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**RE : Second draft of the **Recommendations on Public Participation in Decision-making in Environmental Matters****

Dear Ms Marshall,

We thank you for your invitation to comment the draft Recommendation on Public Participation in Decision-making in Environmental Matters prepared under the auspices of the Task of the Aarhus Convention. Please find below the details about the comments we have made earlier.

We want to underline the general quality of these recommendations and we compliment all work done to reach this quality. Nevertheless, we have two strong main concerns.

We are first concerned by the number of paragraphs of the first draft which are deleted in this second draft. We can understand some of the deletions, when they avoid repetitions or make the text easier to read. But some of them have also taken away useful descriptions of some details of a public participation procedure. In our view the text of this second draft must not suffer further deletions in order not to be reduced to a comment of the provisions of the Convention. It would not make the recommendations very useful.

We are also concerned by the use of the word “may” in some of the paragraphs. The normal language of recommendations is “should”, precisely because recommendations must provide an orientation for action and are not just food for thoughts. This is the case, for example, in the recommendations of OECD Guidelines or of the Alamy Guidelines.

Therefore, we ask that the use of “should” is used as a regular drafting rule and, to modify at least the following paragraphs :

8. In addition to the public participation procedures specified in the Convention, public authorities **should** involve NGOs or other members of the public with relevant expertise in advisory or decision-making bodies related to the decision-making procedure.

28. To ensure adequate and effective notification of the public concerned, public authorities **should** 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.

75 . Practical measures to facilitate effective public participation should be considered, e.g. the use of electronic tools. For example, public authorities **should** 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.

109. A lack of adequate evidence demonstrating how the outcomes of the public participation have been taken into account **should** be treated as a significant violation of the legal requirement to take due account giving rise to the quashing of the respective decision.

129. (e) 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. Public authorities **should** consider forms of participation involving representatives of the 'public' that do not currently have a voice.

We thank you for taking our comments into consideration and we remain at your disposal.

We look forward to the future discussions with the Task Force on the following draft.

Best Regards

Yves Lador  
Earthjustice Permanent Representative to the UN in Geneva

Geneva, December 2013