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

Working Group of the Parties to the Convention
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(Item 10 of the provisional agenda)

**SHARING INFORMATION AND EXPERIENCES ON PUBLIC PARTICIPATION IN
STRATEGIC DECISION-MAKING**

Prepared by the secretariat

I. BACKGROUND

1. At their first meeting, the Parties to the Aarhus Convention recognized the need to consider, in the light of the content of the new Protocol on Strategic Environmental Assessment (SEA) to the Espoo Convention, if further work was needed under the Aarhus Convention on the issue of public participation in strategic decision-making (Lucca Declaration, MP.PP/2002/1/Rev.1, para. 28).

2. At its first meeting, the Working Group of the Parties reviewed a background paper on public participation in strategic decision-making presented by the secretariat (MP.PP/WG.1/2003/5). The paper provided an analysis of the public participation provisions in the Protocol on SEA and their relationship to those in the Aarhus Convention, in particular with respect to the scope of decision-making and the types of public participation requirements in both instruments. The paper also identified challenges faced by the Parties and Signatories in implementing the provisions of articles 7 and 8 of the Convention, and outlined several procedural options for further work in this area, including “soft” options and legally binding measures.

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3. Having taken note of the paper, the Working Group of the Parties considered it most appropriate to pursue some of the “soft” options outlined in it, with a focus on sharing information and experience. It requested the secretariat to prepare a paper, identifying possibilities for further activities in this area. The present document has been prepared pursuant to that request.

II. METHODOLOGIES AND TOOLS FOR COLLECTING AND DISSEMINATING NATIONAL EXPERIENCES

4. The background paper identified four “soft” options to effectively enhance public participation in strategic decision-making through the collection and dissemination of information on national experiences and practices in this area. This paper will analyse each of these options in order to identify the possible scope of their application and areas of activity where they would be considered most appropriate. Furthermore, the paper will try to identify their likely impact and the resource requirements for their implementation. The options discussed here could be introduced gradually, starting with one option and implementing others at a later stage.

A. Electronic tools

5. The secretariat, in consultation with the Task Force on Electronic Information Tools, has been developing an electronic clearing-house mechanism consisting of a network of national web sites (national nodes), the content of which would be accessible through a portal (central node). The main objective of the clearing house is to further the effective implementation of the Convention through the collection, dissemination and exchange of information on the public right to information, public participation in decision-making and access to justice in environmental matters. At its second meeting (26-27 January 2004), the Task Force agreed on draft terms of reference for the national node, which included a description of the minimum content that should be provided by each national node contact point to make the clearing house functional.

6. The clearing house could provide a framework for the exchange of experiences and practices with respect to public participation in strategic decision-making in the following ways:

(a) **Decentralized information collection and sharing.** National contact points for the clearing house would collect and post on the national nodes information on public participation in strategic decision-making in their respective countries. This information, which may cover legislation, regulations, case studies and documented practices with respect to the environmental and public participation components in strategic-level decision-making, would become easily accessible through the search engine of the central node of the clearing house. It is important to note that this methodology of information collection and sharing would entail a high degree of decentralization. It would be left to each country to designate one or more contact points that would take over the responsibility for collecting relevant information and storing it on the national node. The search engine of the central node would provide streamlined access to the information stored in the national nodes. However, the results obtained by using the search

engine would not be sorted by any criteria except those used by individual national contact points to tag the information as relevant for strategic decision-making; nor would this methodology ensure a high degree of consistency and quality of information provided.

(b) Centralized database of practices in implementation. The clearing house could also be used as a forum for the exchange of information on practices in the national-level implementation of articles 7 and 8 of the Convention in a more centralized fashion. In this case, the central node of the clearing house would not simply be a gateway to the information stored in the national nodes, but would serve as a repository of case studies and practices in strategic decision-making collected through a specific research and data collection methodology. The data collected in this way would not be simply posted on the internet, but would be analysed, categorized and stored in a uniform format in a centralized database, with a possibility for, for example, flagging relevant parameters and adding commentaries and updates. The compendium of good practices in the use of electronic information tools and the electronic case study gallery prepared by the Regional Environmental Center for Central and Eastern Europe (REC) could be used as a model. This option, however, would entail significant resource requirements in terms of the staff time needed to ensure the timely and efficient collection, classification, analysis and updating of information.

(c) Electronic networking. The clearing house may be further expanded to include an interactive tool for sharing information. One such tool could be an electronic forum or an online meeting facility for communication among experts, policy makers from different sectors and other interested parties on public participation in strategic decision-making. This network could serve as a forum for sharing good experiences and posting documents, studies and other relevant information. One advantage of such a forum would be a significant decrease in the financial resource requirements needed to promote networking and facilitate dialogue among stakeholders. However, the electronic forum would have to be moderated and the results of discussions classified and stored in a searchable database in order to provide a useful mechanism for sharing information. The moderator would also have to conduct research and raise awareness to make sure that the electronic forum is used in a meaningful way and that the results of this exchange are adequately documented and disseminated to a range of users.

(d) Virtual classroom. One step further in the development of an electronic forum would be the setting-up of a 'virtual classroom', an electronic forum that would be used not only for exchanging information on existing practices and mechanisms, but also for providing guidance for countries that need to develop legislation and policy mechanisms in this area. This virtual classroom could, in addition to providing a forum for the proactive exchange of information on practices in the implementation of articles 7 and 8 of the Convention in national decision-making processes, offer both general and specific advice on the application of public participation requirements to national plans, programmes, policies and legislation. The virtual classroom for pollutant release and transfer registers (PRTR) could be used as a model, and the Convention's clearing house could be used either as a host or an access point to such a forum.

