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**Substantive issues: public participation in decision-making**

# Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters

*Summary*

The Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters, as set out in the present document, were prepared by 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. They were drafted in response to the request of the Meeting of the Parties to the Convention,[1] following calls over several years from officials and members of the public for more practical guidance on how to improve the implementation of the Convention's provisions on public participation in decision-making.

The Maastricht Recommendations were prepared through an open and participatory process. Three drafts were made available for comment — in May 2012, October 2012 and March 2013 — each of which was subject to a wide commenting process. In addition to focal points to the Convention and its stakeholders, the drafts were circulated to focal points and stakeholders of the Convention on Environmental Impact Assessment in a Transboundary Context and the Convention on the Protection and Use of Transboundary Watercourses and International Lakes for their written comments. Participants at the second, third and fourth meetings of the Task Force on Public Participation in Decision-making also had an opportunity to provide their oral comments on the various drafts. Each

[1] ECE/MP.PP/2010/2/Add.1, paragraph 2 (c); see also ECE/MP.PP/2011/2/Add.1, decision IV/6, annex I, activity V.

draft and the written comments received on the second and third drafts were made available on the Task Force's web page.[2]

The Recommendations have greatly benefited from the strong engagement of the Parties to the Convention and other stakeholders that took part in the development of the text. In total, approximately 1,700 targeted comments were received during the commenting process, as well as a number of more general comments. Each comment was individually and carefully considered. Owing to the conflicting nature of many of the comments, it was not possible to reflect every comment in the final text, and as a result the final content of the present Recommendations should be seen as a compromise text. In the face of conflicting comments regarding the wording of a particular recommendation, the approach that was the most consistent with the language and spirit of the Convention was preferred. Careful consideration was also given to meeting the different needs of Parties' in terms of comprehensiveness and the degree of detail in the guidance, bearing in mind the various levels of and approaches to implementation of the Convention's provisions on public participation. To reflect recommendations going beyond the basic requirements of the Convention, wording such as "a good practice" has been used throughout the text in order to offer possibilities to those interested in applying such practices.

The Maastricht Recommendations are based on existing good practice, and are intended as a practical tool to improve the implementation of the Convention's provisions on public participation in decision-making to be used in two key ways:

(a) To assist Parties when designing their legal framework on public participation in environmental decision-making under the Convention;

(b) To assist public officials on a day-to-day basis when designing and carrying out public participation procedures on environmental decision-making under the Convention.

In addition, the Recommendations may also be of value to members of the public, including non-governmental organizations and the private sector involved in decision-making on environmental matters. They may also be of interest to Signatories and other States not party to the Convention, as well as to officials and stakeholders engaged in public participation in decision-making under the scope of other multilateral environmental agreements.

The Recommendations provide helpful guidance on implementing articles 6, 7 and 8 of the Convention, and especially how to address a number of key challenges identified by the Aarhus Convention Compliance Committee and others. They are neither binding nor exhaustive and, depending on the recommendation and the wide range of circumstances in different Parties' territories, they are not necessarily the only means of complying with the Convention. While the Recommendations are not an official interpretation of the Convention, they are an invaluable tool through which to share expertise and good practice, and to assist policymakers, legislators and public authorities in their daily work of implementing the Convention.

To assist officials carrying out public participation procedures under the Convention to do so effectively, it is recommended that the Maastricht Recommendations be translated into relevant national languages and, subject to resources, training be offered to officials in their use.

[2] See http://www.unece.org/env/pp/ppdm.html.

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# I. General recommendations

## A. Definitions

1. The terms "public authority", "environmental information", "the public" and "the public concerned" are used in these Recommendations in accordance with their definitions in article 2 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). By way of further clarification:

(a) "Public authorities" includes all persons coming within the definition of article 2, paragraph 2, of the Convention. This includes persons or bodies, other than the authority competent to take the decision (the competent authority), to which some tasks related to a public participation procedure are delegated[3] (see paras. 27–36 below and annex);

(b) "The public" includes, as well as natural or legal persons, their associations, organizations or groups in accordance with national legislation or practice. As a good practice, the most inclusive definition of "the public" would be that based on the "every person" principle.[4] Under the "every person" principle, any natural or legal person and any association, organization or group, regardless of its status in national law, is to be considered among "the public" for the purposes of the Convention. In order to ensure that the framework for public participation is as transparent, clear and consistent as possible, if it is not intended that every association, organization or group of natural or legal persons regardless of its status in national law, is to be included as "the public", those that are to be considered as coming within that definition should be clearly specified in national law;

(c) "The public concerned" includes, inter alia, non-governmental organizations (NGOs) promoting environmental protection and meeting any requirements under national law. To ensure the framework for public participation is as transparent, clear and consistent as possible, the following may be clearly specified through national law:

(i) What constitutes "having an interest in" environmental decision-making;

(ii) The requirements, if any, which NGOs promoting environmental protection must meet in order to be deemed to have an interest. What constitutes a sufficient interest should be determined in accordance with the objective of giving the public concerned wide access to justice.[5]

2. For the purposes of these Recommendations:

(a) The "national legal framework" or "legal framework" includes all sources of national law, including constitutional, legislative, regulatory and administrative provisions, as well as case law and established administrative practice;

(b) The "zero option" means the option of not proceeding with the proposed activity, plan or programme at all, nor with any of its alternatives.

[3] See the findings of the Compliance Committee on communication ACCC/C/2009/37 concerning compliance by Belarus (ECE/MP.PP/2011/11/Add.2), para. 78.

[4] The "every person" principle is used in a number of countries that are party to the Convention.

[5] See Aarhus Convention, article 9, para. 2.

## B. General issues

3. Public participation enhances the quality and the effective implementation of decisions concerning the environment. Affording the public the opportunity to express its views and requiring public authorities to take due account of those views in the decision enhances the accountability and transparency of environmental decision-making and may strengthen public support for the decisions taken. In the process, it contributes to greater awareness of environmental issues among both the public and public authorities.

4. For the above reasons, public participation should be seen by all parties as a prerequisite of effective action and an opportunity for real influence, not merely as a formal procedural requirement. To this end, public participation should be fully incorporated into the decision-making on all decisions subject to the Convention, taking into account the specificities of the national procedures in place. Likewise, active public participation should be stimulated and encouraged.

## C. Designing the legal framework for public participation in decision-making

5. To ensure effective public participation, the legal framework for decision-making subject to the Convention should:

(a) Aim to provide for the most comprehensive, broad, active and accessible public participation possible with regard to:

(i) The differing types of decisions and activities subject to the framework; and

(ii) The varied number and characteristics of the public concerned corresponding to those activities;

(b) Provide for public participation at the earliest stage of the decision-making;

(c) As a good practice, allow for revision to reconsider past conclusions on the basis of new information;

(d) As a good practice, be created in consultation with the public.

6. With respect to amendments to the legal framework for decision-making subject to the Convention, it should be kept in mind that any reduction from existing rights of public participation may be perceived as not in line with the objectives of the Convention.[6]

## D. Designing a public participation procedure

7. In order to establish and maintain a clear, transparent and consistent framework to implement the provisions of the Convention, the public participation procedure for a decision subject to the Convention should be designed in such a way that both the public authorities and the public know precisely:

(a) What decisions are to be taken, at which stage, the legal effects of those decisions and who is responsible for taking them;

[6] See the findings of the Compliance Committee on communications ACCC/C/2004/04 concerning compliance by Hungary (ECE/MP.PP/C.1/2005/2/Add.4), para. 18; and ACCC/C/2011/57 concerning compliance by Denmark (ECE/MP.PP/C.1/2012/7), para. 46.

(b) The range of options to be discussed and decided at each stage, bearing in mind that the procedure should also be open enough to consider new options identified as a result of the public participation;

(c) The possibilities for the public to participate in the decision-making at each stage and the procedures to be used;

(d) The time frames for each stage, to the extent they can reasonably be predicted in advance;

(e) How the public will be informed about any future steps in the procedure that are not yet elaborated;

(f) The roles of the different bodies involved in the decision-making, including who is responsible for the various tasks and stages of the public participation procedure and their contact details;

(g) The costs, if any, for the public to participate or to access information. To ensure effective public participation, there should be "free access" to participate,[7] i.e., no fees or charges for the public seeking to participate beyond the reasonable cost of copying requested information. If there are any costs, a schedule of these costs should be made available at the start of the public participation procedure;

(h) As appropriate, how to appeal or contest a decision,[8] including the final decision under article 9 of the Convention.

8. When designing a public participation procedure the name or label given to the decision (e.g., "permit", "consent", "plan", "programme", "policy", "decree", etc.) is not decisive in determining whether that decision will fall within the scope of articles 6, 7 or 8 of the Convention. Rather, that will be determined by the decision's legal functions and effects.[9]

9. There is no specific set of tools or techniques that constitute "best practices" in all contexts. Rather, the most appropriate techniques will be situation-dependent, and practices may need to be adapted to meet the particular context, e.g., specific cultural needs, or to address changes that occur during the procedure. To this end, as a good practice, public authorities:

(a) Should, as a matter of course monitor the procedure while it is ongoing to evaluate how well it is working. Public authorities may, as part of the design process, establish criteria to assist in monitoring and evaluating the procedure. As an additional good practice, the evaluation may be made available to the public;

(b) May, in the light of the above monitoring, revise or adapt the procedure, including the choice of tools, techniques and personnel, if needed to address deficiencies in the public participation procedure. Expressions of anger or frustration towards the process by certain members of the public concerned should not be viewed as a reason to do away with their participation, but rather as an indication that in some ways the format of the public participation procedure is not meeting its purpose and thus may need to be revisited and improved. Addressing such frustrations at an early stage may reduce the likelihood that

[7] See Aarhus Convention, preambular para. 12.

[8] See *Opinions of the Implementation Committee (2001–2010)*, para. 73 (a). This online publication of the Convention on Environmental Impact Assessment in a Transboundary Context is available from http://www.unece.org/env/eia/implementation/implementation_committee.html.

[9] See the findings of the Compliance Committee on communication ACCC/C/2005/11 concerning compliance by Belgium (ECE/MP.PP/C.1/2006/4/Add.2), para. 29.

members of the public concerned will seek to contest the decision later on. If it is proposed to make any significant changes to the public participation procedure as a result of monitoring its implementation, the public concerned should be duly notified (see paras. 52−70);

(c) After the decision-making process is concluded, public authorities may, as an additional good practice, evaluate the public participation procedure overall to identify what might be done to ensure more effective public participation in such decision-making in the future. The evaluation might consider both the effectiveness of the procedure in facilitating the engagement of the public and its effectiveness in using that engagement in the decision-making process and, as a good practice, may be made publicly available.

10. As both public authorities and the public have limited time and resources, flexibility in the choice of tools and techniques and tailoring them to the nature of the decision and its context will increase the effectiveness of the public participation procedure. The tools and techniques used should be proportional to the complexity and potential impact of the decision. This will also help to avoid so-called "participation fatigue".

11. With respect to the selection of the most appropriate tools and techniques for public participation, experience has shown that:

(a) For activities subject to the Convention of high potential environmental significance or affecting a large number of people, more elaborate procedures may be appropriate to ensure effective public participation. For example, in addition to opportunities for the public to submit written comments, public inquiries or hearings (more formal, including submission of formal evidence and the possibility for cross-examination in many countries) or public debates or meetings (less formal, possibly with facilitated group processes), may be appropriate;

(b) For activities subject to the Convention with less significant environmental effects, access to all relevant information and the opportunity to submit written comments and to have due account taken of them may sometimes be sufficient. Nevertheless, the public authority should have the power to organize a hearing in any case it considers it appropriate to do so, including upon request from the public.

12. With respect to the legal effects of the public participation procedure, the minimum requirement is that the competent public authority must take due account of the outcomes of a consultation process; however, in some cases, the public participation procedure may constitute a right for the public to make the decision itself. For example, for activities with the potential for very significant environmental effects or affecting a large number of people, and subject to national constitutional law, it may be useful to provide the public with a co-decision power (for example, by delegating the competence to conduct the relevant decision-making procedure) or even with the exclusive decision-making power (for example, by binding referendum at the national, regional or local levels, as appropriate).

## E. Carrying out a public participation procedure

13. When carrying out a public participation procedure, it is recommended that the public authorities do so with:

(a) Clarity of purpose. Both the competent public authorities and the public should understand the goal of the procedure;

(b) Sufficient time frames for all stages of the public participation procedure, including for taking due account of the outcomes of the public participation (see paras. 71−77);

(c) A commitment, made publicly and at an appropriately high level, to use the procedure to guide their actions.

14. In addition, to the extent feasible, when carrying out a public participation procedure, it is recommended that the public authorities, do so with:

(a) Due consideration of the needs and abilities (e.g., with regard to language, literacy, access to the Internet, geographic location (rural/urban), mobility) of the public concerned so that they can participate effectively in the procedure;

(b) A commitment to accountability, self-assessment and learning from experience;

(c) Adequate funding and staff.

15. It is recommended that, if in the course of the decision-making process the public authorities become aware of significant new information or that the circumstances have changed in some significant way, the public is given a further opportunity to participate before the decision is taken. Depending on the new information or circumstances, this may require the timing for comments to be extended or restarted, or for options already closed to be reopened, if necessary for the protection of the environment or to allow the public concerned to reflect the new information in their deliberations. For example, the submission of revised environmental impact assessment (EIA) or strategic environmental assessment (SEA) documentation in which substantial information that might affect the public's comments on a proposed project or activity has changed could be a circumstance requiring the public to be provided with a further opportunity to participate.

