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Good practice Recommendations on Public Participation in Strategic Environmental Assessment

Prepared under the Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)



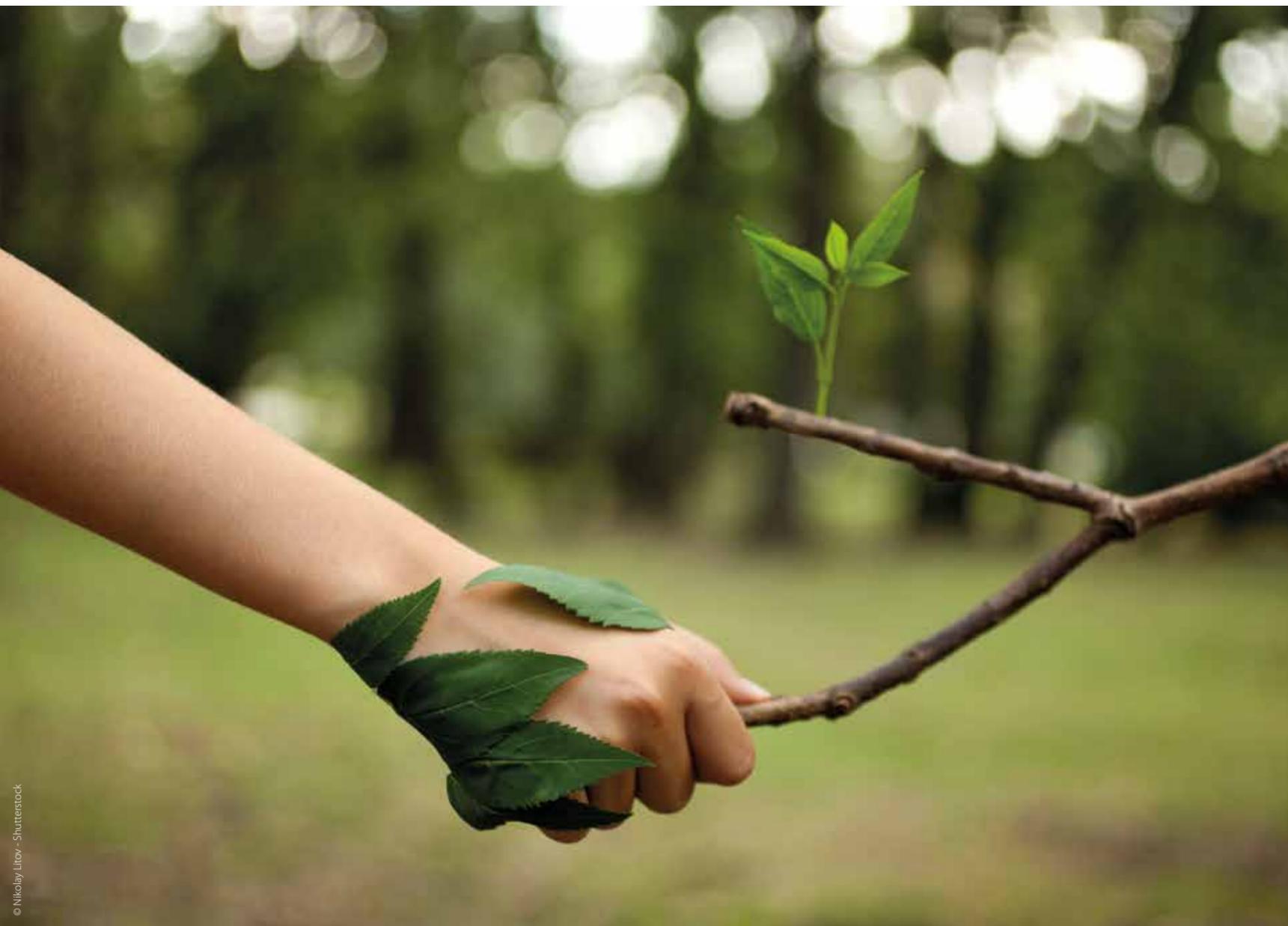
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Foreword

In many countries across the world active environmental citizenship is flourishing. Citizens are increasingly aware of their right to have a say on the environment they live in and to demand participation in decisions that may affect their own and their children's lives. However, environmental democracy is not a given. Its increasing importance is a response to the implementation of numerous projects in the past that have had a significant impact on the environment and the livelihoods of people. These projects were pursued over the objections of the public and, in particular, those of vulnerable groups, such as children and women, rural communities and the poor.

