2. Practical experiences of organizing public participation in SEA in transboundary contexts

16. Article 10 of the Protocol on SEA set out obligations for public participation in transboundary consultations on a plan or programme. The issue of public participation in SEA in a transboundary context was examined from the point of view of the authorities responsible for the process, drawing on experiences gained by the Polish authorities in that regard which were presented at the meeting. In Poland, the same rights of participation in SEA applied whether the public concerned resided in Poland or in a neighbouring country. Those rights included that the public had to be provided with at least a 21-day period for submitting their comments on the draft plan or programme and the comments and suggestions might be submitted (a) in written form; (b) verbally, to be recorded in the minutes; and/or (c) using the means of electronic communications without the need to secure them with a safe electronic signature.

17. The “Draft Modification to Voivodship Spatial Development Plan in Lubuskie” was presented as a practical example of a transboundary SEA in Poland, with Germany being an affected Party. The transboundary SEA process had been organized in accordance with an existing bilateral Polish-German Agreement on EIA, which had been seen to be applicable. A separate agreement for SEA was currently under preparation. The transboundary consultation had begun when Poland sent the notification together with a draft plan and its environmental report to Germany. The documents had been translated into German, and the deadline for Germany to submit comments and suggestions regarding the draft plan and environmental report had been 30 days. The German public had been informed about the draft plan and transboundary SEA by the relevant German authorities through public notice, including in the Official Journal. Comments could be sent directly to the competent authority in Poland or indirectly through the German relevant authority. Due to the number of public comments from Germany (1,099 comments), the Polish competent authority had faced many practical problems, including (a) a lack of human resources to deal with all the comments received; (b) the poor quality of translations due to the Procurement Law that limited opportunities to choose the most suitable translator; and (c) misunderstandings by the German public due to inaccuracies in the translation of the terminology.

18. A second case study presented was the “Draft Polish Nuclear Energy Programme”, which was noted as probably the broadest SEA process in Europe so far. Ten countries had been notified by Poland, of which seven (Austria, Czech Republic, Denmark, Finland,

Germany, Slovakia and Sweden) had decided to participate in the transboundary SEA procedure. The notification had included a draft programme and its environmental report, which had both been translated into English and German. Three countries had asked for the deadline to be extended up to three months. Public participation in the affected Parties had been organized twice: the first on the draft programme and environmental report and the second on the annex, including a new proposal for the location. Generally, each Party had given its own public completely different time frames for commenting. In most cases Parties had submitted their statements together with the comments from the public that had been collected by that country's competent authority. Poland had not been fully prepared for the amount of comments submitted (more than 35,000 comments had been received from the German public alone).

19. Organizing public participation in a transboundary context had its own special characteristics, which, *inter alia*, related to language issues and the distribution of responsibilities between the countries involved. It was emphasized that additional financial and human resources would need to be secured, e.g., for translation of materials as well as to process the comments received from the affected Party. The quality of translation was of utmost importance when preparing documents for consulting the public of the affected Party. Authorities often lacked resources when dealing with substantial amounts of comments received from the public, as tens of thousands or even hundreds of thousands of comments might need to be handled in a systematic and well-organized way. Lastly, differences in countries' national procedures and approaches had to be taken into account.

3. Main obstacles to effective public participation in strategic environmental decision-making and SEA in countries in Eastern Europe, the Caucasus and Central Asia

20. It was noted that countries in Eastern Europe, the Caucasus and Central Asia were at various stages with respect to public participation in plans, programmes and policies. For example, some countries did not yet have legislation that covered SEA, though several were developing their legal framework on SEA at present. A particular challenge observed in that task was how the terms "plans", "programmes" and "policies" should be defined and/or interpreted in national law.

21. It was remarked that many countries in Eastern Europe, the Caucasus and Central Asia had chosen to address SEA and EIA in the same piece of legislation, and that was considered to be potentially problematic. That was because the EIA legislation in those countries often placed responsibility for organizing the public participation on the developer, with State authorities becoming involved only at later stages of the process. In contrast, public authorities were usually responsible for drafting plans, programmes and policies. Thus, the legal provisions used in EIA would not be suitable for SEA. It was important to understand the difference between EIA and SEA and to develop specific legislation for each.