## F. Public participation on the zero option[10]

16. In line with the Convention's requirement for the public to have an opportunity to participate when all options are open,[11] the public should have a possibility to provide comments and to have due account taken of them, together with other valid considerations required by law to be taken into account, at an early stage of decision-making when all options are open, on whether the proposed activity should go ahead at all (the so-called zero option).[12] This recommendation has special significance if the proposed activity concerns a technology not previously applied in the country and which is considered to be of high risk and/or to have an unknown potential environmental impact. The opportunity for the public to provide input into the decision-making on whether to commence use of such a technology should not be provided only at a stage when there is no realistic possibility not to proceed.[13]

[10] See definitions section for definition of "zero option".

[11] See Aarhus Convention, article 6, para. 4.

[12] See the findings of the Compliance Committee on communications ACCC/C/2006/16 concerning compliance by Lithuania (ECE/MP.PP/2008/5/Add.6), para. 74; ACCC/C/2006/17 concerning the European Community (ECE/MP.PP/2008/5/Add.10), para. 51; and ACCC/C/2009/41 concerning compliance by Slovakia (ECE/MP.PP/2011/11/Add.3), paras. 61 and 63.

[13] See the findings of the Compliance Committee on communication ACCC/C/2006/16 concerning compliance by Lithuania (ECE/MP.PP/2008/5/Add.6), para. 74.

## G. Multi-stage decision-making

17. The framework for decision-making may involve various consecutive strategic decisions under article 7 or 8 of the Convention (policies, plans, programmes, legislation or regulations) and individual decisions under article 6 of the Convention (for example, decisions authorizing the basic parameters and location of a specific activity, its technical design, mitigation measures and, finally, its technological details related to specific environmental standards as applicable to the activity in the selected location). Such decision-making is often known as "multi-stage" decision-making.

18. If so preferred, the framework for public participation in multi-stage decision-making may reflect the concept of tiered decision-making whereby at each stage of the decision-making certain options are discussed and selected with the participation of the public, and each consecutive stage of decision-making addresses only the issues within the option already selected at the preceding stage. While the competent authority may have certain discretion as to the range of options to be addressed at each stage of the decision-making, at each stage where public participation is required, it should occur when all the options to be considered at that stage are still open and effective public participation can take place. If a particular tier of the decision-making process has no public participation, then the next stage that does have public participation should provide the opportunity for the public to also participate on the options decided at that earlier tier.

19. Irrespective of how the framework for decision-making is structured, the public should have a possibility to discuss the nature of and need for the proposed activity at all (the zero option, see para.16 above). In order to satisfy the requirements of the Convention and to meet the legitimate expectations of the developer, this possibility should be provided at the earliest stage of the entire decision-making, when it is genuinely still open for the project not to proceed.

## H. Defining and identifying the public which may participate

20. To ensure that the legal framework for public participation in decision-making subject to the Convention is implemented in a transparent, clear and consistent manner, when identifying the public concerned for a proposed activity, the competent public authority should bear in mind the following:

(a) The various groups of stakeholders to be considered, as a minimum, among the public concerned with respect to the proposed activity should be clearly specified. This is a key step to ensure effective public participation in accordance with the Convention;

(b) Many decisions with an environmental dimension also involve social and economic aspects, and the corresponding interest groups should be included in the public participation in an equitable way;

(c) The procedure should be open to considering all the perspectives, including those opposed to the proposed activity. Including critical voices in the discussion from an early stage will make for a more efficient and effective procedure, and ultimately a better quality decision;

(d) Attention should be paid to identifying those who could potentially hinder the transparency and balanced nature of the decision-making process, for example, strong lobby groups or those with a special relationship to the decision makers. It may be prudent to monitor their involvement and influence throughout the procedure in order to ensure that a balanced and fair process is maintained throughout;

(e) Special attention should be paid to identifying groups that are for different reasons hard to reach:

(i) Some members of the public may be willing but unable to participate (e.g., vulnerable and/or marginalized groups such as children, older people, women in some societies, migrants, people with disabilities, those with low literacy or language barriers, ethnic or religious minorities, economically disadvantaged groups, those without access to the Internet, television or radio, etc.);

(ii) Others may be able to participate but unwilling to do so (e.g., people with prior bad experiences of participation procedures, those with a lack of time, or who see no benefits in participating, etc.);

Where such persons are among those identified as potentially affected by the proposed activity or decision, at a minimum efforts should be made to involve organizations or individuals representing such persons;

(f) The list of the possible public concerned is not a closed one and should be open to including other individuals or groups who consider themselves to have an interest in the decision-making and wish to be involved in the procedure;

(g) It may be helpful to consult with already identified members of the public concerned to seek their assistance in identifying other stakeholders addressed in (a)-(f).

## I. Individual notification

21. To ensure adequate and effective notification of the public concerned, public authorities may wish to establish mechanisms whereby members of the public interested in a particular decision-making process or in all decision-making processes of a particular type may request to receive timely individual notification of a decision-making procedure. This may include, at their request, any member of the public (whether from the country of origin or a potentially affected country) including those not necessarily located in the geographical area affected by the decision. Such mechanisms might include electronic mailing lists and automatic notifications connected to electronic databases; in regions where significant parts of the public lack regular access to the Internet, other effective and culturally appropriate means of individual notification should be used, e.g., by mail or even door-to-door notification.

## J. Advisory bodies

22. In addition to the public participation procedures specified in the Convention, public authorities may find it useful to involve NGOs or other members of the public with relevant expertise in advisory bodies related to the decision-making procedure (e.g., general environmental protection councils, public councils, specialized EIA commissions, genetically modified organism (GMO) commisions or water committees). To this end:

(a) Such persons may serve in their personal capacity or as representatives of certain members of the public concerned. In the latter case, those persons should be accountable to their constituencies and fully transparent to others involved in the procedure about the constituency they represent. Persons with a direct financial interest in the possible outcome of the decision-making should not be permitted to participate in such bodies;

(b) To ensure the effective working of advisory bodies, members should participate ad personam (i.e., themselves, without proxies);

(c) The involvement of the public in such bodies should be meaningful, i.e., they should have a real possibility to influence the opinions or statements of such bodies;

(d) Involvement in such bodies should not impede those persons from voicing their opinion in later stages of decision-making or having recourse to any other legal rights;

(e) Involving members of the public in such advisory bodies cannot be a substitute for the participation of the wider public, and in particular those persons who may be affected by the decision being made.

## K. Participation of the public from other countries[14]

23. The environmental impacts of activities subject to the Convention may occur across national borders. In accordance with the Convention,[15] the public must have the possibility to participate in decision-making under the Convention without discrimination as to citizenship, nationality or domicile.[16] This includes the public from affected countries that are not Party to either the Aarhus Convention or the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention). To this end:

(a) The legal framework for implementing the Convention should not contain anything that would discriminate either de facto or de jure against the public from other countries participating in decision-making subject to the Convention in the country of origin that may affect them;

(b) The public participation procedure itself should not contain anything that would discriminate either de facto or de jure against the effective participation of the public from other countries affected by the decision-making. To this end, careful planning may be required and additional resources allocated, for example, for the translation of relevant information in order to enable the public from the affected countries to participate effectively;

(c) Steps should be taken to put in place arrangements with other countries, in particular with neighbouring or downstream countries or those with shared natural resources (whether within existing agreements on transboundary cooperation or on transboundary impact assessment or otherwise) to facilitate the reciprocal participation of the public in those countries in decision-making under the Convention that may affect them. This could use existing systems of transboundary consultation or not. It may be on an ad hoc basis or in the form of permanent mechanisms to facilitate the participation of the public from an affected country in environmental decision-making. Such arrangements may cover:

(i) Time frames. Time frames for public participation that involves a transboundary element should be at least as long as those that do not involve a transboundary element and, on a case-by-case basis, may be longer in order to account for cultural and communication problems. The timescale for public participation should begin when the relevant documents become available to the

[14] See also the Convention on Environmental Impact Assessment in a Transboundary Context and its Protocol on Strategic Environmental Assessment.

[15] See Aarhus Convention, article 3, para. 9.

[16] See also the Protocol on Strategic Environmental Assessment, article 3, para. 7.

public concerned in the affected country, not when they are made available by the country of origin to the affected country;

(ii) Notifying the public about the commencement of the decision-making procedure, their possibilities to participate and, in due course, the decision taken and access to review procedures;

(iii) The translation of documents and interpretation during meetings and hearings. To prevent misunderstandings, it is important to provide high-quality translation and interpretation. So as not to cause delays, it should be agreed between countries in advance whose responsibility it will be to provide translation of documents. Where it is not possible to translate all relevant documents at once, the timescale for the public to examine the documentation and submit their comments should take into account the time needed to review the translated documents once they have been made available;

(d) Regional and/or local authorities should be encouraged to establish similar arrangements with their counterparts in neighbouring or downstream countries or countries with shared natural resources, consistent with requirements under national and international law;

(e) In addition, and without prejudice to the above arrangements, internal arrangements should be put in place in the country of origin to facilitate the participation, without discrimination, of the public from an affected country in public participation procedures under the Convention. Such arrangements may include:

(i) Making accessible on the Internet as much information as possible in the main language(s) used by the public concerned in those countries potentially affected (e.g., neighbouring or downstream country/countries);

(ii) Waiving visa fees and expediting visa processes to enable the public from the neighbouring or downstream country to enter the country of origin to examine all the information relevant to the decision-making and to take part in any meetings or hearings that may be held;

(iii) Using videoconferencing or teleconferencing to enable the public from an affected country to participate and, where appropriate, to communicate with the public concerned from the country of origin;

(iv) Securing additional financial and human resources to address the requirements of public participation in the transboundary context (e.g., added translation and communication requirements and ensuring the process of obtaining, compiling and responding to comments received from the public of the affected country in a meaningful way).

24. In determining whether the public from an affected country, including NGOs promoting environmental protection, may be affected by or have an interest in a particular decision that is subject to the Convention (and will thus be among the "public concerned" for that decision), the public from the affected country should be treated as favourably as the public from the country of origin.[17] Similarly, the public concerned from the affected country should have access to a review procedure[18] in the country of origin on the same footing as the public from the country of origin.[19]

[17] Espoo Convention, article 2, para. 6.
[18] Aarhus Convention, article 9.
[19] Aarhus Convention, article 3, para. 9.

25. If either the competent public authority or the public from an affected country consider that that public has an interest in participating in the decision-making for a particular decision covered by the Convention, but there are no diplomatic relations between the countries or the public authorities of the affected country decline to participate in the procedure, the country of origin may nevertheless provide opportunities for the public of the affected country to participate, using means that will not constitute an interference with domestic affairs of the affected country; for example, through those means set out in paragraph 23 (e) (i)-(iii) above.

26. The *Guidance on the practical application of the Espoo Convention*[20] and the *Guidance on public participation in environmental impact assessment in a transboundary context*,[21] both prepared under the Espoo Convention, and the Good Practice Recommendations on Public Participation in Strategic Decision-making,[22] prepared under the Protocol on Strategic Environmental Assessment, may also be helpful reference tools when making provisions for the public from an affected country to participate in decisions likely to have significant transboundary impacts and thus subject to either an EIA or SEA procedure.

## L. Delegating tasks in a public participation procedure

27. While the public participation procedure should in general be carried out by the public authority which is competent to take the decision at issue, in certain situations this may possibly not provide for the most effective public participation, for example:

(a) Where the public authority is a central body located far away from the intended location of the proposed activity and this may hinder the public from effectively participating, for example, from inspecting all relevant documentation and/or attending hearings;

(b) Where the public authority has an interest in the outcome of the decision, including where it acts, either itself or through an entity under its control, as a promoter or developer of the project. In cases where the public authority is also the promoter or developer, it should delegate responsibility for carrying out the public participation to another, impartial, body or provide a reasoned justification for failing to do so;

(c) Where the proposed activity is controversial and/or complicated such that supplementary efforts are needed to provide a sufficient information basis and an impartial, inclusive forum; here it is advisable to call upon a "third party" highly experienced in carrying out such procedures (see para. 32 below).

28. If, in situations such as those set out in paragraph 27 above, the legal framework seeks to delegate any administrative tasks related to a public participation procedure to persons or bodies other than the competent public authority, it should be borne in mind that the ultimate responsibility for ensuring the public participation procedure complies with the requirements of the Convention will still rest with the competent authority.

29. If the legal framework seeks to delegate any tasks related to a public participation procedure, it should clearly specify:

(a) The distribution of tasks between the various bodies;

[20] ECE/MP.EIA/8, available online from http://www.unece.org/env/eia/guidance/welcome.html.
[21] ECE/MP.EIA/7, available from http://www.unece.org/env/eia/pubs/pp_in_teia.html.
[22] ECE/MP.EIA/SEA/2014/2, available from http://www.unece.org/env/eia/meetings/mop_6.html.

(b) The obligation of each body that has been delegated to perform tasks to report to the competent authority with respect to the completion of those tasks.

30. While developers may hire consultants specializing in public participation, neither the developers nor the consultants hired by them can ensure the degree of impartiality necessary to guarantee the proper conduct of the public participation procedure in compliance with the Convention. Therefore, giving the developers sole responsibility for organizing the public participation, including for making available the relevant information to the public and for collecting comments, would not be compatible with the Convention.[23] This should not be read as entirely excluding the involvement of developers, overseen by the competent public authority, in the organization of the public participation procedure. For example, the developer may be required to:

(a) Notify the public of the public participation procedure,[24] or at least to pay for the costs of such notification (e.g., in the newspaper or on radio or television);

(b) Assist in the organization of public hearings;

(c) Pay special fees to cover the costs related to public participation;[25]

(d) Provide relevant information to the public about the proposed activity and respond to questions from the public about the public participation procedure, e.g., regarding preparations for the public hearing.

