

# Public Participation in Environmental Matters in the UK/England & Wales

A Guidance Note

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## 1. Introduction

Public participation is the engagement by individuals and NGOs with the decision-making structures in society and includes, for example: voting; campaigning; and (as will be addressed in this note) taking part in consultations. Encouraging effective public participation can improve the quality of governance, whilst giving those likely to be affected by decisions the right to be involved in the decision-making process – which has obvious and growing relevance in the context of environmental matters.

However, poorly facilitated public participation can have the opposite effect – it can disenfranchise affected persons and prevent the transfer of helpful information to the decision-making authority. For example, a consultation document which is overly long and technically worded and which imposes an unreasonably short window for replies is unlikely to engage affected persons and produce useful contributions.

As explained in sections 4 and 5 below, in the UK there are certain obligations which fall on the government and public authorities regarding when they must seek public participation and, if such public participation is required, what it must involve. These obligations arise principally out of the Aarhus Convention,<sup>1</sup> but also from domestic legislation, case law and governmental consultation principles.

The Convention acknowledges the role that members of the public play in protecting the environment.<sup>2</sup> The Convention gives individuals and civil society groups, including environmental charities, certain rights and imposes obligations on signatory Parties (such as the UK government) and public authorities regarding access to information, public participation and access to justice.

A key right, which forms what is termed the ‘second pillar’ of the Convention, is the right to participate in public environmental decision-making. This guidance note will focus on this second pillar right and what it means in practice when responding to a public authority consultation that affects the environment.

We recommend that this guidance note be read together with the Aarhus Implementation Guide produced in 2014 (the “**Guide**”)<sup>3</sup> and Maastricht Recommendations on Promoting Public Participation in Effective Decision Making in Environmental Matters prepared under the Aarhus Convention produced in 2015 (the “**Recommendations**”)<sup>4</sup> both of which are not legally binding but provide a guide to good practice. The findings of the Aarhus Convention Compliance Committee (the “**ACCC**”) also contribute to the interpretation of Convention obligations.<sup>5</sup>

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<sup>1</sup> Its full title is ‘The United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters’ (the “**Convention**”). The Convention was ratified by the UK in February 2005.

<sup>2</sup> <https://unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>

<sup>3</sup> [https://unece.org/DAM/env/pp/Publications/Aarhus\\_Implementation\\_Guide\\_interactive\\_eng.pdf](https://unece.org/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf)

<sup>4</sup> [https://unece.org/DAM/env/pp/mop5/Documents/Post\\_session\\_docs/ece\\_mp.pp\\_2014\\_2\\_add.2\\_eng.pdf](https://unece.org/DAM/env/pp/mop5/Documents/Post_session_docs/ece_mp.pp_2014_2_add.2_eng.pdf)

<sup>5</sup> <https://unece.org/env/pp/cc/background>

## 2. What is the Aarhus Convention?

The Convention establishes rights for individuals and civil society organisations in relation to the environment.

Each Party to the Convention is required to guarantee the three ‘pillars’ of the Convention, namely the procedural rights of:

- Access to information (the ‘first pillar’);
- Public participation in decision-making (the ‘second pillar’); and
- Access to justice in environmental matters in accordance with its provisions (the ‘third pillar’).

The central objective of the Convention is to contribute to the protection of the right of every person of present and future generations to live in an environment adequate for his or her health and well-being.

## 3. Is the Aarhus Convention law in the UK?

The UK is a Party to the Convention,<sup>6</sup> however it has not been fully transposed into UK law. This is because the UK regards international law and domestic law as separate legal systems. As a result, unless provisions in international law are implemented by the Westminster Parliament or the devolved administrations, they are not enforceable by a court in the UK. As the Convention is an international treaty, it does not create any directly enforceable rights or obligations in the UK unless they are expressly implemented into domestic legislation. In the case of the Convention, some provisions have been implemented in UK law,<sup>7</sup> whilst some remain as international law obligations only. Notwithstanding the fact that the Convention is not fully enforceable under UK law, public authorities can always be reminded of the UK’s international obligations, which can be an influential tactic (as explained further in section **Error! Reference source not found.**).

## 4. What are the public participation requirements under the ‘second pillar’ of the Aarhus Convention?

Articles 6 to 8 of the Convention require public participation in relation to three different types of decision-making concerning the environment.

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<sup>6</sup> The UK ratified the Convention in February 2005.