At the forefront of the push towards greater environmental democracy are the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters — or Aarhus Convention — and the Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context. These international treaties were crafted to serve people's interests and to empower them to participate in decisions that have the potential to affect their lives. Based on the principle of the right to a healthy and favourable environment and the notions of sustainable development and environmental democracy, these treaties put in place mechanisms to realize these ideals in practice. The two instruments detail procedures to enable the public to be informed about and participate effectively in decisions that may affect their lives. While negotiated in the framework of UNECE, both instruments are open to accession by non-UNECE States. They promote universal principles, and there is increasing interest in them both within the region and globally.

The Recommendations on Public Participation developed under these treaties aim to assist policymakers, legislators and public authorities in their daily work of engaging the public in decision-making processes. They provide helpful guidance for engaging all interested stakeholders, so as to improve decision-making, planning and the implementation of policies and programmes at all levels. In addition, the Recommendations will contribute to Government efforts to tackle poverty and inequality by ensuring that all persons, including the poorest segments of society and rural communities, are given the opportunity to participate in decisions that affect them and, as a result, to benefit from the income generated from economic activities.

At the Rio+20 Conference the international community recognized that good governance and a truly sustainable economy require the effective involvement of the public, be it as voters, consumers or shareholders. I am therefore convinced that these Recommendations will also help to pursue a people-centred post-2015 development agenda and sustainable development goals.

Christian Friis Bach
Executive Secretary

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Summary

The present good practice recommendations aim to improve public participation in strategic environmental assessment (SEA) as provided for by the United Nations Economic Commission for Europe (ECE) Protocol on Strategic Environmental Assessment (Protocol on SEA) to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention). Their objective is to support the application of the Protocol's provisions by Parties and future Parties as regards public participation, as well as to illustrate good practice in this field so as to promote early, timely and effective opportunities for such participation.

The recommendations were prepared by the ECE secretariat, with the support of a consultant, in consultation with the Bureau under the Espoo Convention and its Protocol, and taking into account the comments by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment at its second and third meetings (Geneva, 27–30 May and 11–15 November 2013, respectively). The recommendations were initially discussed at a meeting on public participation in environmental decision-making (Geneva, 29–30 October 2012), organized jointly with the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), in line with decision I/4 of the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol (see ECE/MP.EIA/SEA/2). They incorporate comments and input from national focal points and experts under the Espoo Convention, the Protocol on Strategic Environmental Assessment and the Aarhus Convention received prior to, during and after the joint meeting. In addition, efforts have been made to ensure consistency between the present draft and the more general recommendations on public participation in environmental decision-making prepared under the Aarhus Convention.

The Meeting of the Parties to the Convention serving as Meeting of the Parties to the Protocol endorsed the recommendations through decision II/8 (Geneva, 2-6 June 2014).

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I. Introduction to public participation in strategic environmental assessment

- Public participation is a cornerstone of effective strategic environmental assessment (SEA). It can increase the transparency and credibility of decision-making, help ensure that all relevant issues are considered during the plan- or programme-making process and allow the early consideration of the public's opinions in the plan- or programme-making process. In turn, it can mobilize public support for the implementation of the plan or programme.
- 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 (Protocol on SEA) to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention). They offer a guide to the implementation of Protocol on SEA obligations, illustrate good practice and provide ideas for more innovative practice.
- The recommendations have been prepared in consultation with the Bureau under the Espoo Convention and its Protocol and were discussed at a workshop on public participation in environmental decision-making (Geneva, 29–30 October 2012) organized jointly with the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). They are additional guidance for the application of article 7 of the Aarhus Convention by its Parties, and complement the recommendations on public participation in decision-making in environmental matters prepared under that Convention. They should be read in conjunction with the Resource Manual to Support Application of the Protocol on Strategic Environmental Assessment (Resource Manual).¹
- Throughout this guidance, “must” refers to the Protocol on SEA’s and Aarhus Convention’s requirements, and “may” or “could” refer to additional good practice.

II. Public participation requirements in the Protocol on Strategic Environmental Assessment

- The Protocol on SEA requires the public to be given an opportunity to comment on draft plans or programmes and the associated environmental reports. It also recommends that, to the extent appropriate, Parties endeavour to provide public participation in SEA screening and scoping. Due account of public comments must be taken in decisions about the plan or programme. After the plan or programme is adopted, the public must be provided with information about the adopted plan and the SEA process in an “SEA statement”. (See annex for a list of the Protocol’s public participation requirements.)
- Article 3 of the Protocol on SEA additionally provides a number of general rights to the public, similar to those of article 3 of the Aarhus Convention, including to:
 - Relevant assistance and guidance from officials and authorities;
 - Recognition of and support for relevant associations, organizations or groups (e.g., non-governmental organizations (NGOs));
 - Exercise rights under the Protocol without being penalized, persecuted or harassed, and without discrimination as to citizenship, nationality or domicile.