31. Arrangements requiring or encouraging developers to enter into public discussions before applying for a permit are permitted under the Convention,[26] provided that such arrangements are in addition to a mandatory public participation procedure meeting the requirements of the Convention after the application for the permit is made.

32. If the legal framework seeks to delegate administrative functions other than those set out in paragraph 30 (a)-(d) above, it should ensure that the persons or bodies to which it seeks to delegate are impartial and do not represent any interests related to the decision. So long as they are indeed impartial, such bodies might include:

(a) Other public authorities, for example a central authority may delegate such tasks to the local authority in the location of the proposed activity;

(b) Bodies or persons, whether public or private, specializing in the organization of public participation, for example planning inspectors or *commissions d'enquête publique*, professional process facilitators or specialists in mediation.

33. For an overview of which tasks in a public participation procedure may be delegated to another public authority, an independent entity specializing in public participation or the developer, see the annex.

34. Alternatively, subject to national law, certain tasks in the public participation procedure may be delegated or commissioned to members of the public concerned (including NGOs promoting environment protection) provided:

[23] See report of the Compliance Committee to the fourth session of the Meeting of the Parties to the Convention (ECE/MP.PP/2011/11), para. 84.

[24] Aarhus Convention, article 6, para. 2.

[25] See report of the Compliance Committee to the fourth session of the Meeting of the Parties to the Convention, para. 85.

[26] Aarhus Convention, article 6, para. 5.

(a) Those members of the public are widely considered to act in the public interest and are able to carry out the tasks delegated to them in an equitable and non-discriminatory manner, paying heed to issues of gender, ethnicity, religion, age, disability, poverty, etc., and also to the differing viewpoints of the public concerned;

(b) Those members of the public voluntarily consent to undertake the tasks proposed to be delegated to them. This does not exclude the possibility that those persons may receive remuneration for performing those tasks;

(c) The public participation procedure is carried out in a manner that fully meets the requirements of the Convention and the public concerned has access to a review procedure to challenge the substantive or procedural legality of those person's decisions, acts and omissions;[27]

(d) A lack of members of the public volunteering to undertake the tasks proposed to be delegated to them does not release the competent public authorities from their obligation to organize the public participation procedure in accordance with the Convention.

35. Possible tasks that might be delegated to members of the public concerned might include:

(a) Notifying the public;[28]

(b) Making all relevant information accessible as soon as it becomes available;[29]

(c) Organizing public hearings;[30]

(d) Collecting and collating comments.[31]

36. Legal provisions allowing the public to organize the public participation procedure (for example, the possibility in some countries of Eastern Europe, the Caucasus and Central Asia for the public to undertake so-called "public *expertiza*") should be considered as supplementary measures and not as the only measure to implement the requirements of the Convention.[32]

## M. Practical arrangements to support public participation

37. Practical arrangements to facilitate effective public participation may be put in place where appropriate. For example:

(a) Measures may be taken to facilitate the public's access to information relevant to the decision-making (e.g., by providing the public with access to information for the least possible cost, such as by making copies of requested documents available electronically free of charge, and by expediting the time frames for accessing information);

(b) Local public authorities and/or public institutions (e.g., schools or public libraries) may be requested to assist the regional and/or central authorities in carrying out, with due compensation where appropriate, certain functions related to public participation

[27] Aarhus Convention, article 9, para. 2.
[28] Aarhus Convention, article 6, para. 2.
[29] Aarhus Convention, article 6, para. 6.
[30] Aarhus Convention, article 6, para. 7.
[31] Ibid.
[32] See the findings of the Compliance Committee on communication ACCC/C/2009/37 concerning compliance by Belarus (ECE/MP.PP/2011/11/Add.2), para. 76.

(e.g., making available documentation for inspection; assisting in organizing public hearings or providing the venue);

(c) Schemes may be established to support, financially or otherwise, the public to participate (e.g., to assist with travel costs or arrangements for the public to prepare for and attend public hearings or inquiries, or to provide technical or legal support to assist the public to engage effectively in the participation procedure, including to seek legal advice or the assistance of technical experts).

### N. Evaluation, training and research on public participation practices

38. Routine, well-designed evaluation of public participation efforts, including the techniques and formats used, and the subsequent study of such evaluations, can make an important contribution to ensuring more effective public participation procedures in the future.

39. Public authorities designing and carrying out public participation procedures should, to the extent feasible and appropriate, consult existing social science research and feedback from actual experience to inform their practice and build broader knowledge about public participation. The Aarhus Convention clearinghouse mechanism is one resource to find such literature.[33] University researchers may also be engaged to design and perform independent evaluations of public participation procedures.

## II. Public participation in decision-making on specific activities (article 6)

### A. Applying article 6, paragraph 1 (a)

40. While not expressly stated in the Convention, in applying article 6, paragraph 1 (a), of the Convention, it is recommended that:

(a) Where one operator carries out several activities falling under the same subheading of annex I to the Convention in the same installation or at the same site, the production capacities or outputs of those activities should be added together; [34]

(b) References to threshold values "per day" in annex I should be read as per 24-hour period beginning and ending at midnight;

(c) Capacities or outputs indicated in annex I should be read as capacities or outputs technically possible, and not capacities or outputs envisaged by operators;[35]

(d) Paragraph 20 of annex I should be read to encompass any activity subject to an EIA procedure requiring mandatory public participation under national legislation by reason of international law (e.g., activities covered by annex I to the Espoo Convention), supranational law (e.g., annex I projects and those annex II projects included by way of

[33] See http://aarhusclearinghouse.unece.org/.

[34] Guidance on Interpretation and Implementation of the IPPC Directive, available from the European Commission website, http://ec.europa.eu/environment/industry/stationary/ippc/general_guidance.htm.

[35] Ibid.

categorical screening under the European Union (EU) EIA Directive)[36] or an independent national determination;

(e) If domestic legislation requires the carrying out of a procedure that includes all the basic elements of an EIA procedure, without it being named as such, the de facto EIA process should be considered an EIA procedure for the purposes of paragraph 20 of annex I;[37]

(f) Those activities listed in annex I to the Convention for which no thresholds are set (e.g., nuclear power stations, chemical installations, installations for incineration or landfill of hazardous waste, etc.) should be subject to article 6, paragraph 1 (a), regardless of their size;[38]

(g) For changes in activities listed in annex I to the Convention for which no threshold is set, it might be useful in a particular case, e.g., construction of new reactors at a nuclear power plant, that any change to or extension of an activity should be likewise subject to the requirements of article 6, paragraph (1) (a), regardless of their size.[39]

**Complex decision-making**

41. Where the national framework requires several permitting decisions for an activity covered by article 6, paragraph 1, to proceed (often known as "complex decision-making"), some kind of significance test should be applied at the national level to determine which of the multiple permitting decisions should be subject to public participation under the Convention.[40] To this end, when determining which of the multiple decisions in a complex decision-making process should be subject to public participation under the Convention, the following criteria may be taken into account, having in mind the need for effective public participation and to avoid participation fatigue:

(a) Does the decision in question "permit" (i.e., effectively authorize) the activity in question?;[41]

(b) Will the parameters for the proposed activity set by the decision have a significant effect on the environment?;

(c) Will the parameters of the proposed activity set by the decision foreclose the options to be considered at later stages?;

(d) Will the decision change environmentally significant parameters set by a preceding decision that required public participation?;[42]

(e) Will the activity, by virtue of its nature, size or location affect or be of interest to a significant number of people?;

[36] 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 (codified version).

[37] See the findings of the Compliance Committee on communication ACCC/C/2008/35 concerning compliance by Georgia (ECE/MP.PP/C.1/2010/4/Add.1), para. 46.

[38] See the findings of the Compliance Committee on communication ACCC/C/2009/41 concerning compliance by Slovakia (ECE/MP.PP/2011/11/Add.3), para. 58.

[39] Ibid.

[40] See the findings of the Compliance Committee on communication ACCC/C/2006/17 concerning compliance by the European Community (ECE/MP.PP/2008/5/Add.10), para. 43.

[41] Ibid., para. 42.

[42] Ibid., para. 43.

(f) Will the proposed activity require a large commitment of public funds (e.g., medium to large infrastructure projects)?;

(g) Will the implementation of the activity, plan, programme, policy or legal instrument require the decision to be taken in cooperation with those affected and interested?;

(h) Will the decision require particularly broad comprehension and acceptance in order to be effective?

42. If, despite the existence of a public participation procedure or procedures with respect to one or more environment-related permitting decisions, there are other environment-related permitting decisions for the activity in question for which no full-fledged public participation procedure is foreseen but which are capable of significantly changing the basic parameters or which address significant environmental aspects of the activity not already covered by the permitting decision(s) involving a public participation procedure, those decisions should be subject to a proper public participation procedure also.[43]

## B. Applying article 6, paragraph (1) (b)

43. Article 6, paragraph 1 (b), of the Convention requires a mechanism to be established within the national legal framework to determine whether a decision on a proposed activity which is not listed in annex I may yet have a significant effect on the environment and thus require public participation in accordance with the requirements of article 6. The mechanism for such a determination may be related to the system of EIA or may be independent from it, or a mixture of both approaches may be applied.

44. Irrespective of whether the above determination is related to the EIA procedure or not, the recommended first step is to identify all activities which potentially may have an effect on the environment. Such activities may include:

(a) Any activity which under national legislation requires an environmental permit or licence (such as noise permits, emissions permits, logging permits, authorizations for culling or disturbing animals, permits for discharge of water or for water intake, fracking permits, mining permits, exploratory drilling permits, fishing permits, export or import permits for endangered species, etc.);

(b) Any other activity subject to an individual screening under national law. For example:

(i) Changes to or extensions of activities within the scope of the second sentence of paragraph 22 of annex I to the Convention;

(ii) Activities subject to individual screening for environmental assessment (for example, annex II activities under the EIA Directive) or nature protection assessment (for example, activities subject to article 6, paragraphs 3 and 12, of the EU Habitats Directive).[44]

[43] Ibid.

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

45. Following the identification of all activities that potentially may have an effect on the environment, a determination must then be made as to which of those may have a "significant effect" and therefore require public participation in accordance with article 6, paragraph 1 (b). The mechanism for this determination may take the form of:

(a) Deeming particular types of decisions concerning certain types of activities to be subject to public participation in accordance with the provisions of article 6 (the "list" approach, as used in annex I to the Convention);

(b) Requiring public authorities to make such a determination through a case-by-case examination (the "case-by-case" approach);

(c) A mixture of both above procedures.

46. If the legal framework requires public authorities to make the determination under article 6, paragraph (1) (b), through a case-by-case approach, a list of clear criteria should be established against which a determination of the proposed activity's environmental significance should be made (for example, the criteria listed in annex 3 to the Espoo Convention or annex III of the EU EIA Directive).

47. The determination should be subject to review under the Convention at the request of the public concerned, in particular to check if the criteria established for the purpose were properly applied in a given case.[45]

## C. Applying article 6, paragraph 1 (c)

48. Article 6, paragraph 1 (c), of the Convention is not a mandatory provision. Public authorities that seek to use this provision should bear in mind that the provision requires a determination that a proposed activity both:

(a) Serves national defence purposes; and

(b) The application of the provisions of article 6 would have an adverse effect on these purposes.

49. Such a determination should be made within a clear, transparent and consistent framework, through establishing and maintaining either:

(a) A list of activities and criteria, which, if a public authority determines in a particular case that they are met, may be deemed to fulfil the above requirements;

(b) A mechanism for a case-by-case determination of whether the above requirements are met based on criteria set by law.

50. Whichever approach is used, the grounds for exemption in article 6, paragraph 1 (c), should be interpreted in a restrictive way, taking into account the public interest in ensuring effective public participation in decisions affecting the environment. The proposed activity should be genuinely for national defence purposes and the grounds for exemption should not be used simply to avoid having to carry out a public participation procedure.

[45] See the findings of the Compliance Committee on communication ACCC/C/2010/50 concerning compliance by the Czech Republic (ECE/MP.PP/C.1/2012/11), para. 82. Also see article 9, paragraph 2, of the Convention.

51. The determination should be subject to review under the Convention at the request of the public concerned,[46] in particular to check if the criteria established for the purpose were properly applied in a given case.

## D. Adequate, timely and effective notification (article 6, paragraph 2)

52. The legal framework should clearly require that the public concerned be informed in an adequate, timely and effective manner,[47] so that public authorities have clear guidance as to the timing, content and quality of notification, in particular when they have a degree of discretion as to how notification is to be carried out.