<sup>7</sup> These have been implemented in different ways in the three legal jurisdictions of the UK – England & Wales, Scotland and Northern Ireland.

## Article 6: Public participation in decisions on specific activities

Article 6 applies to a **decision**, to be made by a public authority,<sup>8</sup> on an **individual application** that will **permit a particular activity** listed in Annex 1 to the Convention, **in a specific place and under specific conditions**.<sup>9</sup> Examples include applications for: oil and gas refineries; chemicals factories; and waste management facilities. The difference between an Article 7 plan, programme or policy and an Article 6 decision is that the former is usually not sufficient for an individual or specific activity to be undertaken without a further permission.

Article 6 also applies to decisions on proposed activities not listed in the annex which may have a significant effect on the environment. The UK considers that all projects likely to have a significant effect on the environment are subject to control under environmental impact regimes which implement EU Directive 2011/92/EU as amended by Directive 2014/52/EU.

Reconsideration of, or updating conditions for, an activity may also trigger further public participation under Article 6.

### What does Article 6 require?<sup>10</sup>

**Who must comply?** - The obligations are on the UK to put the public participation regime in place. In practice, the authority that has received the application for permission will be responsible for the public participation process and taking its results into account when making its decision. The notice that begins the public participation must state the consent sought, who will make the decision, what the decision may be and give details of the public participation process.

**Timing** - Public participation must take place early in the environmental decision-making procedure, when all options (including a zero option – i.e. no development) are open. This requirement also applies to Article 7 plans, programmes and policies. However, an authority may consider an application for permission under Article 6 in relation to a development that has already been subject to earlier public participation, for example through compliance with Article 7 or 8 requirements. Where this happens, the

<sup>8</sup> 'Public authority' is defined in Appendix A.

<sup>9</sup> The Guide, p. 124 quoting Jerzy Jendrośka, 'Public participation in the preparation of plans and programs: some reflections on the scope of obligations under Article 7 of the Aarhus Convention', Journal for European Environmental & Planning Law, vol. 6, No. 4 (December 2009), pp. 495-515.

<sup>10</sup> Article 6, set out in Appendix D.

requirement that public participation must take place at a point where all options are open may be modified so that later stages of decision-making address only the issues within the option already selected at the preceding stage, provided that all options discounted have been subject to public participation whilst they were open.

**Who is consulted?** - The 'public concerned'. This is the public affected or likely to be affected by, or having an interest in, the environmental decision-making. Non-governmental organisations promoting environmental protection may be treated as having an interest. Where the environmental impacts extend beyond national boundaries, everyone who may be affected should have access to the review procedure on an equal basis. This may include other countries when issues such as transboundary pollution or migrating species are under consideration.

**Time frames** - The timeframes in the procedure must be reasonable, so that the public can be informed and also prepare for and participate effectively in the environmental decision-making. This is also the case for plans, programmes and policies within Article 7. What is reasonable will often depend on the facts, specifically the type of proposed development and the amount of documentation.

**What information must be given?** - The public authority making the decision must give to the public concerned access, free of charge, to all information relevant to the decision-making as soon as it becomes available, unless the Convention allows for that information to be withheld, for example where it is subject to confidentiality obligations. The information must include:

- A description of the site and proposed development;
- The significant effects on the environment of that development;
- Any mitigating measures; and
- The main alternatives studied by the applicant and the main reports and advice issued to the public authority.

**How does the public comment?** - The public (including individuals, community groups/residents' associations and environmental NGOs) must be able to submit comments or other information which it considers relevant to the proposed development. These comments may be written or, if at a public hearing or inquiry, oral. The Recommendations consider that online consultation material should be supplemental to, and not a replacement for, face to face meetings.

**What happens after the participation?** - The authority must take account of the public participation outcome when reaching a decision. This is also the case for plans, programmes and policies within Article 7. The Guide suggests that this means that the authority should be able to show why a particular comment was rejected. The Recommendations<sup>11</sup> go further and suggest that the requirement for the authority to take account of the outcomes of the consultation process is a minimum and that where there are substantial environmental effects affecting a large number of people, subject to constitutional law, the public should have greater involvement in making that decision, perhaps through a co-decision power or a referendum.

**The public must be informed of the final decision** - This decision must be publicised in line with appropriate procedures and the text, together with the reasons and considerations on which it is based, must be accessible to the public.