7. The above options provide generic descriptions of different tools to facilitate the sharing of information and experiences. Other, more specific, electronic tools could also be identified, including those that would not be directly developed under the auspices of the Convention's clearing house, but hosted and managed by interested governments or organizations.

B. Publications

8. In discussing possible areas of work that may require the preparation of publications, it is important to keep note of the publications that are being developed to support the implementation of the Protocol on SEA in order to avoid unnecessary duplication. The secretariat of the Espoo Convention is currently preparing, in cooperation with REC and the United Nations Development Programme (UNDP), a capacity-building manual and accompanying training materials to support the implementation of the Protocol on SEA, primarily in the countries with economies in transition. Another project envisaged under the auspices of the Protocol is the preparation of national and regional reports describing ongoing capacity-building activities and assessing capacity-development needs. In addition to this, a number of research and guidance documents are being prepared by the European Commission, focusing on the implementation of Directive 2001/42 (assessment of effects of certain plans and programmes on the environment).

9. Publications prepared under the auspices of the Aarhus Convention should, therefore, take account of publications being prepared in other relevant forums and endeavour to cover significant gaps, and also be designed having in mind that they could support activities in such forums, thus contributing to the effective implementation of other instruments. These publications would be useful guidance materials for countries that seek to build or reinforce their systemic capacities in this particular area. The experience of European Union member States in the implementation of EC directives providing for public participation in strategic decision-making (e.g. Directive 2003/35 on public participation, Directive 2002/49 on noise control, Water Framework Directive 2000/60) could also provide information that can be translated into a handbook or a compilation of good practices.

10. In addition to guidance documents, this option may also include commissioning studies and research papers from independent experts and consultants, and any of the following:

(a) Revision of the chapters dealing with the application of articles 7 and 8 in the Implementation Guide to the Aarhus Convention (2000);

(b) Collection of case studies on the application of the public participation provisions of the Aarhus Convention in strategic decision-making in specific sectors (e.g. infrastructure projects, land use, waste management);

(c) Comparative study of which programmes, plans, policies and legislation are subject to public participation requirements in EU member States and other countries;

(d) Repertoire of practices in the application of the Aarhus Convention's public participation requirements in national strategic decision-making.

11. The preparation of publications could be linked with the information-sharing mechanisms established under the electronic tools option. In that case, publications would be the final product of this work, whereby the information collected by electronic means would be systematized and published in both the electronic and printed forms. One obvious advantage of using printed materials in combination with or derived from online resources would be that these documents

could be more widely disseminated and become accessible even to users that do not have access to electronic networks.

C. Workshops and seminars

12. In addition to setting up information-sharing mechanisms in the virtual environment and through publications, Parties, Signatories and other States may decide to engage in capacity-building activities more directly. Through bilateral or multilateral arrangements, countries with extensive experience in this area may want to provide support to countries that are interested in developing and implementing a participatory approach to strategic decision-making on environmental matters. These activities could also be organized in conjunction with activities proposed under the previous options. A programme of workshops or seminars could be organized as a follow-up to electronic information-sharing and learning tools in cases where, for example, certain major difficulties are identified and direct communication among experts and policy makers would be the best way to solve them.

13. The decision on the content and target audiences for such workshops and seminars would be based on needs assessments conducted primarily through sharing information and experiences. They could also be planned in coordination with the Espoo Convention's secretariat in order to avoid unnecessary overlaps and promote synergies with the capacity-building activities on the implementation of the Protocol on SEA.

14. In addition to organizing a specific programme of capacity-building activities on strategic decision-making, it would also be possible to explore options for incorporating them into existing capacity-building activities or procedures established under the Convention. For example, the joint project of UNECE with the United Nations Institute for Training and Research (UNITAR) to develop national profiles for the implementation of the Convention could have a follow-up component for strategic decision-making in selected countries. Targeted capacity-building may also be designed to support the preparation of more detailed reports on the status of implementation of articles 7 and 8 in the framework of the Convention's reporting requirements.

D. Coordination mechanism

15. Some delegations to the Working Group of the Parties considered the establishment of a task force to coordinate or to provide input into the above-mentioned activities premature at this stage.

16. However, creating a framework for coordinating activities may still be useful at a later stage to make sure that the framework for sharing information and experiences on strategic decision-making is set up and used in the best possible way. The benefits of setting up a task force to do this are obvious: it would provide a formal mechanism to bring together public participation experts and public officials from a range of countries that would coordinate activities and engage in discussions that contribute to, among other things, the application of public participation mechanisms in sectoral policies and a more specific interpretation of national obligations under articles 7 and 8 of the Convention. It is also true that the establishment

and functioning of such a task force would require the allocation of certain financial resources under the Convention's work programme. However, even if a task force were not considered a viable option, the effective implementation of any of the "soft" options outlined above would still require, in addition to financial and human resources, a degree of coordination. The option of establishing a task force to start working after the second meeting of the Parties may be worth considering.

III. CONCLUSION

17. The Working Group of the Parties determined a need for further work under the auspices of the Convention with respect to public participation in strategic decision-making. It agreed that sharing experiences and information through electronic and other means was the best way to continue this work. This paper presented several procedural mechanisms and tools that may be used to facilitate the sharing of information and experiences. The selection of one or several of the most appropriate options would largely depend on the substantive character and the type of activities that will form a basis for this exchange. It will also depend on the level of priority that the Parties, Signatories and other States give to making progress on this issue.