**Adequate notification**

53. The notification of the public should adequately address all matters listed in article 6, paragraph 2, (a) to (e) accurately, in sufficient detail and in clear language. In particular:

(a) With respect to article 6, paragraph 2 (d) (ii):

(i) The notification should describe clearly all the opportunities for the public to participate and the time frames regarding those opportunities;

(ii) As a good practice, an overview of the public participation procedure may be prepared and attached to the invitation for public participation. It is recommended that the overview:

a. Provide information about the opportunities for the public to submit comments and the method(s) by which they can be submitted (orally or in writing, electronically, etc.);

b. Include a summary of the most important information relevant to the decision-making (e.g., the EIA documentation);

c. Be coordinated with all public authorities involved in the public participation procedure, so as to ensure that those aspects under the competence of other authorities are included also;

d. Indicate whether those who participate will be automatically notified of the decision once it has been taken, and how to access it. If automatic notification is not envisaged, there should be provision for the public concerned to register for such notification, and information on that opportunity should be provided with the initial notification;

(b) With respect to article 6, paragraph 2 (d) (iv), in addition to the contact details of the body or person(s) from whom relevant information can be obtained, precise information about where and when it is available for examination should be provided;

(c) With respect to article 6, paragraph 2 (d) (v), the following should be specified:

(i) The contact details of the body or person(s) to which comments or questions can be submitted;

[46] See Aarhus Convention, article 9, paragraph 2.

[47] See the findings of the Compliance Committee on communication ACCC/C/2006/16 concerning Lithuania (ECE/MP.PP/2008/5/Add.6), para. 91 (a) (i).

(ii) The time schedule for transmittal of comments or questions, recalling that the time schedule should, in accordance with article 6, paragraph 3, provide a reasonable time frame, inter alia, taking into account that the means of notification used may have an impact on the timing for the notification effectively to reach the public concerned (for example, publication in the government's official notification database, though the database is publicly accessible, may not constitute effective notification for most members of the public who do not check such databases on a daily basis);

(d) With respect to article 6, paragraph 2 (vi), the notice should indicate which particular information will be made available in accordance with article 6, paragraph 6. It should also make clear that access to this information will be available for examination free of charge. While not all information must necessarily be detailed in the notification, at a minimum it should include the application to permit the proposed activity and its main attachments, including EIA documentation if any, and should also briefly outline the other types of information to be made available;

(e) With respect to article 6, paragraph 2 (e), a good practice for those activities subject to article 6 that are not subject to any national or transboundary EIA procedure may be to inform the public concerned in a timely and effective manner either:

(i) If the legal framework provides for the possibility for the public to participate in the screening decision, of the public's opportunities to so participate;

(ii) If the legal framework does not envisage public participation in the screening decision, of the results of the EIA screening;

(iii) If the activity was not subject to such a screening, of the nature and results of any other procedure applicable to the activity.

54. To assist the public concerned to identify notices that may be relevant to them, it is recommended that the title of any written notice state the proposed activity, the nature of the proposed decision and the proposed geographical location(s). As a good practice, the contact details of the decision maker and the developer should be prominently displayed above any other details.

55. More generally, public authorities should endeavour to ensure that officials have the knowledge and capacity to ensure that the public concerned is notified in an adequate, timely and effective manner.[48]

56. If the legal framework delegates the task of notification to a third party, for example, the developer, it should require the third party to report on a timely basis to the competent public authority regarding who was notified, regarding what, when and how.

**Timely notification**

57. The requirement for informing the public in a "timely" manner should be seen in the context of the obligation to provide "reasonable time frames" (article 6, para. 3) and "early public participation, when all options are open and effective public participation can take place" (article 6, para. 4).

58. The various forms of written notification should be provided to the public concerned on the same date. If this is not feasible, the time frames for the public to participate should be calculated from the latest date that the written notification, once given, would effectively reach the public concerned.

[48] See Aarhus Convention, article 3, para. 2.

**Effective notification**

59. Public authorities should seek to provide a means of informing the public that ensures that all those who potentially could be concerned have a reasonable chance to learn about the proposed activity and their possibilities to participate.[49] What will constitute "effective notification" must therefore be determined on a case-by-case basis, taking into account the particular situation in each case.

60. Public authorities should ensure that the notification and all accompanying information remains available to the public throughout the entire public participation procedure so that members of the public learning of the procedure later in the process still have access to all relevant information in order to participate effectively. It should also remain available to the public for the duration of the time period for any administrative or judicial review procedures regarding the final decision to be brought under national law and determined.

61. Care should be taken to ensure that the information provided in the various forms of notification is consistent.

62. In order to ensure adequate and effective notification and provision of information to the public as part of the ongoing review of the public participation procedure, the possibility for additional notifications should be provided and used, as appropriate, for example:

(a) When there is some doubt that all of the public concerned has been notified effectively (for instance, if it is subsequently discovered that some members of the public concerned may not have received the original notification, e.g., due to mail delivery problems, or may not have had access to the media through which notification was given, e.g., no access to the Internet);

(b) When the proposed activity will entail more than one decision that requires public participation under article 6 (see para. 41 above);

(c) When significant new information comes to light or the circumstances change in a material way that may require that the public be provided with a further opportunity to participate. This includes significant new information of a procedural nature, for example, the time and venue of the public hearing, if the public has not previously been informed of this;

(d) When there is additional information, whether of a substantive or procedural nature, which could not be provided with the original notification regarding the commencement of the procedure and which, in accordance with article 6, paragraph 2 (d), should be provided as and when it can be;

(e) If the envisaged public participation procedure is changed in any material way (e.g., changes to the time frames for the procedure or means through which the public may provide its input).

**Methods of notifying the public**

63. When designing the methods for notifying the public, the following may be borne in mind:

[49] See the findings of the Compliance Committee on communication ACCC/C/2006/16 concerning compliance by Lithuania (ECE/MP.PP/2008/5/Add.6), para. 67.

(a) The methods chosen should be tailored to reach as many of the public concerned as possible, in particular as many as possible of those in the immediate vicinity of the proposed activity or its environmental effects;

(b) As a good practice, the plan for notification of the public should take into account the size and complexity of the project, the cultural context in which the project or activity is located or may affect and the needs of any more vulnerable groups. For most projects, the forms of public notice listed in paragraph 64 should be used, but for complex or controversial projects and activities, the plan for stakeholder engagement may be complex and use a variety of methods of notification, including things like knocking on doors of people who do not have telephones or electricity. The key is that the means of notification should fit the needs of the people identified as the public concerned. In all cases, the public should be told how they will be notified;

(c) Language issues should be addressed, as appropriate, for example by providing translations if the public concerned do not speak the language of the documentation or by enabling representative organizations to relay the notification to their communities in their own language or a widely recognized regional lingua franca (e.g., English for the EU region, Russian for the countries of Eastern Europe, the Caucasus and Central Asia);

64. As a guide, public notice should be placed:

(a) In a public place in the immediate vicinity of the proposed activity (e.g., on a prominent fence or signpost on the site of the proposed activity, etc.);

(b) On a publicly accessible physical noticeboard at the public authority competent to take the decision, and on a prominent and publicly accessible part of the competent public authority's website (if such a website exists);

(c) In the newspaper(s) corresponding to the geographical scope of the potential effects of the proposed activity and which reaches the majority of the public who may be affected by or interested in the proposed activity;

(d) In places highly frequented by the public concerned and customarily used for the purpose (e.g., noticeboards in community halls, post offices, shops and commercial centres, places of worship, schools, kindergartens, sports halls and meeting places for marginalized groups, as well as at bus stops, sports fields, etc.);

(e) On the notice boards and websites of all local authorities in the area potentially affected.

65. Public notice through radio, television and social media (e.g., Facebook, Twitter, blogs), in areas where these are popular forms of communication, may be used to supplement, but not replace, the above forms of notification. Social media may be particularly useful in some cultures for notifying younger members of the public who may not be reached by more traditional forms of media.

66. If one of the chosen ways of informing the public about its possibilities to participate is via local newspapers, effective notification would be more likely met by choosing the newspaper with the largest circulation in the geographical area concerned,[50] but it would be important to consider on a case-by-case basis how those among the public concerned normally receive their information. For example, it may be that some members of the public concerned may not be able to afford to regularly buy major newspapers. It will also likely be more effective to publish notification in a popular daily local newspaper rather

[50] Ibid.

than in a weekly official journal,[51] although additional publication in the official journal would also be important, as in many countries it would still be considered the standard source of such notification.

67. It should be recalled that some members of the public concerned may not be reached through the usual forms of notification (for example, those living in remote areas, without easy access to the Internet, with low literacy levels or speaking other languages) and therefore other means of effective notification may need to be used,[52] for example by contacting relevant NGOs or other bodies that work with those communities.

68. Notification through the noticeboards or the website of the project proponents (whether a private or public entity) should be considered only as a supplementary means. Such notification can only be in addition to, and not instead of, notification on the noticeboard and website of the public authority competent to take the decision.

69. Journalists' articles commenting on a project in the press, on the Internet or television may be very useful as a supplementary means of informing the public. However, they do not in themselves constitute public notice for the purposes of the Convention and cannot replace it.[53]

70. As a good practice, a mechanism may be established to provide for individual notification, with a straightforward procedure through which any member of the public may register in advance to receive notifications, with options to choose notifications for particular geographical regions or related to particular topics. The list of members of the public who have registered for such notification should be kept up to date. In addition to members of the public who have requested in advance to be notified of the decision-making procedure, individual notification may be useful for those members of the public who are identified as having special interests (e.g., those known to have legal interests or those living in the immediate vicinity).

## E. Reasonable time frames to inform the public and for the public to prepare and participate effectively (article 6, paragraph 3)

71. The different phases of a public participation procedure for which reasonable time frames are required may include:

(a) Informing the public concerned about the commencement of the procedure (article 6, para. 2);

(b) Enabling the public concerned to become acquainted with the documentation (article 6, para 6). This period should be long enough to allow the public to request additional information in accordance with article 4, paragraphs 1 and 2, that it considers may be relevant to the decision-making on the proposed activity;

(c) Enabling the public to submit any comments, information, analyses or opinions that it considers relevant (article 6, para. 7). In setting this time frame, the way in which comments may be submitted should also be borne in mind. For example, if comments are required to be submitted by post in writing, the real time frame for the public to comment will be several days shorter than the stated time frame because the comments

[51] Ibid.
[52] Ibid.
[53] See the findings of the Compliance Committee on communication ACCC/C/2009/37 concerning compliance by Belarus (ECE/MP.PP/2011/11/Add.2), para. 86.

have to be sent several days earlier to allow time for mail delivery. As a good practice, the postmark of comments sent by post may be taken as the date of submission;

(d) Considering the comments, information, analyses or opinions submitted by the public (article 6, para. 8);

(e) Taking the final decision, while taking due account of the outcome of public participation (article 6, para. 8);

(f) Preparing the statement of reasons and considerations on which the decision is based;

(g) Preparing the text of the decision;

(h) Notifying the public of the decision, together with how the public may access the text of the decision and the statement of reasons and considerations on which it is based (article 6, para. 9).

72. When designing the legal framework for public participation, as general principles, it should be recalled that the requirement to provide "reasonable time frames" in article 6, paragraph 3:

(a) Should take into account, inter alia, the nature, complexity, size and potential environmental effects of the proposed activity, as well as the amount of documentation relevant to the decision-making involved; thus a time frame which may be reasonable with respect to a small simple project may well not be reasonable in the case of a major complex project with voluminous documentation or one with potentially very significant environmental impacts;[54]

(b) Means "reasonable" from the point of view of the public seeking to prepare for and participate effectively in the public participation procedure;

(c) Should take into account generally applicable administrative time frames in the country (e.g., time frames for making an information request and appealing a refusal).

73. With respect to the setting of time frames for the various phases of public participation procedures, the legal framework may:

(a) Set fixed time frames for each phase;

(b) Set minimum time frames;

(c) Adopt a flexible approach whereby the public authorities responsible for a particular public participation procedure are responsible for setting time frames appropriate to the circumstances of that case, but with a legislated minimum based on the legislated time frame for accessing information under article 4 of the Convention.

74. Whether or not a fixed or flexible approach is used, in the event of significant new information coming to light or the circumstances changing in a material way after the public participation procedure has begun, the public authorities should be able to extend the time frames for public participation so that the public can review the relevant information and participate effectively.

75. A flexible approach has the advantage of enabling public authorities to set time frames for the public participation procedure that take into account factors such as the nature, complexity, size and potential environmental effects of the proposed activity.

[54] See the findings of the Compliance Committee on communication ACCC/C/2006/16 concerning compliance by Lithuania (ECE/MP.PP/2008/5/Add.6), para. 69.

However, it potentially leaves public authorities with absolute discretion in setting time frames, which could result in uncertainty and inconsistency. Thus, if the flexible approach is to be used, the applicable legal framework should specify, for each phase of the public participation procedure, either a maximum or minimum time frame depending on which will better facilitate public participation in that phase. For example:

(a) The setting of a minimum time period is generally more suited to the phases of the public participation procedure that the public performs (e.g., preparing and submitting comments);

(b) Conversely, the setting of a maximum time period is generally more suited to the phases of the public participation procedure which the public authority must perform (e.g., the consideration by public authorities of comments submitted by the public). The setting of a maximum time frame for the public to submit comments, regardless of how long the maximum time frame is, runs the risk that, in individual cases, time frames might be set which are not reasonable.

76. If the legal framework specifies minimum time frames, the legal framework or accompanying guidance should make clear that they are genuinely minimum time frames from which the setting of longer time frames is not only possible but in fact recommended for proposed activities with more significant environmental impacts (e.g., those subject to a mandatory EIA procedure) or those affecting a large number of people.