## Article 7: Public participation concerning plans, programmes and policies relating to the environment

Article 7 requires the UK to establish a **transparent and fair framework** for public participation in the **preparation of plans, programmes and policies relating to the environment**.<sup>12</sup> This covers any type of strategic decision adopted by an authority or prepared for adoption by an authority through a formal procedure. A decision is likely to be a plan or programme if it is also subject to a regulatory procedure and sets a framework for certain categories of activities.

In addition, the public authority responsible for the plan must identify which members of the public may participate and it must do so in line with the Convention objective of protecting the environment for present and future generations. In short, it is not enough simply to design a consultation procedure – participation should be actively encouraged. The obligations in Article 6 in relation to timeframes, consultation when all options are open and taking the responses into account when the decision is made, all apply to Article 7.

There is some overlap between Article 7 of the Convention and the EU requirements for Strategic Environmental Assessments (“SEAs”) but the obligations are not identical.<sup>13</sup> In the UK, the authority

<sup>11</sup> Recommendation 12, set out in Appendix E.

<sup>12</sup> Article 7, set out in Appendix C.

<sup>13</sup> *“It should be noted however that, while a valuable aid to the implementation of Article 7, SEA procedures, as currently set at the international and regional level and as regulated at the national level, cannot be considered as*

responsible for carrying out the public participation requirements in relation to a particular plan, programme or policy will be determined by the relevant legislation that has been made to implement Article 7.<sup>14</sup>

## Article 8: Public participation during the preparation of legally binding rules (i.e. legislation)

Article 8 relates to the preparation of **legally binding rules** (i.e. legislation) that apply generally and that **may have a significant effect** on the environment.<sup>15</sup> For example, between 10 May and 2 August 2018, Defra ran consultations on ‘Environmental Principles and Governance after the United Kingdom leaves the European Union’. The consultation contributed to the development of the draft Environmental Principles and Governance Bill by seeking views on how the Bill should be drafted, how environmental principles should be embedded into law, public policy-making and delivery, and what functions and powers the new environmental watchdog should have to oversee environmental law and policy.<sup>16</sup>

The public participation requirements apply to public authorities in the process of making legislation up until the time legislative drafts prepared by the executive branch are passed to the legislature.<sup>17</sup> The UK has not formally transposed the requirements of Article 8 of the Convention into domestic legislation. However, as a matter of practice, the Government (and other public authorities with the power to make legally binding rules) invite public participation when preparing draft legislation. This obligation ends when the draft is introduced into a legislative procedure.

Articles 8 has certain obligations public authorities must adhere to and they are much less prescriptive than the obligations in Articles 6 and 7. Article 8 requires:

- Public participation to be carried out at an early stage, while options are still open;
- Time frames to be sufficient for effective participation;
- The publication of draft rules to be made publicly available;
- The public to have an opportunity to comment; and

*fully implementing its requirements. While such procedures are useful tools towards implementation, they need to be supplemented by other procedures”, The Guide, p. 174.*

<sup>14</sup> See, for example, the Environmental Assessment of Plans and Programmes Regulations 2004.

<sup>15</sup> Article 8, set out in Appendix B.

<sup>16</sup> <https://aarhusclearinghouse.unece.org/sites/default/files/2021-04/Aarhus%20Convention%202021%20National%20Implementation%20Report%20%E2%80%93%20Tracked%20Changes.pdf>.

<sup>17</sup> The Guide, p. 182.



- The results of the public participation to be taken into account as far as possible.<sup>18</sup>

The Article does not state who is to carry out the public participation exercise but in practice it is likely to be the public authority preparing the draft rules.

## 5. What are the other requirements for consultation in the UK?

If there is domestic legislation implementing a Convention requirement, the participation requirements may be set out in that legislation. For example, Schedule 5 to the Environmental Permitting (England and Wales) Regulations 2016 sets out how a regulator must meet public participation requirements when considering an application for an environmental permit. If there are requirements in the legislation they must be complied with.<sup>19</sup>

If there is no requirement in legislation, a public authority may be under an implied duty to consult. This may arise, for example, because there has been a previous promise to consult, or there has been a past practice of consultation or a failure to consult would lead to conspicuous unfairness.

All consultations must be conducted fairly and case law has established some guiding principles, sometimes referred to as either the Sedley or Gunning principles,<sup>20</sup> to determine whether a consultation is fair. These are:

- **(Principle 1):** the consultation must occur at a time when the proposals are still at a formative stage;
- **(Principle 2):** adequate information must be given to enable consultees to respond properly;
- **(Principle 3):** adequate time must be allowed for consideration and response; and
- **(Principle 4):** the product of consultation must be conscientiously taken into account in making the decision

<sup>18</sup> The Guide, p. 125.