22. It was noted that as some authorities and/or developers considered that public participation hindered the development of projects, there could be pressure to involve the public only at the more general, abstract level of decision-making on plans, and then not to do so again at the time of decision-making on specific projects relevant to those plans. It was stressed that public participation at the strategic level (e.g., regarding plans or programmes) could not replace public participation with respect to specific projects.

23. It was observed that one obstacle for effective public participation in strategic decision-making was that the relevant information was sometimes difficult for the public to find. For example, information on draft legislation might be posted on the web pages of several ministries, and even finding information on legislation that had already been adopted was not always straightforward. To enhance the effectiveness of public participation in the preparation of draft legislation, it was suggested that one centralized

national website or web page would be useful. The designated site would provide information on all draft legislation under preparation in the country, ideally also providing links to the respective ministries responsible for the drafting process.

24. A good practice reported by the Government of Georgia was the agreement the Aarhus Centre Georgia had reached with the Georgian Government to be permitted to post information on scheduled parliamentary hearings regarding draft legislation on the Centre's website.

4. Main obstacles to effective public participation in strategic environmental decision-making and in SEA in the countries of the European Union

25. Concern was expressed that public participation in strategic decision-making and in SEA was only provided to comply with legal requirements, and was often not done at an appropriate or sufficiently early stage of the planning when comments from the public could actually be taken into account. Often the time limits for public participation in SEA were too short for effective public participation. The public might also lack motivation to participate in strategic decision-making if they did not see their public participation in such cases having any effect.

26. The fact that article 7 of the Aarhus Convention left it quite open to define "the extent appropriate" to which each Party should endeavour to provide opportunities for public participation in the preparation of policies relating to the environment led to a lack of clarity and was considered to be a particular obstacle to ensuring effective public participation in decisions on policies.

27. The view was expressed that the Aarhus Convention gave special rights to environmental NGOs, by deeming NGOs promoting environmental protection to be among the "public concerned" in the decision-making covered by each instrument. Neither the Protocol on SEA nor the SEA Directive explicitly deemed NGOs promoting environmental protection to be among the "public concerned", but rather referred to "relevant" NGOs, leaving the determination of their "relevancy" to the competent authorities of a Party. In addition, neither the Protocol nor the Directive contained legal requirements for the public concerned to have access to justice to challenge the substantive or procedural legality of decisions covered by those instruments.

28. In comparison with the SEA Directive, the Protocol on SEA was praised for providing for extensive public participation that might already begin as early as the screening (the determination of whether SEA is required under the Protocol for a plan or a programme) and scoping stages (the determination of the relevant information to be included in the environmental report). To the extent appropriate, that might also apply to assessment of policies and proposed legislation that granted rights for the public to be informed of the monitoring processes undertaken. However, it was noted that those provisions related only to the evaluation of the environmental and health effects of a proposed plan, programme or policy, but not to the actual plan, programme or policy assessed. It was also commented that the threshold for triggering the carrying out of an SEA under the Protocol had been set too high. The Protocol was also criticized for not including sustainability or cumulative effects as assessment criteria.

29. The SEA Directive was praised for providing for public participation on both the draft plan or programme and the accompanying environmental report. (The Protocol on SEA likewise required Parties to ensure that the public concerned had the opportunity to express its opinion on the plan, programme and the environmental report (article 8, para. 4).) Among the shortcomings of the Directive, participants noted that it: (a) did not cover policies and legislation; (b) did not specifically include health; (c) did not require public participation in the early (screening or scoping) stages; (d) excluded financial budgets or

programmes; and (e) lacked legal remedies in cases where public participation was restricted, absent or its results were not taken into consideration. One participant expressed the view that certain provisions of the SEA Directive might need to be improved to allow for better implementation of SEA and public participation in the EU, in line with the requirements under the Protocol on SEA and the Aarhus Convention.

5. Innovative approaches to public participation in environmental decision-making and SEA

30. It was remarked that the “Arnstein ladder of participation” might provide a useful model against which to view public participation procedures carried out in practice, with each step up the ladder moving from lower to higher levels of public engagement. It was noted that public participation during EIA procedures was often limited to providing information and consultation, and much more could be done to engage the public in the types of public participation addressed by the higher rungs of Arnstein’s ladder.

