



**COUNCIL OF
THE EUROPEAN UNION**

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INFORMATION NOTE

from: General Secretariat

to: Delegations

Subject: ESPOO Convention:

2nd Meeting of the Working Group on Environmental Impact Assessment and
Strategic Environmental Assessment (Geneva 27 - 30 May 2013)

- Final statements

Delegations will find attached, for information, a compilation of statements delivered by the Presidency at the 2nd Meeting of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment (Geneva 27 - 30 May 2013), as transmitted by the Presidency.

**ESPOO Convention:
2nd Meeting of the Working Group on Environmental Impact Assessment and Strategic
Environmental Assessment (Geneva 27 - 30 May 2013)**

STATEMENTS

I. Item 2 – Status of Ratification

Sub-item 2.4 of the Provisional Agenda

The EU and its Member States and Croatia note the paper prepared by the Secretariat in relation to the status of ratification and the possible opening up of the Convention to Non-ECE Countries. We note the decision taken at the Meeting of the Parties to the ECE Water Convention to facilitate opening that Convention to non-ECE Countries.

II. Item 3 – Compliance and Implementation

Sub-item 3.5 of the Provisional Agenda

The EU and its Member States and Croatia can support the establishment of an ad-hoc group to prepare proposals regarding implementation of the Convention by Armenia and Azerbaijan. We have no specific comments on the terms of reference or other actions at this time.

Sub-item 3.6 of the Provisional Agenda

We note the work of the UN Editors. We can agree to have legal advice sought where recommended by the Editors. We can also agree to the proposals that the editorial errors be corrected by way of corrigendum to the Convention text and that the more substantive errors be addressed by way of agreed interpretation or, if necessary, amendment.

III. Item 4 - Exchange of Good Practices

Sub-item 4.12

The EU and its Member States and Croatia recognise the need for guidance on good practice on nuclear-related activities. The update by the Secretariat of background documents prepared and circulated by the Secretariat two years ago, along with input from the Workshop, forms a good basis for further development. However, we feel such a group should receive its mandate and endorsement at the next Meeting of the Parties.

IV. Item 6 - Promoting ratification and application of the SEA Protocol

Sub-item 6.17

The EU and its Member States and Croatia approve the electronic publication of the Resource Manual, including the health annex, in Russian.

Sub-item 6.22 - Draft Good Practice Recommendations on Public Participation in Strategic Environmental Assessment (ECE/MP.EIA/WG.2/2013/3)

The EU and its Member States and Croatia would like to thank the Bureau and the Secretariat for their work in preparing the draft good practice recommendations. The draft document provides useful practical guidance on application of the Protocol's provisions by parties and future parties in relation to public participation. The discussion of the draft recommendations in October 2012 was productive and we appreciate the extent to which our comments and views have been incorporated into the revised text, in particular the less proscriptive language and the greater discretion given to the parties in terms of implementing the recommendations. The clarification on page 4 that the use of "must" refers to existing requirements in the SEA Protocol while "may" and "could" refer to additional, recommended but non-binding good practice is particularly important in this regard. On the document that is now before us, we would suggest the following changes:

- 1) Page 4, para 2, last sentence: delete "best", insert "good" as the guidance is intended as a good practice guide.

"2. These good practice recommendations aim to improve public participation in SEA as provided for by the United Nations Economic Commission for Europe (ECE) Protocol on Strategic Environmental Assessment (SEA Protocol) to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention). They offer a guide to the implementation of SEA Protocol obligations, illustrate **best good** practice and provide ideas for more innovative practice."

- 2) Page 5, para 9 (e): we feel that this point should be deleted as it is unclear.

- 3) Page 6, point 10(a): delete "positively" in last sentence:

"(a) *The participants*: participants should be involved early and throughout the planning process, be allowed to fully express their views, and have these views considered by the plan-makers **positively**, respectfully, seriously and in a spirit of mutual education;"

- 4) Page 6, point 10(b): suggestion to alter "lead" into a different word, expressing that public participation may strive for the possibility that useful suggestions are generated but this is not obligatory as it cannot be forced and it will depend on the plan what effective participation is in a particular context:

"(b) *The plan-makers*: public participation should **lead aim to facilitate** ~~to~~ useful suggestions that help in the choice of alternatives and improve the plan or programme."

