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Second Draft of the Recommendations on Public Participation in Decision-making in Environmental Matters
Comments of the German Delegation

Reference: ZG III 6 - 45074/7.14

Berlin, 28 November 2012

Dear Sir or Madam,

Germany welcomes the Second Draft Recommendations on Public Participation in Decision-making in Environmental Matters as a measure for improving implementation of the provisions of the Aarhus Convention on this issue. Since the Draft Recommendations elaborate on the different steps of a public participation procedure, Germany recognises that the Draft Recommendations might assist Parties to fulfil their obligations under the Aarhus Convention and might be of particular value to public officials when designing and carrying out public participation procedures on environmental decision-making under the Convention.

However, some recommendations might be useful when designing a public participation procedure but might conflict with constitutional law. For example, the delegation of the responsibility for organising public participation (paragraphs 21 et seq.) requires a particular legitimisation in a system of separation of powers. In addition, the co-decision power of the public as well as the exclusive decision-making power of the public as stipulated in





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paragraph 9, subparagraph 4 might be subject to constitutional restrictions of the national law. Therefore, it might be useful to insert in the above mentioned paragraphs a phrase like “subject to constitutional law”.

Since the recommendations on the “Participation of the public concerned from other countries” (paragraphs 25 – 27) refer to transboundary cases a reference to the Espoo Convention and the SEA Protocol being *leges speciales* on this issue as well as to the Recommendations on public participation being drafted under these treaties might be useful.

The same applies to the recommendations on “Public participation concerning plans, programmes and policies (article 7)” (paragraphs 129 – 134).

Finally, as regards the examples given in paragraph 66 on “early participation when all options are still open” some clarification might be useful. First, example one seems at least within the German legal framework to be difficult to be handled. In particular, with regard to private projects, e.g. industrial plants, the competent authority does not have any information regarding the funding of such projects. An obligation to inform the authority on that fact does not exist. Therefore, funding does not seem to be an appropriate criterion to consider whether all options are still open at least as far as private projects are concerned. Hence, it might be useful to limit this example to public projects.

Second, in example four the notion “key politician” seems to be very vague. It is unclear who is included, e.g. only ministers. Therefore, the word decision-maker might be more precise.

Yours sincerely,



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For the Federal Ministry for the Environment,
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Enclosure(s)

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