77. The legal framework should provide clarity as to the calculation of the various time frames, which should be expressed in clear terms. For example:

(a) Wherever possible, the terms (e.g., "days", "weeks", "months") used to describe time frames should be in keeping with those customarily used in national legislation;

(b) If time frames are expressed in days, it should be clear whether those are calendar days or working days, and the approach adopted should be consistent throughout the legal framework;

(c) The beginning and end date of time frames should be calculated with care, taking into account public holidays. For example, if the end date of a given time frame would fall on a public holiday, the following working day should be used;

(d) While "days" are most suitable to express shorter time frames, longer time frames may be expressed in "weeks" or "months";

(e) Wherever possible, the main holiday seasons (e.g., summer, late December) should be avoided as times for holding public participation procedures;

(f) For proposed activities which have potential transboundary impacts, the public holidays and main holiday seasons in the affected countries should also be avoided.

**Reasonable and unreasonable time frames for public participation**

Some examples of reasonable and unreasonable time frames for the different phases of public participation procedures include:

- **Unreasonable:** A period of 10 working days for the public to analyse the documentation, including the EIA report, and to prepare to participate in the decision-making process concerning a major landfill cannot be considered a reasonable time frame.[55]
- **Unreasonable:** A period of 20 days for the public to prepare and participate effectively cannot be considered reasonable if the period includes days of general celebration in the country.[56]
- **Reasonable:** In contrast, a period of six weeks for the public to inspect the documentation and prepare itself for the public inquiry and a further six weeks for the public to submit comments, information, analyses or opinions relevant to the construction of a waste disposal plant could be considered as reasonable time frames.[57]
- **Reasonable:** A legal framework that provides for a minimum of 30 days between the public notice of the decision-making procedure and the start of public consultations is a reasonable time frame, so long as the minimum period may, where appropriate, be extended as necessary. taking into account, inter alia, the nature, complexity and size of the proposed activity.[58]

## F. Early public participation when all options are open (article 6, paragraph 4)

78. In the case of tiered decision-making (see para. 17 above), in order to ensure early and effective public participation when all options are open:

(a) There should be at least one stage in the decision-making process when the public has the opportunity to participate effectively on whether the proposed activity should go ahead at all (the zero option) (see also para 16 above);

(b) In addition, at each stage of a tiered decision-making process, the public should have the opportunity to participate in an early and effective manner on all options being considered at that stage;

(c) Information about the decision-making in the earlier tiers should be available in order for the public to understand the justification of those earlier decisions — including the rejection of the zero option and other alternatives;

[55] Ibid., para. 70.

[56] See the findings of the Compliance Committee on communication ACCC/C/2008/24 concerning compliance by Spain (ECE/MP.PP/C.1/2009/8/Add.1), para. 92.

[57] See the findings of the Compliance Committee on communication ACCC/C/2007/22 concerning compliance by France (ECE/MP.PP/C.1/2009/4/Add.1), para. 44.

[58] See the findings of the Compliance Committee on communication ACCC/C/2009/37 concerning compliance by Belarus (ECE/MP.PP/2011/11/Add.2), para. 89.

(d) When in a tiered decision-making process new information subsequently sheds doubt on decisions made in the earlier tiers or stages or severely undermines their justification it should be possible to reopen these decisions.

79. An example of good practice in applying the requirement for early public participation when all options are open is to provide the public with the opportunity to participate in both the screening and scoping stages of the EIA procedure, when those issues to be considered as important for further examination are being identified.

80. "When all options are open" may be read as a time when any option could still be chosen as the preferred option. Some examples of situations when all options might no longer be considered open could include:

(a) When a public announcement of a preferred option has been made even though the plan or programme has not yet been adopted;

(b) When a formal decision on the issue has been taken by a public body (including representative bodies like local, regional or national parliaments);

(c) When a decision maker has promised to constituents that they will pursue or avoid particular options;

(d) When a public authority has concluded contracts or agreements with private parties related to a decision subject to the Convention which would have the effect of foreclosing options prior to meaningful input from the public.[59]

81. While providing public participation at the very early stages of the procedure — for example, as a good practice, at the screening and scoping stages in the EIA procedure or, in a number of countries of Eastern Europe, the Caucasus and Central Asia, at the stage of the OVOS procedure (during which the developer must take account of the outcomes of the public participation when preparing the OVOS report as part of the developing the project documentation)[60] — is to be welcomed as a good practice, it should be recalled that such an opportunity for the public to participate must be supplemented with opportunities to participate also at the later stage when all the relevant information/documentation has been gathered/prepared and the public authorities are in a position to take the final decision.

## G. Encouraging developers to engage with the public concerned before applying for a permit (article 6, paragraph 5)

82. It may be useful to prepare guidance to assist developers, where appropriate, to identify the public concerned, to enter into discussions and to provide information regarding the objectives of their application before applying for a permit.

83. While such a dialogue between the developer and the public concerned before the developer applies for a permit is to be encouraged, it is supplementary to the public participation procedure to be carried out by the competent public authority once the permit application has been made.

[59] See the findings of the Compliance Committee on communication ACCC/C/2008/24 concerning compliance by Spain (ECE/MP.PP/C.1/2009/8/Add.1), para. 119 (a) (iii).

[60] *Editor's note*: The OVOS/*expertiza* system is a development control mechanism followed in many countries of Eastern Europe, the Caucasus and Central Asia. The Committee has held that the OVOS and the *expertiza* should be considered jointly as the decision-making process constituting a form of environmental impact assessment procedure (see ECE/MP.PP/C.1/2013/9, para. 44).

84. As a good practice, the public authority should check that such a dialogue between the developer and the public concerned provides accurate and reliable information and does not amount to manipulation or coercion.

## H. Access to all relevant information (article 6, paragraph 6)

**All information relevant to the decision-making**

85. Access to information is an essential prerequisite for effective public participation. All information relevant to the decision-making that is available to the public authorities (except information exempted from public disclosure in accordance with article 4, paragraphs 3 and 4) should be made available to the public concerned regardless of its quality and regardless of whether the public authority considers it to be accurate, comprehensive or up to date.

86. While it is good practice for public authorities, to the extent feasible, to check the accuracy of information prior to making it publicly available, this should not hold up the release of information to the public.

87. This includes raw data from monitoring stations, even if not yet validated or made available in its final form. Should the authority have any concerns about disclosing the data, they should provide the raw data and advise the requestor that they have not been processed in accordance with the official procedure for processing raw environmental data. The same applies for processed data, in which case the authorities should advise the requestor how the data was processed and what it represents.[61]

88. Public authorities should consider establishing a set of minimum information which is considered to be relevant to decision-making subject to article 6, and to which the public should have access for examination as a matter of course. Without prejudice to the exceptions to disclosure set out in article 4, paragraphs 3 and 4, such minimum information may for example include:

(a) The full application for the decision to permit the proposed activity;

(b) Relevant information assembled during the procedure, including all attachments to the application required by law, such as:

(i) The full final EIA report, including all annexes;

(ii) All relevant documentation providing information about the characteristics of the proposed activity not already specified in the EIA report, for example, regarding its location, structure, related infrastructure or other facilities (e.g., new roads, power grids, communication needs);

(iii) All relevant maps;

(iv) All relevant opinions, statements or certificates issued by other public authorities or other statutory consultees, whether public or private bodies;

(v) References to all relevant legislation applicable to the proposed activity;

(vi) Any relevant plans, programmes or policies that the proposed activity is being proposed under;

[61] See the findings of the Compliance Committee on communication ACCC/C/2010/53 concerning compliance by the United Kingdom of Great Britain and Northern Ireland (ECE/MP.PP/C.1/2013/3), para. 77.

(vii) Previous permits for the same activity;

(viii) Previous relevant decisions on fines, obligations, suspensions or refusals of permit applications with respect to the project applicant;

(ix) All comments, information, analyses or opinions submitted by the public in written form or submitted orally and recorded by public authorities or by other bodies responsible for the public participation.

89. The information provided should be balanced. It should present different aspects of the topic and avoid any manipulation. Subject to the exceptions set out in articles 4, paragraphs 3 and 4 of the Convention, all expert opinions relevant to the decision-making should be available to the public.

90. In addition, without prejudice to the exemptions from disclosure contained in article 4, paragraphs 3 and 4, the minutes, transcripts and/or recordings from any public hearings or meetings held with respect to a decision to permit an activity covered by article 6 should be considered as information relevant to the decision-making. As a good practice, if recordings are made, it is recommended they be archived for possible future reference and not destroyed after transcripts have been made.

**Exceptions to disclosure**

91. While article 6, paragraph 6, expressly permits the exemptions from disclosure provided in article 4, paragraphs 3 and 4, of the Convention, when designing and implementing the legal framework for article 6 decisions, the following should be taken into account:

(a) If information is relevant to decision-making, then there is a strong presumption that it is also in the interest of the public seeking to participate in that decision-making to have access to that information. Thus, the grounds for refusal set out in article 4 should be interpreted in a restrictive way, taking the public interest served by disclosure into account;

(b) Any decisions to exempt certain information from disclosure should themselves be clear and transparent, give the reasons for the non-disclosure and provide information on access to a review procedure;[62]

(c) In accordance with article 4, paragraph 6, if information exempted from disclosure under article 4 can be separated out without prejudice to the confidentiality of the information exempted, public authorities should make available the remainder of the information relevant to the decision-making;

(d) If circumstances change over time, so that the exemption from disclosure would no longer apply, the information should be made available to the public as soon as it is no longer confidential;

(e) As a general rule, documents prepared especially for the decision-making procedure, including in particular the original application for the permit and EIA reports and their annexes, should be disclosed in their entirety;

(f) For the avoidance of doubt, as a minimum, the public shall have access to all the information listed in article 6, paragraph 6 (a)-(f).

[62] See the findings of the Compliance Committee on communication ACCC/C/2010/48 concerning compliance by Austria (ECE/MP.PP/C.1/2012/4), para. 56.

**Access to examine the relevant information**

92. In order to facilitate effective examination by the public concerned of all the information relevant to the decision-making, the information should at a minimum be accessible for examination:

(a) At the seat of the competent public authority, as well as the relevant branch location(s);

(b) If feasible, electronically, e.g., via a publicly accessible website with both a user-friendly search function and an accessible archive of the most important documents from past procedures;

(c) If the seat of the competent authority is located far away from the place of activity (e.g., more than two hours away by public transport), in addition to (a) and (b) the information should be accessible at a suitable easily accessible location(s) in the vicinity of the proposed activity, for example, in the offices of the local authority in the place of the activity;

(d) During usual working hours on all working days throughout the entire period of the public participation procedure. In addition, the competent public authority should consider how to make the information available to members of the public who cannot access it during usual working hours (e.g., due to their own working hours).

93. The various locations and, as a good practice, their opening hours, for the public to access the information should be specified in the notification under article 6, paragraph 2 (d) (iv).

**Overcoming barriers to access to information**

94. Barrier-free access to information should be provided. In addition to the full original documentation, non-technical summaries, to be prepared by the applicant in simple, user-friendly and understandable language, of, as a minimum, the EIA documentation and permit documentation, should be made available to the public. The preparation of a good non-technical summary may be crucial to ensure effective public participation. In this regard, the non-technical summary:

(a) Should avoid information which is too complicated or too technical for the public concerned;

(b) Should use an appropriate language that the public concerned (including, where relevant, ethnic minorities or migrants) can understand;

(c) Should present the information in a user-friendly manner (i.e., easy to read or hear);

(d) Should help in identifying the relevant parts of the information.

95. However, providing non-technical summaries without providing access also to the full technical documentation is not sufficient. Subject to the exceptions from disclosure in article 4, paragraph 4, the public is entitled to have access to all relevant technical documentation if it so wishes. Access to information may not be refused to the public because it is deemed to be "not suitable" or "too technical".

96. Where the information is of a very technical nature, the public authority may wish to provide opportunities for the public to ask questions or be given helpful explanations, for example, through public meetings or other public events, a question and answer list on the authority's website and also at public hearings (though it is recommended that the public also be provided with an opportunity to ask questions before the hearing is held, in order to prepare properly for the hearing itself).

97. Practical measures to facilitate effective access to the information relevant to the decision-making should be considered, e.g., through the use of electronic tools in areas where these are in common use. For example, public authorities may wish to establish and maintain user-friendly websites where the public can find information about the proposed activity, access relevant documents online and submit electronic comments about the proposed activity. Such websites may also, inter alia, include a list of persons or bodies to which any administrative tasks related to the public participation procedure are delegated (see paras. 27–36 above).

98. Measures should be taken to ensure that officials and authorities assist and provide impartial guidance to the public in examining the information relevant to the decision-making, for instance, by explaining the information and its relevance to the decision-making. Public authorities may request the applicant and/or consultants hired by them (for example, EIA consultants) to assist with this task.[63]

**Access for examination free of charge and copies at no more than a reasonable charge**

99. The public should be able to receive copies of information upon request, at no more than a reasonable charge or for no charge at all.[64] Public authorities intending to make a charge for copying information should make available, in advance and in a prominent place, a schedule of charges which may be levied.

100. In accordance with national law, there should be no charge for the public to have access to examine the information relevant to the decision-making and no charges for requesting information not provided.

101. Public authorities may consider providing copies of documents relevant to decision-making free of charge in cases where it is justified by the nature of the documentation (e.g., if it is voluminous), the activity in question (e.g., if it concerns particularly sensitive issues), or the public concerned (e.g., any members of the public for whom attending the location where the information is available free of charge would be difficult). Where the information is to be provided in electronic form it may also be provided free of charge.

102. The public should be able to receive copies of the information in the form requested (e.g., in electronic or paper form), unless it is reasonable for the public authority to make it available in another form, in which case reasons should be given for doing so, or the information is already publicly available in another form.[65] The public should also be able to receive the information in the language requested, if the information is held by the public authority in that language.