<sup>19</sup> <https://www.legislation.gov.uk/uksi/2016/1154/schedule/5/part/1/paragraph/2>

<sup>20</sup> So called because the principles were first proposed in 1985 by Stephen Sedley QC, as part of his legal arguments in the case of *R v Brent London Borough Council, ex parte Gunning* (1985) 84 LGR 168. The principles were adopted by the judge in that case and have been applied/endorsed since that time, notably by the Supreme Court in *R. (on the application of Moseley) v Haringey LBC* [2014] UKSC 56.

These are not hard and fast rules and a consultation may be fair even though all these requirements are not met. Each case will have to be considered on its own facts as to whether or not consultation was fair. However, they are a useful guide and broadly cover the same ground as the Convention public participation requirements, although the requirements in Articles 6 and 7 of the Convention are more detailed.

In addition, there are Cabinet Office Consultation principles, that were revised in 2018.<sup>21</sup> This is guidance for government departments when conducting consultations, so whilst it is not legally binding it nevertheless sets out desired standards. The Principles provide that:

- The content of the consultation should be clear and precise, have a purpose, be informative and available online (Principles A, B and C);
- The consultation should take account of the full range of people affected by the policy and the consultation should be targeted effectively (Principles F and G);
- There should be collective agreement before launch, and the consultation should last for a proportionate amount of time and may be part of an iterative process (Principles H, E and D);
- Consultations should not be launched in election periods (Principle K);
- The Government response should be published within 12 weeks or an explanation given as to why this is not possible. The response should be on the same page of gov.uk as the consultation so it is clear when the government has responded (Principle J); and
- The response should explain how the consultees' responses have informed the policy (Principle I)
- There should be an appropriate time between the end of the consultation and the implementing policy or legislation (Principle J).

In respect of consultations in Northern Ireland, there are additional obligations imposed on public authorities by Section 75 of the Northern Ireland Act 1998. Section 75 imposes an 'Equality of

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/691383/Consultation\\_Principles\\_1\\_.pdf#:~:text=Do%20not%20consult%20for%20the%20sake%20of%20it.,on%20which%20you%20already%20have%20a%20final%20view.](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles_1_.pdf#:~:text=Do%20not%20consult%20for%20the%20sake%20of%20it.,on%20which%20you%20already%20have%20a%20final%20view.)

Opportunity' duty and a 'Good Relations' duty on public authorities when carrying out their functions – these duties have implications for how consultations must be run.<sup>22</sup>

## **6. In what ways are the Aarhus Convention public participation requirements relevant to a consultation relating to the environment?**

The Convention may be relevant in two ways, namely:

**To support proposals made in consultation responses on measures that may have a significant effect on the environment, for public participation in environmental-decision making processes.**

For instance, the Health & Safety Executive's design and implementation of an authorisation process for new pesticides to be placed on the market in England, Wales & Scotland. In such a case the public authority should be reminded of its obligations to comply with its duty to ensure that any authorisation process allows for effective participation by members of the public in line with its legal obligations under domestic law, the Convention and/or the Cabinet Office Code.

**When responding to a consultation that relates to a decision on a permission covered by Article 6, or a plan, programme or policy within Article 7 or draft rules (which may be regulations or other legislation) within the scope of Article 8.**

If Article 6 or 7 is relevant, there is likely to be domestic legislation that implements the public participation requirements in the part of the UK to which the consultation relates. The Aarhus National Implementation Report<sup>23</sup> sets out the mechanisms by which the UK has implemented the Convention's requirements. If there is domestic legislation that applies, check to see whether the requirements in that legislation are met.

Whether or not there is relevant domestic legislation, consider whether the consultation meets the Sedley principles. Bear in mind that the consultation may be part of a process of engagement which may overall meet both domestic and Convention requirements. The following questions may help.

- Is the consultation occurring at a formative stage? Can responses to the consultation influence the decision-making or does it appear that the decision has already been made? Is there a zero (no

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<sup>22</sup> <https://www.equalityni.org/Employers-Service-Providers/Public-Authorities/Section75/Section-75/PublicConsultation/Consultation-principles>.

