

**Environmental Governance and Civil Society:
Challenges and Opportunities for Europeans**

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**‘Developing instruments
for a reinforced culture of consultation and dialogue’**

**R. Hallo
Stichting Natuur en Milieu (NL)**

Introduction

My preferred alternative title for my talk is:
‘Applying Aarhus to EU environmental decisionmaking’

Aarhus is the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

By way of introduction, I will just say a few words about the Aarhus Convention.

Aarhus was negotiated and signed in 1998 by 36 European countries, including all 15 EU member states and the European Community. Aarhus is without question the most significant international legal instrument on the environmental rights of Europe’s citizens. No discussion of environmental governance can ignore it.

The Convention entered into force in 2001. Several EU member states have already ratified, the rest are moving toward ratification.

The Community is also working on ratification. The Commission expects to present a proposal in the coming months which would bring the rules for the EU institutions and bodies in line with the Aarhus requirements.

At the same time, another process has been moving forward here in Brussels, the discussion on Governance.

My aim here is to make a link between the two processes.
I will give my views on the Commission’s General Principles and Minimum Standards for Consultation in relation to what Aarhus requires and encourages.

Views on the General Principles and Minimum Standards

The starting point for my views on the General Principles and Minimum Standards is the following:

- Every person has the right to know about proposed decisionmaking and the right to give his or her views on the decision or policy in question.
- The Commission should consult as widely as possible, early on and throughout the decision-making process.
- The Commission should make full use of websites and electronic communication.
- The Commission should inform people which comments were used and which were rejected, and why.

The Aarhus Convention's provisions on public participation include these requirements. Allow me to quote the most relevant (underlined) parts of these provisions.

Article 6.2:

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.

Article 6.3:

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.

Article 6.4:

Each Party shall provide for early public participation, when all options are open and effective public participation can take place.

Article 6.8:

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

How close do the General Principles and Minimum Standards (GPMS) come to meeting this test?

There is much that is positive in the Communication.

- 'Guiding principle for the Commission is .. to give interested parties a voice.'
- 'Commission wishes to stress that it will maintain an inclusive approach ... every individual citizen ... will be able to provide ... input.
- 'Commission will avoid consultation processes [in which] Brussels is only talking to Brussels'.
- There is a commitment to make good use of websites and electronic communication to promote consultation and dialogue.
- There is a recognition that consultation must be early and ongoing to be effective.
- There is an attempt to establish a uniform baseline of good practice across the Commission services and the encouragement for services to do more.
- The Minimum Standards include: Content (plus suggestions below), Target Groups, Publication, Time limits, and Acknowledgement and Feedback in line with Aarhus requirements, though Aarhus is clearer.

However, there are good reasons not to be entirely satisfied with the GPMS. Unfortunate, therefore that this conference comes too late to influence the development of the GPMS. Fortunate, that it is not too late to influence the Community instrument for implementation of Aarhus.

1. Approach is functional, not rights-based.

- The Commission thinks better consultation will assist it to produce better policy and legislation and increase public awareness and support of its initiatives.
- Part of the reason for rejecting a legally-binding approach.
- But Aarhus (art. 1) requires the Community to ‘guarantee ... the rights of public participation in decision-making’.
- So the non-binding approach is not sufficient to comply with Aarhus.

2. Scope is too limited.

- Link is made to Commission Work Program and initiatives which will be given an extended impact assessment.
- Uncertain whether all initiatives where public consultation is desired, by the public, will be covered.
- Not only major policy initiatives are important. Some segment of the public may be affected and interested in initiatives that would fall outside this category.
- Aarhus requires public participation for plans and programmes relating to the environment. (art. 7).
- Aarhus also requires the EU to ‘endeavour’ to provide opportunities for public participation in the preparation of policies relating to the environment (art. 7). This provision cannot be ignored and requires the Community to make some effort to organize public participation as far as its policies are concerned.

3. Comitology decisions are excluded altogether.

- Aarhus (art. 8) also requires the Community to make an effort ‘to promote effective public participation ... during the preparation ... of executive regulations’.
- A categorical exclusion from the GPMS is not compatible with the Aarhus requirement to ‘strive to promote’ public participation.

4. Institutionalised advisory bodies should not be a filter for civil society views.
 - The GPMS note that the Commission has entered into Protocols with the Economic and Social Committee (ECOSOC) and the Committee of the Regions (CoR) to reinforce their function as ‘intermediaries’ between the EU institutions and organised civil society.
 - Delegation of the consultation function to these advisory bodies is undesirable.
 - Direct consultation between the decision-making institutions and citizens and their organisations is preferred.

5. Internet consultations should not entirely replace direct consultations.
 - Direct face-to-face meetings with senior officials with decision-making responsibility for the proposal in question remain valuable and should continue to be used, alongside electronic consultation means.
 - Staff notes of such meetings should also be made and posted to the consultation website in the interest of transparency.

6. Minimum Standards: Content
 - Not just specific issues or questions should be open for discussion.
 - Wherever possible, the draft text should be subject of consultation.
 - With reasons for proposal and identification of supporting data and analysis.
 - Clear statement of decision to be made should also be provided.

Conclusions

Let's go back to the original title of my talk, the one in the program.

'Developing instruments for reinforced consultation and dialogue'.

I am not opposed to developing new instruments.

My purpose here is to remind ourselves that we don't have to 'reinvent the wheel'.

There already is an excellent and available instrument for strengthening consultation and dialogue.

We should look to the Aarhus Convention and make full use of it as a model.

Aarhus is based on best practices and years of experience in improving public participation.

Not all of its public participation provisions are fully reflected in the new General Principles and Minimum Standards.

Not all of its public participation provisions are requirements for the Commission.

But the General Principles and Minimum Standards are not binding because the Commission itself wants to avoid an overly legalistic approach.

OK. (There's nothing wrong with a legal approach, but OK.)

But then the Commission should go beyond the minimum Aarhus requires and use Aarhus as the standard.

The Commission should incorporate Aarhus standards into the environmental consultation and dialogue procedures and practices for every legislative and policy initiative from this day on.

Thank you.