31. In order to more effectively engage the public in environmental decision-making, opportunities should be given to participate in various stages of planning, as several decisions were often made during the preparation of plans, programmes and policies. In addition, the public should be engaged upfront to identify their priorities and to elicit their views as to how they considered the process should go forward. The 2007 Austrian guidance, *The Public Participation Manual*,⁵ was noted as a useful resource providing advice for carrying out successful public participation processes.

32. The forms that public participation might take were various, and there were many innovative ways for engaging the public. One example was the “Sniffer” platform in Scotland, which brokered knowledge on sustainability issues for use across sectors: public, private, third/voluntary sector and academia. The Sniffer had proved successful in enhancing collaboration between partners from different fields.

33. Another example was the Strategic approaches to ENvironment and SUstainability research group (SENSU). SENSU methodology aimed to stimulate engagement by raising awareness through asking questions of the public. For example, with respect to decision-making regarding coastal development in Cornwall, England, the group distributed posters on the streets of Cornwall urging people to express their views even before a coastal plan was being drafted. The aim was to find out what the public wanted from a coastal plan, and what their priorities were. Empowerment was a key word in public participation, and engaging the public from the outset might reduce conflict.

34. It was proposed that the content of the recommendations currently being developed under both the Aarhus Convention and the Protocol on SEA should not be limited to implementing those instruments’ legal requirements. The legal requirements set the minimum standards, but much more could be done. Public participation could generate new ideas and options and thus, importantly, should not be used only to validate pre-existing proposals. Public engagement was also one of the most effective mechanisms for monitoring the correct implementation of procedures, particularly in the case of SEA.

35. It was important to identify the groups considered to be the main target of the public participation, as well as any groups that were hard to reach or that might hinder the decision-making. The involvement of members of the public speaking regional or minority languages should not be forgotten. Attention should also be given to the participation of

⁵ Kerstin Arbter et al., *The Public Participation Manual: Shaping the Future Together* (Vienna, Austrian Society for Environment and Technology, 2007). Available from http://www.oegut.at/downloads/pdf/part_publ-part-manual.pdf.

children. While the methods used for participation by adults might not be possible for children, they should still have a role.

B. Public participation in draft legislation

1. Experiences of public participation in the European Commission's Impact Assessment procedure with respect to EU legislation

36. The European Commission's Impact Assessment procedure was a process that prepared evidence for the Commissioners on the advantages and disadvantages of possible policy options by assessing their potential economic, social and environmental consequences. The rationale behind the Impact Assessment was to: (a) make better proposals; (b) promote coherence by considering social, economic and environmental impacts; (c) ensure transparent and open decision-making; and (d) show the consideration given to each proposal. The Impact Assessment procedure included the following steps: (a) identifying the problem (including the need for action); (b) defining the objectives; (c) developing the main policy options; (d) analysing the impacts; (e) comparing the options; and (f) outlining future monitoring and evaluation.

37. The Impact Assessment procedure usually started with drafting "roadmaps",⁶ the establishment of inter-service groups, conducting studies and holding consultations. The consultation of stakeholders was not a single consultation, but entailed various meetings, working groups, web questionnaires, etc., in order to gather information and opinions. The consultations were targeted to specific key groups depending on the proposal. For Internet consultations, the minimum time frame was 12 weeks, and the possibility to comment was advertised widely.

38. The European Commission had independent Impact Assessment Boards that provided their opinion on the Impact Assessment procedures, and thus served as quality control mechanisms. The European Commission Impact Assessment Board had said that stakeholder consultations were an essential tool for producing high quality and credible policy proposals. The Impact Assessment Board's 2011 report⁷ recommended that the Commission should always provide feedback to stakeholders, as well report on how their contributions to the decision-making process had been used. It also set out that all public consultations by the Commission launched after the beginning of 2012 should last at least 12 weeks, instead of 8 weeks, and that the Board would monitor compliance with that new requirement.

39. In addition to the Commission's Impact Assessment procedure, the proposed provisions on public participation in the adopted proposal for a revised EIA Directive⁸ were described:

(a) The existing EIA Directive had been criticized for not specifying clear time frames for public participation, which had led to too short or too long public consultations. The proposal for a revised EIA directive defined the time frame for consulting the public on the EIA report as 30 to 60 days, with a possibility to be extended by another 30 days;

⁶ See http://ec.europa.eu/governance/impact/planned_ia/planned_ia_en.htm.

⁷ Available from http://ec.europa.eu/governance/impact/key_docs/docs/sec_2012_0101_en.pdf.