103. Subject to the exceptions set out in article 4, paragraphs 3 and 4 of the Convention, the public should be allowed to make copies onsite using their own means of copying, free of charge, including taking digital photographs of the relevant documentation.

**Providing information as soon as it becomes available**

104. All information relevant to the decision-making should be made available for examination by the public concerned:

(a) As soon as it becomes available to the public authorities, at whatever stage in the decision-making procedure that may be;

[63] Aarhus Convention, article 3, para. 2.

[64] See the findings of the Compliance Committee on communication ACCC/C/2008/24 concerning compliance by Spain (ECE/MP.PP/C.1/2009/8/Add.1), paras. 76 and 95.

[65] Aarhus Convention, article 4, para. 1 (b).

(b) Should remain available for examination by the public concerned throughout the entire public participation procedure, including for the duration of the time period allowed for any administrative or judicial review procedures to be brought under national law and determined.

105. As a good practice, all information relevant to the decision-making should be held by the competent public authority prior to the commencement of the public participation procedure. This is to ensure that members of the public participating early in the procedure are able to participate on a fully informed basis. If further information becomes available during the public participation procedure, this fact should be clearly signalled in all places where the information is accessible to the public (e.g., on the website, electronic database or paper file), and as a good practice members of the public who have already submitted comments should be actively informed. Members of the public who may have already participated prior to the additional information becoming available may of course submit further comments, etc., in the light of the new information.[66] If large amounts of new information are made available during the procedure, the public authority should ensure that the remaining time frame enables the public to prepare to participate effectively[67] and, if necessary, should increase the time frames for the public to comment.

106. As a good practice, when members of the public make information requests under the Convention, and make clear that the information is requested in the context of a public participation procedure subject to the Convention, public authorities may make efforts to expedite the processing of such information requests in order to assist the public to participate effectively.[68]

107. The legal framework may envisage that certain information relevant to the decision-making may be made available directly by the applicants and/or consultants hired by them (for example, EIA consultants). However, this should be considered as a supplementary arrangement and does not displace the requirement on the competent public authorities to provide the public concerned with access to all the information relevant to the decision-making.[69]

## I. Procedures for the public to submit comments (article 6, paragraph 7)

108. The right to submit comments, information, analyses and opinions set out in article 6, paragraph 7, of the Convention is granted to ‘the public” and not to the “public concerned”, which means that any public meeting, hearing or inquiry held under article 6, paragraph 7, should also be open to the public generally; the public should be entitled to submit any comments, information, analyses or opinions that it considers relevant to the proposed activity:

(a) Free of charge;

(b) Without undue formalities.

109. For the avoidance of doubt, it is for the member of the public, not the public authority or the project proponent, to decide whether those comments, etc., are relevant to the proposed activity.

[66] Aarhus Convention, article 6, para. 7.
[67] Aarhus Convention, article 6, para. 3.
[68] Aarhus Convention, article 3, para. 2.
[69] See the findings of the Compliance Committee on communication ACCC/C/2009/37 concerning compliance by Belarus (ECE/MP.PP/2011/11/Add.2), paras. 69 and 70.

110. The public is not required to provide:

(a) Proof of residence, citizenship or domicile, although some proof of identification may be useful in order to gauge whether each comment received was submitted by a different member of the public, or some persons or bodies have commented several times during the procedure (albeit that it should be permissible to do so);

(b) Any evidence as to its sources of information or any justifications or reasoning for its views.[70] However, although there is no legal requirement for the public to provide evidence or reasons for its views, public authorities may consider encouraging members of the public to do so on a voluntary basis, explaining that reasons may assist the public authority to gain a deeper understanding of the comments or opinions submitted.

**Written submissions**

111. Clear procedures should be established for the submission of written comments that enable such comments to be submitted:

(a) By any member of the public, not just those that the public authority may consider to be among the public concerned;

(b) Within the entire period of time envisaged for public participation, including before, at or after any public meetings, hearings or inquiries that may be held;[71]

(c) In electronic form, without undue formalities regarding electronic signature;

(d) Orally. Where a member of the public is unable to write or for some other reason is not able to submit his or her submission in writing, their comments may be received orally and a record kept both orally and in writing.

112. Comments, information, analyses or opinions submitted by the public may be submitted either to the public authority competent for the decision-making or to an appropriate impartial body acting under the direction of that authority. If the latter approach is used, that body should collate all comments, etc., received and deliver them in their entirety to the competent public authority, not only in an aggregated form.[72] As a good practice, an acknowledgement may be promptly sent to each member of the public submitting comments, etc., to confirm safe receipt and their comments made public on the website of the authority. Making comments available on the website of the authority may act as confirmation of receipt of those comments, where appropriate.

113. If the public authority provides questionnaires to the public to assist the public in making its comments, it should be made clear that the public is welcome to send comments in any other form it thinks appropriate also. Care should also be taken to ensure the questionnaire itself is not set out in a way that is restrictive to the public fully and freely sharing its views.

**Online consultations**

114. With the widespread availability of modern communication technologies, online consultation techniques can help to increase the public's understanding and the quality of

[70] See the findings of the Compliance Committee on communication ACCC/C/2010/59 concerning compliance by Kazakhstan (ECE/MP.PP/C.1/2013/9), paras. 58 and 59.

[71] See the findings of the Compliance Committee on communication ACCC/C/2009/44 concerning compliance by Belarus (ECE/MP.PP/C.1/2011/6/Add.1), para. 82.

[72] Ibid., para. 64.

their participation. Online consultations can complement face-to-face public meetings and hearings, but should not fully replace them.

115. A properly conducted online consultation should include the following elements:

(a) Identification of the public concerned for the consultation;

(b) A full explanation of the consultation procedure, its role and impact in the decision-making process;

(c) Access to all relevant documents;

(d) An adequate time frame for providing input into the consultation by the public concerned;

(e) An analysis of the input received and publication of the analysis, with the opportunity for further inputs by the public concerned;

(f) A mechanism to feed the outcomes of the online consultation into the decision-making process;

(g) An option for the public to submit their viewpoints in other ways.

**Oral submissions**

116. As a good practice, clear criteria should be established regarding when a public hearing or inquiry should be held. Where this is to be determined on a case-by-case basis, a screening process should be carried out with the reasons given for the determination made available to the public. The criteria for determining the need for a public hearing or inquiry may include:

(a) The scale of the activity and/or its potential impact;

(b) The size of the affected population;

(c) The controversial or high profile nature of the activity, recognizing, however, that this often may not be known until the public has had an opportunity to present its views;

(d) A need to investigate witnesses or to provide an opportunity for the public to be heard;

(e) A need to provide for cross-examination or the airing of conflicting views;

(f) Requests from the public concerned for a hearing or inquiry to be held.

117. As a good practice, it is recommended that more than one public hearing or inquiry should be held when merited by:

(a) The geographical scope of the activity (e.g., in cases where the proposed activity may have transboundary impacts, hearings may as a good practice be held in each country potentially affected by the proposed activity);

(b) The scope or location of the public concerned;

(c) New facts or evidence coming to light after the first public hearing.

118. It is recommended that the procedures for the public hearing or inquiry should:

(a) Be publicized sufficiently in advance of the hearing to enable the public to prepare and participate effectively. This includes the format, agenda and indicative timing. The public must be informed in advance of any changes in the procedure, and any such changes should not create any additional barriers to the public's participation;

(b) Be clear and transparent about the hearing's purpose, format and its potential to affect the decision-making;

(c) Be clearly explained again in person at the start of the hearing or inquiry;

(d) Be open to all members of the public who wish to attend and provide fair opportunities for all participants to be heard;

(e) Be organized in a convenient and culturally appropriate location for the public to attend and in a venue that is suitable for the purpose, bearing in mind the type, size, location and complexity of the proposed activity and the needs of any members of the public with disabilities. Where possible, the room location and lay-out should be chosen to provide a sense of equality and openness so as to create favourable conditions for all persons wishing to do so to express their views, including those that are not at ease, or unaccustomed to, speaking in public. For example, instead of the traditional set-up of a podium for the project proponents and authorities, with the public in the audience, it is recommended to use one-level seating arrangements, such as circles, where a sense of equality and openness between all participants is conveyed;

(f) Be organized at a time that is suitable for the public concerned to attend (e.g., outside of business hours or during the weekend) where practicable, and outside the main holiday seasons;

(g) If necessary, include appropriate controls to prevent the project developer or promoter or other persons with an interest in the project from paying members of the public to express support for the project during the hearing;

(h) Ensure sufficient speaking slots and time to hear from all major interest groups involved;

(i) Provide an appropriate balance between time devoted to the provision of necessary background information and time devoted to questions and discussion;

(j) Allow the public to express its views without having to have legal representation;

(k) Allow opportunities for the public to distribute written statements and corroborating evidence, including through the testimony of witnesses;

(l) Require a register to be kept of participants who attended;

(m) Specify time limits for taking the floor;

(n) In order to ensure proper attention is given to each speaker, limit the hearing to no more than eight hours per day. If necessary, the hearing should thus be spread over several days.

119. Public hearings and inquiries are platforms to enable the public to submit orally its viewpoints, concerns and information. This should be clearly reflected in the speaking times: the majority of time should be allocated for the public to submit its views, rather than to presentations by the project developers, promoters, consultants or public authorities.

120. Public hearings or inquiries:

(a) May be recorded and, if appropriate in the light of the nature or significance of the proposed activity, transmitted live by television or Internet;

(b) In addition to the physical hearing, may, if feasible, be supplemented by technologies such as audio-conferencing or videoconferencing to enable members of the public who cannot physically attend the hearing to participate.

121. To enable public authorities to provide appropriate facilities, the procedures for the public hearing may envisage the pre-registration of participants wishing to:

(a) Speak;

(b) Use technical means;

(c) Distribute written materials;

(d) Present evidence;

Care should, however, be taken to ensure that pre-registration does not present a barrier to participation (including if the registration form could present a barrier to those without literacy skills) and, insofar as practicable, participants who have not pre-registered to speak should still be allowed to take the floor.

122. The minutes or transcripts of the public hearing or inquiry may subsequently be made available to those who made oral submissions to verify their comments have been transcribed accurately. A good practice, if technical means and language issues allow, is to prepare the minutes or transcript during the hearing and to make the record of each day's proceedings available as soon as possible and preferably at the end of each day.

123. In addition to, but not instead of, public hearings or inquiries, other interactive forms of public participation may be used (e.g., informal public discussions and seminars, bilateral consultations with NGOs and relevant experts, facilitated group processes, consensus conferences, round-table discussions, stakeholder dialogues and citizens' juries, multi-optional decision-making, expert environmental evaluation by the public, etc.).

## J. Taking due account of the outcome of public participation — scope of obligation (article 6, paragraph 8)

124. There should be a clear obligation in the legal framework for the competent public authority itself to have to take due account of the outcome of the public participation. It is not enough if the obligation to take due account of the outcome of the public participation is placed only on the developer and, where relevant, its EIA or OVOS consultant.[73]

125. As the Convention grants the right to submit views to "the public",[74] therefore the obligation to take due account of the outcome of the public participation must be understood as covering equally the comments, etc., submitted by "the public" and those submitted by "the public concerned".

126. The process for taking the comments, information, analyses or opinions of the public into account should be fair and not discriminatory.[75]

127. So long as the comments, information, analyses or opinions submitted are within the ambit of the relevant decision and competence of the relevant public authority, that authority must seriously consider all such comments, etc., received, regardless of whether they:

(a) Aim to protect a private or the public interest;

[73] See the findings of the Compliance Committee on communication ACCC/C/2009/37 concerning compliance by Belarus (ECE/MP.PP/2011/11/Add.2), para. 96.

[74] Aarhus Convention, article 6, para. 7.

[75] See the findings of the Compliance Committee on communication ACCC/C/2009/44 concerning compliance by Belarus (ECE/MP.PP/C.1/2011/6/Add.1), para. 84.

(b) Relate to environmental concerns or not (e.g., the public is entitled to submit economic or other analyses whether or not they relate to environmental concerns);

(c) Are reasoned or not. Though there is no legal requirement for the public to provide reasons, members of the public should be encouraged to so do as reasons may assist the public authority to gain a deeper understanding of the comments or opinions submitted.

128. Taking due account of comments may result in:

(a) Amending the proposed decision in the light of the public's comments;

(b) Taking additional measures, for example, to mitigate or monitor potential harmful effects of the proposed decision;

(c) Selecting an alternative option on the basis of the public's input;

(d) Rejecting the proposed decision entirely.

129. Some countries have developed guidance on what taking "due account" means in practice. For example, in 2008 Austria's Council of Ministers adopted Standards on Public Participation to assist government officials, which, inter alia, state that:

> "Take into account" means that you review the different arguments brought forward in the consultation from the technical point of view, if necessary discuss them with the participants, evaluate them in a traceable way, and then let them become part of the considerations on the drafting of your policy, your plan, your programme, or your legal instrument.[76]

**Evidence of taking due account of the outcome of public participation**

130. With respect to evidence of taking due account of the outcome of the public participation, the obligation to take "due account" under article 6, paragraph 8, should be seen in the light of the obligation in article 6, paragraph 9, to "make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based". This means that the statement of reasons accompanying the decision should include a discussion of how the public participation was organized and its outcomes taken into account. It is recommended that the legal framework should therefore include a clear requirement that the statement of reasons include, as a minimum:

(a) A description of the public participation procedure and its phases;

(b) All comments received;

(c) How the comments received have been incorporated into the decision,[77] identifying clearly which comments have been accepted in the final decision, where and why, and which have not and why not.