- 5) Page 6, para 11, first sentence: delete “are”, insert “might be” to allow more flexibility:

"11. Effective opportunities for public participation **are might be**:"

- 6) Page 7, point e): insert the word “relevant” before "information":

"(e) *Open and transparent*. People who are affected by a plan or programme and are interested in participating could be given access to all **relevant** information and be able to participate in meetings and hearings related to the SEA process. Information and facilitation for such participation could be provided;"

- 7) Page 7, point h): suggestion to use a more abstract wording to explain the term “proportional” instead of an example, by replacing the sentence after “proportional” by the following sentence:

"(h) *Proportional*. ~~The effort put into an SEA for a local town plan should not be the same as that put into a nuclear energy plan.~~ **The effort put into public participation in an SEA will depend on the characteristics and nature of the proposed plan or program, and its potential environmental, including health, effects.**"

- 8) Page 7, para 12, first sentence: insert “might” after “SEA” to allow for more flexibility::

"12. Techniques for effective public participation in SEA **might** include:"

- 10) Page 9, para 17: delete second sentence. In the third sentence, delete “a higher-level decision option”:

"17. Neither the SEA Protocol nor the Resource Manual specify what is meant by the requirement of the article 8, paragraph 1, to provide opportunities for public participation “when all options are open”. ~~However, this could be interpreted as “when any option could still be chosen as the preferred option”.~~ All options are no longer open where, for instance, ~~a higher-level decision has precluded some options or identified a preferred option~~; funding has been provided for a component of some options but not others (e.g., a road that facilitates development in a particular area); a public announcement of a preferred option has been made by the competent authority even though the plan or programme has not yet been adopted; or development consent has been given by the public administration to a project, the execution of which otherwise would depend on the plan or programme."

Indeed, if a country’s administration operates on the base of a tiered decision-making system, the options for authorities at lower level necessarily will be more limited than before. For instance, a national traffic plan which covers transport issues in relation to roads, railways or water, may also have an intermodal approach, thus setting the framework for all lower planning levels as well. In this, there would be fewer options available at regional or local level. The text should take this into account.

- 11) Page 9, para 20: modify text as follows:

"20. At the screening stage, ~~public views must be sought, "where appropriate", on whether the plan or programme requires SEA, to the extent appropriate, each Party shall endeavor to provide opportunities for the participation of the public concerned.~~ "Where appropriate" could include where the public will be particularly affected by the plan or programme, where different groups would be affected differently, where the plan or programme is likely to be contentious, or where innovative solutions are sought. If a plan or programme is not expected to require SEA, then involving the public at the screening stage will may avoid later accusations that the plan or programme was prepared without the full range of necessary information."

- 12) Page 9, para 21, last sentence: modify as follows:

" These ~~may~~ include ~~but are not limited to:~~"

- 13) Page 10, box 4, para 2 (a), second sentence: delete "will typically", insert "may":

"(a) Public notice in the mass media (radio, television, newspapers) corresponding to the geographical scope of proposed activity (from international to local). It ~~will typically~~ may be more effective to publish the notification in a popular daily local newspaper rather than in a weekly official journal, and in media with larger rather than smaller circulations;"

- 14) Page 11, para 24, modify as follows:

" 24. Determination of the relevant information to be included in the environmental report — scoping — must include consideration of "the interests of the public" (art. 7, para. 2 (c)), and, "to the extent appropriate", ~~the public must be given an opportunity to participate~~ each Party shall endeavor to provide opportunities for the participation of the public concerned in scoping (art. 6, para. 3). ~~It is also good practice to identify and notify~~ may also be useful to identify and inform any other affected Parties at the scoping stage, so that they can consult their public on the scope of the SEA if appropriate. If Parties find it appropriate to provide opportunities for public participation in scoping, then the public could be notified of these opportunities in accordance with the recommendations in box 4."

- 15) Page 11, para 25, last sentence: insert "may" after "These" and delete "but are not limited to", as follows:

" These may include ~~but are not limited to:~~"

- 16) Page 12, para 27, second sentence should read as follows:

" 27. Public availability of documents may require

- 17) Page 13, paragraph 30, third sentence: delete "are likely to", insert "may":

" 30. The public are entitled to submit any opinions on the draft plan/programme and environmental report that they consider relevant, free of charge and without undue formalities. The public are not required to provide any evidence as to the sources of information they used, or any justifications and/or reasoning for their views. However, such sources **are likely to may** improve the evidence in the environmental report and hence lead to a knowledge-based decision."

- 18) Page 14, para 32, first sentence: delete "are often" and insert "may be", as public hearings are not necessarily an effective form of public participation.

"32. Public hearings or inquiries in which the public may submit oral opinions **are often may be** an effective form of public participation. One or more such hearings could be held when merited by:"

- 19) Page 15, paragraph 35, second sentence: delete "positively".

"35. Decision makers must "take due account" of comments from the public when the plan or programme is adopted. This does not mean that all suggestions must be followed, but that comments should be considered **positively**, respectfully, seriously and in a spirit of mutual education. "

- 20) Page 15, paragraph 36: delete "detailing, in response to each comment":

"36. It is good practice for planning authorities to document how public comments were taken into account, **detailing, in response to each comment**, what changes were made to the plan or programme, or, if no changes were made, explaining why not. Decision makers could refrain from simply stating that a comment has been "noted" (or similar), as this does not indicate that they have taken due account of the comment."

- 21) Page 16, para 40, first sentence: after "SEA" insert "may".

"40. People who are traditionally disenfranchised from SEA **may** include the elderly, the young, the disabled, the poor, women, minorities and people living in remote locations."