<sup>23</sup> <https://aarhusclearinghouse.unece.org/sites/default/files/2021-04/Aarhus%20Convention%202021%20National%20Implementation%20Report%20%E2%80%93%20Tracked%20Changes.pdf> ; available via, <https://aarhusclearinghouse.unece.org/national-reports/reports/>.

change) option? If not, has there been an earlier public participation exercise in relation to this project?

- Do you have enough information to respond properly to the consultation? The Cabinet Office guidance requires that the content of the consultation should be clear and precise, have a purpose, be informative and available online. These are not legal requirements but if they are not met this may show that the information given was inadequate.
- When must you respond to the consultation? Is it reasonable to expect consultees to consider the information and to give a proper response in the time given? This may vary depending on whether the consultation period runs over public holidays or periods of adversity (such as the pandemic). Cabinet Office consultation principles state that the consultation should last for a proportionate amount of time and that consulting too quickly will not give enough time and will reduce the quality of the responses.
- Who has been consulted? Are there individuals or groups who should have been included in the exercise but appear to have been left out? This may include vulnerable groups, such as the elderly, who may not always have access to electronic means of consultation. The Cabinet Office consultation principles recognise that the consultation should take account of the full range of people affected by the policy and the consultation should have targeted effectively.

## **7. What can you do if you consider a consultation is deficient?**

- If you consider that the consultation is deficient, for example insufficient information has been given or the timescale for response is unrealistic, you should raise your concerns with the public authority through the email or telephone contact details provided in the consultation. You should also download a copy of the consultation as it will be removed from the public authority website when the deadline for responding has passed.
- Where you think that there is a duty to consult and an authority has made a decision without consultation, you should check if there is a legal duty to consult, either in legislation or because there is an implied duty.
- It may be possible to bring judicial review proceedings where an authority proceeds with a flawed consultation or fails to carry out a consultation.

- It is important to recognise that you must act promptly as judicial review proceedings are time sensitive as the rules require the claim to be filed promptly<sup>24</sup>.
- A challenge on the basis that an authority has failed to comply with an implied duty may fail if there are urgent or national security considerations in play<sup>25</sup>, or because those affected have been able to put their case, even though there has been no formal consultation<sup>26</sup>. Generally it is not adequate for an authority to argue that fairness did not require consultation because it would not affect the decision taken.<sup>27</sup>
- Where a Convention right or obligation has not been implemented through domestic legislation it is not directly enforceable in the UK. This means it is not possible to bring an action in a domestic court relying only on that right or obligation. However, there is a mechanism for making a complaint to the Aarhus Convention Compliance Committee (“**ACCC**”) about any UK failure to comply with the Convention requirements.
- If a consultation does not meet domestic requirements it may be successfully challenged. The Convention requirements for public participation are broadly in line with domestic common law requirements for consultation, although the Convention provisions, in particular Article 6, impose detailed requirements.

*If it is not possible to raise compliance with the Convention in domestic legal proceedings, it may be possible to highlight the UK Government's non-compliance with its international obligations through publicising this and to bring pressure on the Government for full implementation.*

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<sup>24</sup> In judicial review proceedings, the claim form must be filed promptly, and in any event not later than six weeks (planning case) and three months (all other cases) after the grounds to make the claim first arose, unless the Court exercises its discretion to extend time.

<sup>25</sup> E.g. *Council of Civil Service Unions v Minster for the Civil Service* [1985] AC 374.

<sup>26</sup> *Walton v Scottish Ministers* [2013] PTSR 569.

<sup>27</sup> *R v Chief Constable of the Thames Valley Police ex p Cotton* [1990] IRLR 344, at para 60.

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## Appendix

### Appendix A – Definition of Public Authorities in the Aarhus Convention

Public authority as defined in the Convention. “Public authority” means:

- a. Government at national, regional and other level;
- b. Natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment;
- c. Any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a body or person falling within subparagraphs (a) or (b) above;
- d. The institutions of any regional economic integration organization referred to in Article 17 which is a Party to this Convention. This definition does not include bodies or institutions acting in a judicial or legislative capacity

### Appendix B – Article 8 of the Aarhus Convention

#### PUBLIC PARTICIPATION DURING THE PREPARATION OF EXECUTIVE REGULATIONS AND/OR GENERALLY APPLICABLE LEGALLY BINDING NORMATIVE INSTRUMENTS

Each Party shall strive to promote effective public participation at an appropriate stage, and while options are still open, during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment. To this end, the following steps should be taken:

- (a) Time-frames sufficient for effective participation should be fixed;
- (b) Draft rules should be published or otherwise made publicly available; and
- (c) The public should be given the opportunity to comment, directly or through representative consultative bodies. The result of the public participation shall be taken into account as far as possible.