131. The statement of reasons should be published together with the final decision.

132. To assist the preparation of the statement of reasons, it can be helpful to draw up a table where the comments received and the ways in which they have changed the draft are

[76] See Austrian Federal Chancellery and the Austrian Federal Ministry of Agriculture, Forestry, Environment and Water Management, *Standards of Public Participation* (2008), adopted by the Austrian Council of Ministers on 2 July 2008, p. 13; available from http://www.unece.org/env/pp/ppeg/Austria_pp_standards.pdf.

[77] See the findings of the Compliance Committee on communication ACCC/C/2008/24 concerning compliance by Spain (ECE/MP.PP/C.1/2009/8/Add.1), para. 100.

documented. If some comments were not taken on board, the reasons why they have been rejected should also be set out in the table. This is a good method when many comments are received, because similar arguments can be clustered in the table. However, going through the motions of preparing a table of the comments, without actually making any changes to the actual draft decision as a result of those comments, cannot be seen as taking due account of the outcomes of the public participation.

133. Depending on the circumstances of the case, a lack of adequate evidence demonstrating how the outcomes of the public participation have been taken into account may be treated as a significant violation of the legal requirement to take due account, giving rise to the quashing of the respective decision.

134. In addition to the written documents demonstrating how comments were taken into account, in the case of decisions with particularly significant environmental impacts or affecting a large number of people, as a good practice, and where feasible, public authorities may wish to hold a meeting with those who submitted comments to discuss the comments and to explain which arguments will be taken on board and which will not be included and why not. Minutes should be kept of the meeting and made publicly accessible.

## K. Prompt notification and access to the decision (article 6, paragraph 9)

135. The legal framework should include clear obligations on the competent public authorities to:

(a) Inform the public promptly about the decision that has been taken;

(b) Inform the public promptly about how to access the text of the decision, together with the reasons and considerations on which it is based;

(c) Prepare a statement summarizing the reasons and considerations on which the decision is based;

(d) Keep the text of the decision along with the statement of reasons and considerations on which it is based in a publicly accessible place on a long-term basis.[78]

136. The requirement in article 6, paragraph 9, for the text of the decision to be made accessible to the public includes:

(a) The decision that was taken;

(b) Any alterations to the decision due to a subsequent administrative or judicial review procedure;

(c) All the conditions included in or attached to the decision;

(d) All the annexes to the decision, if any.

137. While the Convention leaves some discretion to those designing the applicable legal framework regarding the choice of "appropriate procedures" for promptly informing the public of the decision, the methods used to notify the public concerned under article 6, paragraph 2, may also be used here, bearing in mind, however, that under article 6, paragraph 9, the right to be informed is granted to "the public" and not to "the public concerned" only (see recommendations on article 6, para. 2, above).

[78] See the findings of the Compliance Committee on communication ACCC/C/2009/37 concerning compliance by Belarus (ECE/MP.PP/2011/11/Add.2), para. 98.

138. Article 6, paragraph 9, does not require the text of the decision itself to be published in the mass media. However, it requires that the public is promptly informed of the decision and how it may access the text of the decision together with the reasons and considerations on which it is based.[79] In informing the public of the decision and how it may access its text, it is recommended to use a form of mass media with the widest distribution to the public concerned.

139. As regards where the final decision may be accessed, a good practice would be to make it available at all locations where the public could have access to examine the information relevant to the decision-making (see para. 92 above). In addition, the final decision should be made available electronically, for example, on a prominent, publicly accessible and user-friendly part of both the developer's and the public authority's websites.

140. As a good practice, the decision, or a link to where it can be accessed online, may be sent to all members of the public who participated either orally or in writing in the public participation procedure and provided their contact details.

141. The mere fact that the public may be able to access the decision on a proposed activity subject to article 6 through a publicly accessible electronic database does not satisfy the requirement of article 6, paragraph 9, of the Convention if the public has not been promptly and effectively informed of that fact.[80]

142. Whatever time period for informing the public about the decision is specified in national law, it should be reasonable bearing in mind the relevant time frames for initiating review procedures under article 9, paragraph 2. There should be a possibility for the time frame for initiating review procedures to be restarted if a member of the public concerned can prove that it did not receive notice due to a failure of the public authority or by force majeure.

143. Information about the possibilities to appeal the decision should be provided to the public together with the decision.[81]

## L. Reconsideration and updating the operating conditions for an activity covered by article 6 (article 6, paragraph 10)

144. When a public authority reconsiders or updates the operating conditions for an activity referred to in article 6, paragraph 1, it should first make a determination of whether it is appropriate to apply the provisions of article 6, paragraphs 2 to 9. In making this determination, the following should be borne in mind:

(a) The nature and magnitude of the activity, the potential impact on the environment and the level of public concern;

(b) The goals of the Convention, recognizing that access to information and public participation in decision-making enhance the quality and the implementation of decisions, contribute to public awareness of environmental issues, give the public the opportunity to express its concerns, enable public authorities to take due account of such

[79] See the findings of the Compliance Committee on communication ACCC/C/2006/16 concerning compliance by Lithuania (ECE/MP.PP/2008/5/Add.6), para. 81.

[80] See the findings of the Compliance Committee on communication ACCC/C/2004/8 concerning compliance by Armenia (ECE/MP.PP/C.1/2006/2/Add.1), para. 31.

[81] Aarhus Convention, article 9, para. 5; see also *Guidance on the Practical Application of the Espoo Convention* (ECE/MP.EIA/8) (original version), section 10.2, final decision, p. 25.

concerns, further the accountability of and transparency in decision-making and strengthen public support for decisions on the environment.[82]

## M. Public participation in decision-making regarding genetically modified organisms (article 6, paragraph 11, and article 6 bis)

145. The recommendations regarding article 6 should be applied mutatis mutandis and as appropriate to public participation in decision-making regarding genetically modified organism (GMOs) under article 6, paragraph 11, and article 6 bis.[83]

146. In order to ensure effective public participation, it is recommended as a good practice that the provisions of article 6bis should be applied not only to decisions on whether to permit the deliberate release into the environment and placing on the market of GMOs but also, as appropriate, to decisions regarding the contained use of GMOs.[84]

147. When designing and implementing the regulatory framework to facilitate public participation in decision-making regarding GMOs, it should be recalled that the exemptions listed in annex I bis[85] to the Convention are not mandatory and may be incorporated into the regulatory framework, or not, on a discretionary basis.[86]

148. The public may submit any comments, information, analyses or opinions that it considers relevant to the proposed deliberate release, including placing on the market, in any appropriate manner.

149. As a good practice, in order to improve public awareness and participation regarding GMOs, in addition to public hearings or public inquiries, other mechanisms that allow the public to be heard, for example round-table discussions, consultative bodies involving members of the public, stakeholder dialogues and citizens' juries, among others, may be considered.

150. Attention should be given to ensuring that measures to promote public participation in decision-making regarding GMOs within the context of article 6, paragraph 11, and article 6 bis are in line with relevant elements of the national biosafety framework and further the implementation of article 23 of the Cartagena Protocol on Biosafety to the Convention on Biological Diversity.

[82] See the findings of the Compliance Committee on communication ACCC/C/2009/41 concerning compliance by Slovakia (ECE/MP.PP/2011/11/Add.3), para. 56.

[83] *Editor's note*: Article 6 bis, contained in decision II/1 on genetically modified organisms (the GMO amendment) (ECE/MP.PP/2005/2/Add.2, annex), is not yet in force.

[84] Guidelines on Access to Information, Public Participation and Access to Justice with respect to Genetically Modified Organisms (MP.PP/2003/3), para. 3.

[85] *Editor's note*: similarly, annex I bis, also contained in the GMO amendment, is not yet in force.

[86] See annex I bis, para. 2.

# III. Public participation concerning plans, programmes and policies (article 7)[87]

## A. General issues

151. Plans, programmes and policies have a different character to decisions on specific activities and this needs to be borne in mind when designing and implementing the related public participation procedures. For example:

(a) It might be harder for members of the public to understand the relevance of a plan, programme or policy to their daily lives. It may thus be useful for public authorities to explain its practical relevance (e.g., through newspaper articles explaining the effects of the plan once implemented, etc.);

(b) There may be more uncertainty in the preparation of plans, programmes and policies than in an application for a specific activity, and there may also be a wider range of alternatives. The uncertainty needs to be carefully conveyed to the public. There may be several stages of consideration of alternatives, all of which would benefit from public participation;

(c) For larger scale plans, programmes or policies, the potential "public" might be very large. The competent public authorities may thus need carefully to consider how best to reach them and to involve them effectively in the decision-making;

(d) For other plans, programmes or policies (e.g., those for rural or marine areas), the size of the public directly affected might be more limited, but the potential implications might be longer term, or there may be a distinct "future public" (e.g., residents of a proposed new residential development) to consider.

152. Bearing in mind the special character of plans, programmes and policies highlighted in the above paragraph, in making provisions for the public to participate in the preparation of plans and programmes, the recommendations regarding article 6, paragraphs 3, 4 and 8, should be applied mutatis mutandis and the rest of the recommendations should be applied as appropriate. With respect to the preparation of policies, the recommendations should be applied as appropriate.

153. The Good Practice Recommendations on Public Participation in Strategic Decision-making[88] prepared under the Protocol on Strategic Environmental Assessment is also a helpful reference tool when making provisions for the public to participate in the preparation of plans, programmes and policies.

## B. Plans and programmes

154. While the Convention does not define "plans and programmes", a broad interpretation is recommended, covering any type of strategic decision:

(a) Which is regulated by legislative, regulatory or administrative provisions;

[87] A number of of the recommendations contained in this section build upon good practices identified in the following publication: Department of the Environment, Transport and the Regions, Public Participation in Making Local Environmental Decisions: The Aarhus Convention Newcastle Workshop Good Practice Handbook (London, Department of the Environment, Transport and the Regions, 2000).

[88] ECE/MP.EIA/SEA/2014/2, available from http://www.unece.org/env/eia/meetings/mop_6.html.

(b) Which is subject to preparation and/or adoption by an authority or prepared by an authority for adoption, through a formal procedure, by a parliament or a government;

(c) Which provides an organized and coordinated system that:

(i) Sets, often in a binding way, the framework for certain categories of specific activities;

(ii) Is usually not sufficient for any individual activity to be undertaken without an individual permitting decision.

155. The following types of plans and programmes may be considered as "relating to the environment":

(a) Those which "may have a significant effect on the environment" and require SEA, for example, water management programmes, urban development plans, regional and local waste management plans, national energy strategies and plans;

(b) Those which "may have a significant effect on the environment" but do not require SEA, for example, those that do not set the framework for a development consent, like incentives programmes;

(c) Those which "may have effect on the environment" but the effect is not "significant", for example, those that determine the use of small areas;

(d) Those intended to help to protect the environment, for example, national biosafety strategies, air management plans, nature conservation plans, emergency plans for hazardous activities/installations, or anti-smog programmes;

(e) Financial plans affecting the environment.

## C. Policies

156. While the Convention does not define "policies", a broad interpretation is recommended, covering any strategic decision other than a plan or programme:

(a) Which is subject to preparation and/or adoption by an authority or prepared by an authority for adoption, through a formal procedure;

(b) Which may or may not be regulated by legislative, regulatory or administrative provisions;

(c) Which does not set in a binding way the framework for certain categories of specific activities (for example, development projects);

(d) Which is not sufficient for a specific activity to be undertaken without an individual permitting decision.

**Designing a public participation procedure**

157. Given that the Convention leaves considerable discretion regarding the design of a public participation procedure under article 7, the design phase is very important. In order to ensure a transparent and fair framework throughout the procedure, having a clear strategy for the public participation in place from the outset may be helpful.

158. The public participation procedure should be developed to suit not only the nature of the plan, programme or, to the extent appropriate, policy being prepared, but also to suit the local conditions. What works well in one area might not work well in another.

159. Being flexible and responsive to the public is good practice. During the public participation procedure, the competent authority may wish to evaluate how well it is working, and revise it if needed.

**Early public participation**

160. Public authorities should bear in mind that public participation is meaningless if decisions have already been taken — officially or unofficially. At the latest, the public should be involved when a draft of a plan, programme or, to the extent appropriate, policy has been elaborated. However, in practice this is often too late for effective participation, because:

(a) Many smaller decisions have already been taken by that time;

(b) There is significant time pressure by that time and only minor changes are possible;

(c) The drafters of the draft plan, programme or policy are often convinced that they have already found the best solution and are no longer flexible or open to take new ideas on board.

161. Bearing the above in mind it is recommended to involve the public as early as possible and to continue to involve the public throughout the decision-making process. Involving the public early can help the authority develop a better proposal from the beginning and lead to greater public acceptance of the final product.

**Zero option**

162. Plans and programmes are often the first stage in a tiered decision-making process. It is thus important that a wide range of different scenarios and alternatives other than the politically preferred option(s) are considered and assessed, including the zero option (see para. 16 above). If this does not happen at this stage, it may be difficult for the public authority to demonstrate at a later stage in the tiered decision-making that the public was indeed able to participate when all options were open.[89]

**Identifying the public which may participate**

163. The public participation procedure should be open to allow anyone affected by or with an interest in the decision to participate.