- 22) Page 17, para 44, third sentence: modify as follows:

"44. Members of the public may also struggle to see the relevance of some plans/programmes, particularly strategic, national level plans, to their lives even though these plans may end up significantly affecting them. For instance, a national transport plan may directly lead to a new road or airport being built near somebody's house, but without knowing the plan contents the householder may not feel that the plan relates to them. Lack of public participation at this stage **does may** not indicate lack of interest or concern about the plan's impacts, but rather a lack of understanding of the relevance of the plan. If this issue is not addressed up front, it could result in the media or politicians identifying the issue and conveying it in a sensational manner; or in the public subsequently finding out, feeling betrayed, and delaying the plan's implementation through protests or legal challenges. "

- 23) Page 17, para 45, second sentence: include “may” after “issue”:

"45. Where a plan or programme could have significant impacts but these are not obvious to the public, Parties could put measures in place to ensure that the public becomes aware of these impacts. Proactive measures for dealing with this issue **may** include:"

- 24) Page 17: delete paragraphs 47 to 49. The Protocol does not contain provisions regarding the confidentiality of information. It only determines in Art. 4(5) which plans or programmes are exempted from the Protocol. For all other plans or programmes a full SEA with the information required according to the relevant provisions has to be carried out, if this plan or programme falls under the Protocol.

- 25) Page 19, para 51, second and third sentence: delete to reflect decision I/2 taken at the 5 MOP/1MOP, June 2011 (ECE/MP.EIA/Report/SEA/2):

"51. The Espoo Convention makes both the Party of origin and the affected Party responsible for the distribution of environmental information to the public and collection of comments from the public in the transboundary environmental impact assessment (EIA) of projects. ~~A similar approach could be taken for SEA. Most Parties already have an established point of contact for transboundary public consultations on EIA, and the same point of contact could be used for SEA.~~ Article 10, paragraph 3, of the SEA Protocol implies that the affected Party is responsible for organizing consultation in their country, where this is acceptable to both Parties. A possible approach is for the Party of origin to submit the draft plan or programme and the environmental report to the affected Party so that it could inform its own public; public comments could then be submitted either directly to the competent authority of the Party of origin or collated by the affected Party and sent to the Party of origin."

- 26) Page 19, para 52, first sentence: modify as follows, in order to increase flexibility:

"52. Matters ~~which may be to be~~ discussed and implemented jointly between the Party of origin and the affected Party when planning the transboundary consultation process for a particular SEA could include:"

The EU and its Member States and Croatia would ask that these suggestions be incorporated into a revised draft before submission to the Meeting of the Parties to the Convention.

V. Item 8 - Budget, Financial arrangements and Financial Assistance

Sub Item 8.28 - Financial Strategy (ECE/MP.EIA/WG.2/2013/5)

The EU and its Member States and Croatia would like to thank the Bureau and the Secretariat for their work in developing, as agreed at the first meeting of the Working Group in April 2012, a draft financial strategy for carrying out work under the Convention and the Protocol.

We can support broadly the objectives set out in the draft financial strategy - subject to a small number of proposed amendments. We agree with the elements of the draft strategy relating to planning future activities and drafting budgets. We believe that the suggested voluntary financial contribution scheme should be open for Parties and Signatories.

We suggest the following text changes:

- 1) Page 3, paragraph 7: insert "sustainable" before availability:

"7. To improve the **sustainable** availability and predictability of the extrabudgetary funding for the activities under the Convention and the Protocol:"

- 2) Page 4, paragraph 8:

The EU and its member states and Croatia favor the voluntary contribution schemes. However, in order to be in line with other similar Conventions (e.g. Aarhus Convention) we would like to postpone the decision making on this subject until the next meeting of the WG to be held in November. In the meantime, we would like to request the Secretariat to elaborate in more detail on how the schemes would be applied and how the hybrid system, if adopted, would efficiently function.

We would therefore ask that these suggestions be reflected in the further development of the draft financial strategy.

VI. Item 9 – Preparations for the sixth session of the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context and the second session of the Meeting of the Parties to the Convention Serving as the Meeting of the Parties to the Protocol

Sub-item 9.31 of the Provisional Agenda

The EU and its Member States and Croatia note the preparatory work undertaken to date by the Bureau and secretariat ahead of the MOPs in Kiev next year. The proposal to hold the meetings from 2 to 5 June is acceptable.

Sub-item 9.32 of the Provisional Agenda

The EU and its Member States and Croatia would like to thank the Bureau and the Secretariat for preparing the list of draft decisions for possible consideration at the Meeting of the Parties in 2014.

A number of the proposed decisions correspond to usual practice and would be expected to be included for adoption by MOP6/MOP2 as a natural course of action. We believe this would be the case for the decisions on adoption of the workplan or review of implementation or even agreeing some elements of the budgetary and financial arrangements.

Of course, the final list of decisions will be influenced not only by the discussions held here over the last few days at this 2nd Meeting of the Working Group. The list will be further influenced by discussions at the 3rd Meeting of the Working Group on EIA and SEA in Geneva in November and by the further development of work on, for example, a financial strategy or guidance on public participation in SEA.