**Appendix C – Article 7 of the Aarhus Convention****PUBLIC PARTICIPATION CONCERNING PLANS, PROGRAMMES AND POLICIES RELATING TO THE ENVIRONMENT**

Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework, Article 6, paragraphs 3, 4 and 8, shall be applied. The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.

**Appendix D – Article 6 of the Aarhus Convention****PUBLIC PARTICIPATION IN DECISIONS ON SPECIFIC ACTIVITIES**

1. Each Party:

(a) Shall apply the provisions of this Article with respect to decisions on whether to permit proposed activities listed in annex I;

(b) Shall, in accordance with its national law, also apply the provisions of this Article to decisions on proposed activities not listed in annex I which may have a significant effect on the environment. To this end, Parties shall determine whether such a proposed activity is subject to these provisions; and (c) May decide, on a case-by-case basis if so provided under national law, not to apply the provisions of this Article to proposed activities serving national defence purposes, if that Party deems that such application would have an adverse effect on these purposes.

2. The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, inter alia, of:

(a) The proposed activity and the application on which a decision will be taken;

(b) The nature of possible decisions or the draft decision;

(c) The public authority responsible for making the decision;

(d) The envisaged procedure, including, as and when this information can be provided:

(i) The commencement of the procedure;

(ii) The opportunities for the public to participate;



- (iii) The time and venue of any envisaged public hearing;
  - (iv) An indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public;
  - (v) An indication of the relevant public authority or any other official body to which comments or questions can be submitted and of the time schedule for transmittal of comments or questions; and
  - (vi) An indication of what environmental information relevant to the proposed activity is available; and (e) The fact that the activity is subject to a national or transboundary environmental impact assessment procedure.
3. The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.
4. Each Party shall provide for early public participation, when all options are open and effective public participation can take place.
5. Each Party should, where appropriate, encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit.
6. Each Party shall require the competent public authorities to give the public concerned access for examination, upon request where so required under national law, free of charge and as soon as it becomes available, to all information relevant to the decision-making referred to in this Article that is available at the time of the public participation procedure, without prejudice to the right of Parties to refuse to disclose certain information in accordance with Article 4, paragraphs 3 and 4. The relevant information shall include at least, and without prejudice to the provisions of Article 4:
- (a) A description of the site and the physical and technical characteristics of the proposed activity, including an estimate of the expected residues and emissions;
  - (b) A description of the significant effects of the proposed activity on the environment;
  - (c) A description of the measures envisaged to prevent and/or reduce the effects, including emissions;
  - (d) A non-technical summary of the above;
  - (e) An outline of the main alternatives studied by the applicant; and
  - (f) In accordance with national legislation, the main reports and advice issued to the public authority at the time when the public concerned shall be informed in accordance with paragraph 2 above.
7. Procedures

for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity.

8. Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.

9. Each Party shall ensure that, when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance with the appropriate procedures. Each Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based.

10. Each Party shall ensure that, when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 of this Article are applied *mutatis mutandis*, and where appropriate.

11. Each Party shall, within the framework of its national law, apply, to the extent feasible and appropriate, provisions of this Article to decisions on whether to permit the deliberate release of genetically modified organisms into the environment.

## **Appendix E- Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters: Recommendation 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).

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ClientEarth is an environmental law charity, a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 10 Queen Street Place, London EC4R 1BE, a registered international non-profit organisation in Belgium, ClientEarth AISBL, enterprise number 0714.925.038, a registered company in Germany, ClientEarth gGmbH, HRB 202487 B, a registered non-profit organisation in Luxembourg, ClientEarth ASBL, registered number F11366, a registered foundation in Poland, Fundacja ClientEarth Poland, KRS 0000364218, NIP 701025 4208, a registered 501(c)(3) organisation in the US, ClientEarth US, EIN 81-0722756, a registered subsidiary in China, ClientEarth Beijing Representative Office, Registration No. G1110000MA0095H836. ClientEarth is registered on the EU Transparency register number: 96645517357-19. Our goal is to use the power of the law to develop legal strategies and tools to address environmental issues.