⁸ Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (the EIA Directive) has already been revised three times. As a result of a review process, on 26 October 2012 the European Commission adopted a proposal for a revised Directive (COM(2012) 628 final).

(b) It was proposed that the decision to grant development consent should contain a summary of the comments received from the public as well as a statement summarizing how any environmental considerations had been integrated into the development consent and how the results of the consultations and the information gathered had been incorporated or otherwise addressed. For projects likely to have significant adverse transboundary effects, the competent authority should provide information on how it had taken into account any comments received by the affected member State during the consultations;

(c) It was also proposed that the competent authority should conclude the EIA of the project, including all consultations, within three months, with a possible extension of another three months.

2. Public participation on Greece's draft bill of biodiversity

40. The Greek Open Government Initiative (opengov.gr) was initiated by the Prime Minister's Office in October 2009. Almost every piece of draft legislation or policy initiative by the Government was posted on a blog-like platform prior to their submission to parliament, and citizens and organizations could post their comments, suggestions and criticisms on the draft. A consultation report based on all comments was a prerequisite for the submission of the draft bill to parliament.

41. With respect to the public participation process carried out regarding Greece's draft bill on biodiversity, the public had been informed via press releases, articles in newspapers and specialized magazines, television programmes and official ministerial documents. Among challenges had been the balancing of conflicting interests when incorporating the various comments received into the draft. A further challenge had been the large amount of irrelevant information received, as well as the fact that only Internet users had easy access to the public consultation process. Approximately 300 comments had been submitted and all of them had been evaluated by the group of legal and environmental officers that had prepared the draft bill.

3. Public participation regarding Armenia's draft environmental legislation

42. Although not required under Armenian law, a public participation process had been carried out regarding the preparation of the draft law "On the use of genetically modified organisms". The public had been asked to provide their views on specific points and to submit comments on how to improve the draft bill. Relevant State bodies were also involved, so that they could listen and react during the consultation. In addition, it had been beneficial to involve scientists in the consultation in order to secure the scientific basis of the draft bill. A potential obstacle to taking due account of the public's comments was the limited possibilities for making changes to the draft once the draft bill had gone to the parliament. However, in that particular case, the discussion at the parliament had resulted in a mandate being given to revise the draft taking into consideration all the comments from the public and scientists in order to ensure environmental security.

C. Public participation in plans, programmes and policies

1. Sustainable development

Public participation in the era of green economy

43. It was stated that the "double crisis" of climate change and the financial crisis presented perhaps the most significant challenge to the viability of current market-economy models. However, the double crisis might be solved if the value of the environment was

taken into account in the functioning of the market. That would enable growth while ensuring that the environmental aspects were considered.

44. Overall, policy responses under the various labels of green economy, green growth or sustainable growth revealed a common approach. These included a set of policies, such as environmental taxation or subsidies, intended to change pricing structures and to make it desirable and profitable to move in the direction of green production. However, the internalization of environmental aspects in the market depended on whether it was possible to sufficiently predict the physical impacts of production on the environment and whether it was possible to accurately estimate the cost of those impacts.

45. It was observed that efficiency did not guarantee sustainability, since decision-makers would not know if they were respecting the scale and just distribution of resources. It was important that the public be able to participate in the highest strategic decisions concerning the scale and distributive aspects of economic activities affecting the environment, inter alia, to raise issues relating to the capacity of ecosystems, quality of life, well-being and equity.

46. It was observed that in drafting the EIA Directive, and later the Espoo Convention, the issue of sustainability had not been sufficiently taken into account, and problems with public participation regarding that issue had since arisen. To better take the aspect of sustainability into account, a task force or a consultant could be asked to investigate the possible relationship between sustainable development strategies and environmental assessment at the strategic and the project levels. The drafting of an amendment to the Aarhus Convention, or alternatively a new instrument, might be considered which would aim to ensure full public participation in the formulation of sustainable development strategies or policies, as well as in decision-making that might have an impact on the implementation of such strategies or policies.

Public participation regarding the Eastern Partnership Roadmap, Ukraine

47. The main goal of the EU Eastern Partnership Roadmap was to create the conditions to accelerate political association and deepen economic integration between the EU and the Eastern European partner countries (Armenia, Azerbaijan, Belarus, Georgia, Republic of Moldova and Ukraine). The Eastern Partnership was a policy and the Roadmap could be considered as a plan falling under article 7 of the Aarhus Convention.