164. However, simply designing the procedure so that anyone who may wish to participate can do so may not be enough. It is recommended that a wide range of interest groups be identified and encouraged to take part in the process. For example, depending on the nature of the plan, programme or, as appropriate, policy, as well as its geographical scope, in addition to members of the public generally, it may be important to invite representatives of, inter alia, some or all of the following groups to participate:

(a) Community groups;

(b) Residents' organizations;

(c) Business and industry organizations;

(d) Farmers' organizations;

(e) Religious communities and faith-based groups;

[89] Aarhus Convention, article 6, para. 4.

(f) Universities and research institutions;

(g) NGOs interested in environmental protection, heritage protection, social welfare, etc.;

(h) Associations of users (for example associations of users of given waters);

(i) Tourist and sports organizations.

165. It is also important to involve ordinary members of the public and, as a good practice, actively to encourage all the people and organizations likely to be affected by or having an interest in the decision to take part.

166. As a good practice, a mechanism may be established to enable members of the public to register in advance to be notified regarding the preparation of plans, programmes or, to the extent appropriate, policies regarding the environment for particular geographical regions or related to particular topics. The list of members of the public who have registered for such notification should be kept up to date.

167. To the extent feasible, the decision makers and other relevant officials should be personally involved in the public participation procedure. The involvement of officials is usually very important as it allows the public to see that its contribution is valued and taken seriously by the public authority, and at the same time helps the officials to feel more invested in the public participation procedure. However, they should be aware of their own potential to influence the process and not abuse their position by putting undue pressure on members of the public wishing to express their opinion, forward viewpoints or concerns or add information.

**Modalities for public participation**

168. The modalities for public participation should be designed to ensure effective public participation in the light of:

(a) The particular plan, programme or, to the extent appropriate, policy at issue, including its subject matter, geographical application, intended duration, volume and complexity;

(b) The number and characteristics of the public that it is expected may wish to participate.

169. It is often helpful to use a mixture of methods to help the public gain a deeper understanding of the issues and to participate effectively, bearing in mind that:

(a) Only if the public to a large extent understands the issues will it be able to see how the proposed plan, programme or policy may affect it in the future and thus to come to an informed opinion regarding what the proposed decision should be;

(b) Discussion with other members of the public and the public authority's officials may often help the public to gain a deeper understanding of the issues;

(c) The best results may often be achieved by using interactive methods of participation, for example, public hearings, public discussions, debates or seminars.

170. Whatever modalities for public participation are employed, it should be clear to the public:

(a) What information is available, where it can be accessed and what its sources are;

(b) How it can submit comments;

(c) How the comments will be handled.

**Fixing time frames for public participation**

171. When fixing the time frames for the different stages of the public participation procedure, it should be borne in mind that plans, programmes and to the extent appropriate, policies, unlike decisions subject to article 6 of the Convention, are prepared by public authorities solely in the public interest and therefore ensuring sufficient time frames for the public to prepare and participate effectively may outweigh other factors.

172. Time frames should be set also bearing in mind:

(a) The methods intended to be used to notify the public and to make the necessary information available, as well as the proposed modalities for public participation;

(b) The nature of the plan, programme or, to the extent appropriate, policy, in particular its geographical application, intended duration and complexity;

(c) The number and characteristics of the public which may wish to participate. In order to ensure that the public authority will have sufficient time to consider properly all comments received from the public, the number of the public expected to participate should be an important consideration when setting time frames.

173. Whatever the time frame set at the beginning of the procedure, it is a good practice:

(a) To be flexible and allow more time if it becomes clear that the public need it in order to participate effectively;

(b) To inform the public whenever there is a significant delay in the procedure, including in taking the decision itself.

**Providing the necessary information**

174. There are three main types of information which are necessary to provide to the public during a decision-making procedure under article 7:

(a) Information about the decision-making procedure, including all opportunities for the public to participate;

(b) Information about the proposed plan or programme or, to the extent appropriate, policy, including access to its draft texts and the economic analyses, cost-benefit and other analyses upon which the plan, programme or policy is based;

(c) Information about the possible effects of the proposed plan or programme, including the analyses through which these effects have been assessed.[90]

175. Information about the potential effects of the proposed plan, programme and to the extent appropriate, policy, may include information on:

(a) Legal consequences, for example, on property rights;

(b) Social impacts, for example, an increase in the population of a certain geographical area;

(c) Economic impacts, for example, prospects for increased employment;

(d) Environmental impacts and any proposed mitigation measures;

for each of the different options under consideration. To the extent that it is held by the competent public authority, the above information should be made available to the public on an equal basis for all options being considered, not just those favoured by the decision

[90] Aarhus Convention, article 2, para. 3 (b).

makers, so that the basis for the final decision can be justified on the basis of a valid comparison between the different options.

176. Bearing in mind that good information is vital for the public to participate effectively, the authorities may wish to take care that the information they provide is:

(a) Easy to understand and accessible. A recommended way of making lengthy or complex documents easier for the public to understand is to provide a non-technical summary;

(b) Factual, objective, balanced and transparent as to its sources;

(c) Tailored to the particular proposed plan, programme or policy and also to the public who may be interested in participating in the decision-making regarding it.

177. One possible practice may be to seek input from the public as to how the necessary information should best be provided, for example, through using focus groups to find out how much the public already knows about the subject matter.

**Taking due account of comments**

178. Plans and programmes are often the first stage in a tiered decision-making process. It is therefore important that the outcomes of the public participation are well recorded and documented, so that they can be used as a reference later in the decision-making process.

179. While not all the views expressed in the comments must necessarily be accepted, in order to take all comments submitted duly into account and demonstrate that this has been the case, public authorities may wish to use a variety of methods including preparing a table detailing each comment and the way it was handled. In such a table the comments could be grouped in clusters related to certain issues and explaining how these were handled, or a written response could be provided for each comment.

180. Taking due account of comments may result in:

(a) Amending the plan, programme or policy in the light of the public's comments;

(b) Taking additional measures, for example, to mitigate or monitor potential harmful effects;

(c) Selecting an alternative option on the basis of the input from and dialogue with the public;

(d) Abandoning completely the idea of adopting the plan, programme or policy.

181. A useful way to demonstrate that due account was taken of the results of the public participation is by providing a statement attached to each draft summarizing the points in the draft where the results of the public participation have had an impact, and outlining what that impact has been. Such a statement might be attached to the drafts submitted at each stage of the procedure to prepare a plan, programme or policy. In systems which use regulatory impact assessment the statement might form part of the impact assessment report.

**Monitoring and review of the public participation procedure**

182. Bearing in mind that involving the public once a plan, programme or policy has been adopted might contribute to its better implementation, as a good practice, any review of implementation may include an opportunity for the public to participate, at least by way of providing comments.

183. As a good practice, after a plan, programme or policy has been adopted, it may be helpful to review how successful the public participation procedure was, for example, by consulting the public or commissioning a study to examine the following issues:

(a) Did all the public affected find out that the plan, programme or policy was being prepared?;

(b) Were they able to participate?;

(c) Do they feel their comments were taken into account?;

(d) Do they understand the decision maker's reasons for adopting the plan, programme or policy adopted?

# IV. Public participation during the preparation of executive regulations and laws (article 8)

184. If national law or administrative practice does not provide for public participation in the preparation of all executive regulations and laws across the board, it is recommended to put in place a mechanism or criteria for evaluating whether a proposed executive regulation or law may have a significant effect on the environment, and thus be within the scope of article 8 of the Convention.

185. When determining the appropriate stages of the procedure at which to provide opportunities for public participation, it is recommended to take the following considerations into account:

(a) How to promote early public participation when options are still open;

(b) How to promote effective public participation;

also bearing in mind the type of executive regulation/law involved, its legal effects and subject matter.

186. The most effective public participation is when the public is allowed to provide its views at each of the main stages of preparation of the proposed executive regulations or laws, including:

(a) At an early stage, when the need to regulate on the particular issue is first mooted;

(b) Following preparation of any draft outline of the proposed regulatory actions (including possible alternatives);

(c) Following preparation of the initial draft of the proposed executive regulations or laws;

(d) Following preparation of any subsequent drafts.

187. For the public to participate effectively, in addition to the draft executive regulation or law itself, it is recommended that the public have access to other relevant information, for example, information about:

(a) The rule-making procedure, and the public's opportunities to participate during that procedure;

(b) The reason(s) lawmakers consider there is a need to regulate on the particular issue;

(c) Alternative actions that could be taken to achieve the stated goals;

(d) The constraints lawmakers are under or requirements the lawmakers must meet in the draft rules (e.g., international law obligations).

188. If the public is given the opportunity to comment directly, this may include the possibility to submit its views in writing or through more interactive methods of participation, such as public hearings, public discussions, debates or seminars.

189. If the public is given the opportunity to comment through representative consultative bodies, the persons representing the public in those bodies should be selected through a transparent, democratic and representative procedure ensuring that they are accountable to their constituencies and fully transparent about the constituency they represent. Persons with a direct financial interest in the possible outcome of the decision-making should not be permitted to play this role.

190. A useful way to demonstrate that the results of the public participation have been taken into account as far as possible is by providing a statement attached to each draft summarizing the points in the draft where the results of the public participation have had an impact, and what that impact has been. Such a statement might be attached to the drafts submitted at each stage of the procedure to prepare the draft executive regulations or law. In systems that use regulatory impact assessment, such a statement might form part of the impact assessment report.

# Annex

## Delegating tasks in the public participation procedure

While overall responsibility for each stage of a public participation procedure will always rest with the public authority which is competent to take the decision, that authority may seek to delegate certain of the administrative tasks regarding the procedure to other bodies, e.g., a public authority closer to the site of the proposed activity, an independent entity specializing in public participation or the developer. The table overleaf clarifies which tasks may, and which may not, be delegated to such bodies under the Convention.

**Which tasks in a public participation procedure may be delegated to another public authority, an independent entity specializing in public participation or the developer**

| *Task* | *May the competent public authority delegate the task to another public authority?*<br>*(E.g., the authority closest to the site of the proposed activity or, in the case of an activity with potential impacts beyond the competent authority's territorial jurisdiction, a public authority whose territorial jurisdiction covers the areas potentially affected)* | *May the competent public authority delegate the task to an entity independent from the developer that specializes in public participation?* | *May the competent authority delegate the task to the developer?* | |
|---|---|---|---|---|
| Design the general form of the public participation procedure, including its overall time frame. | No | No | No | |
| Design specific stages in the procedure, including their time frames. | Yes | Yes | No | |
| Identify the public concerned. | Yes | Yes | No | The developer may, however, be requested to assist the public authority in identifying the public concerned by providing certain information, e.g., the potential impacts of the project or the details of persons residing or owning property within the scope of those impacts. |
| Prepare and carry out the notification of the public. | Yes | Yes | Yes | Under the direction and oversight of the public authority. |

| *Task* | *May the competent public authority delegate the task to another public authority?*<br>*(E.g., the authority closest to the site of the proposed activity or, in the case of an activity with potential impacts beyond the competent authority's territorial jurisdiction, a public authority whose territorial jurisdiction covers the areas potentially affected)* | | *May the competent public authority delegate the task to an entity independent from the developer that specializes in public participation?* | | *May the competent authority delegate the task to the developer?* | |
|---|---|---|---|---|---|---|
| Provide the public with access to all relevant information. | No***** | The competent public authority must itself do so, but the other entity may do so in parallel. | No***** | The competent public authority must itself do so, but the independent entity may do so in parallel. | No***** | The public must be able to access all information that is relevant to the decision-making directly at the premises of the competent public authority. In parallel, the developer may be requested to provide access to the information relevant to the decision-making that it has provided. |
| Receive the public's written comments. | Yes | | Yes | | No | |
| Organize any public hearings, including notifying the public concerned of the date and place of the hearing(s) and organizing the venue. | Yes | | Yes | | Yes | Under the direction and oversight of the public authority. |
| Chair any public hearings. | Yes | | Yes | | No | |
| Collate and, if necessary, summarize, all written and oral comments received from the public. | Yes | The competent authority should be able to access all original comments. | Yes | The competent authority should be able to access all original comments. | No | All comments should be transmitted directly to the competent authority. |
| Consider all written and oral comments received from the public. | Yes | | Yes | | No | |

| *Task* | *May the competent public authority delegate the task to another public authority?*<br>*(E.g., the authority closest to the site of the proposed activity or, in the case of an activity with potential impacts beyond the competent authority's territorial jurisdiction, a public authority whose territorial jurisdiction covers the areas potentially affected)* | | *May the competent public authority delegate the task to an entity independent from the developer that specializes in public participation?* | | *May the competent authority delegate the task to the developer?* | |
|---|---|---|---|---|---|---|
| Take into account the comments received from the public in the decision. | No | However, the other public authority may be requested to consider the comments and to make suggestions on how they could be taken into account in the decision. | No | However, an independent entity specializing in public participation may be requested to consider the comments and to make suggestions on how they could be taken into account in the decision. | No | |
| Take the decision and prepare the reasons and considerations on which it is based. | No | | No | | No | |
| Inform the public of the decision, how it may be accessed and how it may be appealed. | Yes | | Yes | | No | |
| Make the decision available to the public, along with the reasons and considerations on which it is based. | No* | The competent public authority must itself do so, but the other authority may do so in parallel. | No* | The competent public authority must itself do so, but the independent entity may do so in parallel. | No* | The public authority must do so itself, but the developer may do so in parallel. |

* For tasks with an asterisk, the public authority must perform these tasks, but the other entity may also do so in parallel.