48. The consultation process run by the EU during the development of the Roadmap in Ukraine had been efficient and transparent. On the other hand, the process had been criticized for the insufficiency of its time frames and means of consultation. With regard to the latter, the EU had identified the public through so-called National Platforms on the Eastern Partnership Civil Society Forum, and all the consultations had been arranged through those platforms. There had been no public announcement about the possibility to participate. The information provided had also been insufficient — a two-page concept note, which, inter alia, described what was to be developed and what kind of input was expected from NGOs. The draft plan had not been available during the commenting period. The time available for comments had been ostensibly 23 days, but in practice it had been effectively limited to a few days only. It had also been questioned whether due account had in fact been taken of the outcomes of the public participation, as the final Roadmap contained practically none of the elements introduced by the public.

France's Grenelle Environment Round Table and the French Environmental Conference

49. The aim of France's Grenelle Environment Round Table, an open multiparty debate initiated in 2007, had been to define the key points of government policy on ecological and sustainable development issues for the coming five years. The Round Table was the first

initiative that had succeeded in bringing representatives of both the public authorities and the public together around the discussion table in France. The first phase had been dedicated to dialogue and proposal development within six working groups. The working groups, composed of 40 members each, had been organized around different themes — e.g., fighting climate change, controlling energy demand and constructing a green democracy — with the objective of developing a plan with concrete proposals for measures to be taken. The working groups had also been divided into five panels representing the stakeholders in sustainable development: the French State, local authorities, NGOs, employers and employees.

50. The second phase of the Round Table had involved gathering input from various segments of the public on the action proposals developed by the working groups. The wide consultations had, inter alia, included regional meetings, online discussion groups and parliamentary debates. Based on the outputs from the groups, and following a consultation phase with various segments of the public, the negotiation phase had taken place in October 2007. Four round tables, attended by the five panels, helped identify the major guidelines for action in all theme areas. President Sarkozy had closed the three days of negotiation with a speech presenting the Round Table's conclusions.

51. The Grenelle Environment Round Table had been followed in September 2012 by a new initiative known as the French Environmental Conference, which aimed to tackle issues such as climate change, scarcity of resources and loss of global biodiversity. A new process of consultation had been designed, with a desire to transition to a new model of sustainable development. In addition to the groups represented at the Grenelle Environment Round Table, a sixth interest group of parliamentarians had been included in the process. Also, the Conference was to be an annual event, which would permit follow-up on the progress made in implementing the workplan adopted the previous year. The first priority project would address energy transition. A participatory phase for the public was planned to include public seminars, debates and hearings at both the national and regional levels. Consultation would be followed by summarizing the findings and developing recommendations, which would then result in the drafting of a bill.

2. Energy and climate change

Public participation regarding the Nordland County Council regional climate plan

52. The aims of the Nordland County Council in undertaking a public participation process in the context of preparing its regional climate plan had included, inter alia: (a) to raise public awareness and create debate about climate change and energy issues; (b) to try innovative methods of public participation and gain experience with new tools; and (c) to receive comments on the plan from a variety of actors, including children, youth and the elderly.

53. The Nordland County

Council had sought to go beyond simply discussing the content of the regional climate plan with the public. They had emphasized the relevance of the issues it addressed to local matters. They also sought to attract people in innovative ways, for example through an electric car serving waffles and refreshments. Such efforts had resulted in dialogue with groups that often did not participate in public hearings, especially children and young people.

54. The lessons learned included that carrying out a public participation process was time-consuming and resource intensive, and taking the comments received into account afterwards was a demanding task. A formula for summarizing the comments received had been used, which included a remark on each comment explaining how that particular

comment had been taken into account. It was noted that the challenges encountered had differed from those encountered in an office environment: for example, public authorities had to learn to use another “language” when talking with people. Using new media (such as Facebook and Twitter) had succeeded in eliciting comments from young people, but many of the comments had been outside the scope of the process.

55. The strengths of the public participation process had been that general awareness of the plan had been raised and the public had provided comments more actively than usual. There had also been a positive response to the County Council travelling around and meeting people, with the electric car in particular receiving a lot of attention.

Public participation in strategic energy-related planning in the United Kingdom

56. It was observed that United Kingdom legislation required certain types of plans (e.g., those relating to energy usage over 50 megawatts) to be subject to SEA. However, some other types of decisions should be seen as “strategic decisions” as well, e.g., decisions to provide financial assistance or decisions to change consents for projects through legislation.

57. A further issue was new technologies/activities, for example shale gas exploration, where developers might be proceeding ahead of Government policy and regulation. Public participation was hampered in such cases by a lack of evidence, lack of knowledge and lack of a framework.

58. Another issue was the need to ensure that changes made as a result of public participation were clearly flagged in order to ensure transparency. Also, to have a fair and participative process, there had to always be the option of saying “no” to the proposed decision.

3. Agriculture and food security

Public participation regarding Spain’s Sustainable Rural Development Programme

59. Spain’s Sustainable Rural Development Programme had been developed under national law as an instrument for planning the sustainable development of rural areas. As part of the public participation process, three coordinating and participation bodies had been created to provide feedback, discuss criteria, prepare documents and report the results.

60. The principle changes to the draft Sustainable Rural Development Programme made as a result of the public participation process had included, inter alia: (a) better enforcement of public participation mechanisms at the local and regional levels; (b) better environmental protection measures for issues covered by the programme; and (c) better coordination and cooperation between the three administration levels.

61. Challenges to effective public participation that had been encountered in implementing the programme included: (a) the complexity of the process; (b) a lack of motivation and engagement with the process by the authorities; (c) conflicts of interest; (d) possible conflicts between long-term objectives (strategic planning) versus immediate needs; (e) budget limitations, including competing priorities; (f) a sectoral and non-holistic vision of the problems to be addressed; (g) the need for flexibility and adapting to others’ ideas and opinions; and (h) the huge workload of carrying out the public participation process.

62. Although the extensive public participation process had lengthened the process, its benefits were considered to outweigh the extra time required. The three coordination and participation bodies were to be continued into the long term. In addition, participants saw the importance and usefulness of their own participation and the process had resulted in the

creation of social networks for participation, information and cooperation in rural development matters. Moreover, the structure for the public participation had been subsequently adapted for the regional level.

4. Marine protection

Public participation regarding marine-related decision-making in Ireland

63. It was noted that experiences with public participation in the context of SEA would likely differ depending on whether the decision-making concerned existing types of activities (such as aquaculture or erosion control) or new types of activities (such as offshore energy or fracking). With respect to existing types of activities, the public and the Government might bring considerable baggage to the process, and there might be existing trust or distrust. With respect to new types of activities, new options and perspectives could be put forward; however, there might also be concern about the unknown.

64. It was observed that public participation regarding SEA presented a special challenge for NGOs, first regarding whether there were sufficient resources for the public to effectively participate and, second, whether NGOs were able to translate the wide array of strategic options and choices in such a way that the public concerned could understand their practical meaning.

65. It was noted that in transboundary marine SEAs there were different starting points depending on whether the decision-making related to: (a) one shared marine area where the SEA was intended to help plan future use and/or development and policy options; (b) an SEA that involved one country's plan, for example to dam a river, that used a common resource and might affect more than one country, but which would bring financial benefit only to the country originating the plan; or (c) an SEA on the territory of one State, but with potential impact on the environment and citizens of another State. It was observed that there had been good experiences regarding the organization of transboundary SEAs in cases where an existing cross-border body had already been in place.

66. Recommendations regarding how to ensure more effective public participation in marine-related decision-making in the future included the need for: (a) a new vision in order to guarantee transparency, fairness and acceptance of the views of the public concerned; (b) forward-looking legislation instead of reactive legislation; (c) improvement in the level of understanding of the environment, including through the environment having more visibility in the media and for environmental information to be accurate; and (d) more training on how to carry out effective public participation procedures.

67. It was suggested that the Aarhus Convention might wish to consider collating case studies of good practice, categorizing them into levels of public engagement along the lines of "Arnstein's ladder of participation" (see para. 30). As a counterpart, a poor practice blacklist at each level might also be considered.

V. Closure of the meeting

68. The two co-Chairs thanked speakers and participants for their valuable contributions and the secretariats of the Aarhus Convention and the Espoo Convention and its Protocol on SEA for their support. They noted that in the light of their fruitful collaboration, further joint activities might usefully be included in the future work programmes of each instrument. The meeting was then closed.