¹ Online publication (ECE/MP.EIA/17), available from http://www.unep.org/env/eia/pubs/sea_manual.html.

III. General principles of public participation in strategic environmental assessment

A. “The public” and “the public concerned”

- The Protocol on SEA defines “the public” as “one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organizations or groups” (art. 2, para. 8). NGOs are thus part of the public. Even where an association, organization or group does not have a legal personality, where national legal frameworks so provide, they may be considered to constitute the public.²
- The Protocol on SEA does not define what is meant by “the public concerned”, except that it must include relevant NGOs. Here, article 2, paragraph 5, of the Aarhus Convention’s definition may be followed, namely “the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest”. The same could apply to organizations promoting health.
- To implement the requirements of article 8, paragraph 3, and to ensure that plan-makers identify the public that should participate in a given SEA, Parties may define in their national legal framework what is meant by:
 - The public, as per the Protocol on SEA;
 - The public concerned, as per the Aarhus Convention (see box 1);
 - What constitutes “having an interest in” environmental decision-making;
 - The requirements, if any, which environmental NGOs must meet in order to be deemed to “have an interest”.

Box 1 - Good practice in identifying the public concerned

- When identifying who should be considered as the public concerned with respect to a proposed plan or programme, the plan-making authority could include:
- A wide range of interests, ensuring a well-balanced and inclusive involvement of the public. Many decisions with an environmental dimension also involve health, social and economic interests, and the corresponding interest groups could be included in the public participation in an equitable way;
- Groups that are hard to reach. Some members of the public may be willing but unable to participate (e.g., disenfranchised groups, such as older and younger people, migrants, people with low literacy). (see sect. V.A and V.B below). Others may be able but unwilling to participate (e.g., people with previous bad experiences, lack of time, or who see no benefits in participating). Efforts could be made to involve at least organizations representing such groups, as well as groups that are able and willing to participate;
- Groups that could potentially hinder the decision-making process, for example strong lobby groups or those that could influence the decision makers. These groups will voice their opinion anyway and it may be more efficient and effective to include them in the discussion at an early stage, to try to understand their concerns, take them into account and possibly find compromises.

Box 2 - Public participation challenges: United States of America

Collaboration often only involves select local people who can attend SEA meetings on a regular basis and/or professionals from industry, non-profit organizations, or the government, whose expenses and time are covered as part of their jobs. This was a primary criticism of the Beaverhead-Deerlodge Partnership (BDP), a collaboration between United States conservation groups and timber companies to create a forest management plan for the Beaverhead-Deerlodge National Forest in Montana. The process used by BDP was criticized as giving “priority and a privileged voice to self-selected interests in managing national forests” because of the generally exclusive nature of stakeholder deliberations.³

² Ibid.

³ M. Hourdequin et al., “Ethical implications of democratic theory for U.S. public participation in environmental impact assessment”, *Environmental Impact Assessment Review*, No. 35 (2012), pp. 37–44.

B. Effective public participation

10. **Article 8, paragraph 1, of the Protocol on SEA requires public participation in SEA to be “effective”. Effective participation means effective from the point of view of both:**
- 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 respectfully, seriously and in a spirit of mutual education;
 - The plan-makers:** public participation should aim to facilitate useful suggestions that help in the choice of alternatives and improve the plan or programme.
11. Effective opportunities for public participation may be:⁴
- Well planned and focused** on negotiable issues relevant to the plan or programme. The public should know the aims, procedure and expected outcomes of the SEA process;
 - Open to mutual gains for planners and participants.** This may require being open to a broader scope than the plan objectives alone, and involve promoting cooperation and consensus rather than confrontation;
 - Supportive of participants** through an adequate diffusion of information on the plan or programme and on the planning process. Capacity-building, facilitation and assistance could be provided, particularly for groups that would not otherwise have the capacity to participate and in regions where there is no culture of plan-making;
 - Efficient.** Because SEA is resource consuming (human, financial, time) for the public, efficient SEA will ensure more willing participation;
 - Open and transparent.** People who are affected by a plan or programme and are interested in participating must be given access to all necessary information and be able to participate in meetings and hearings related to the SEA process. Information and facilitation for such participation could be provided;
 - Context-oriented.** Because many communities have their own formal and informal rules for public access to resources, conflict resolution and governance, plan-making could be adapted to the cultural, social, economic and political dimensions of the affected communities;
 - Credible and rigorous,** and adhering to established ethics, professional behaviour and moral obligations. Facilitation of public participation by a neutral facilitator — one chosen jointly with the public, or where the public has the right to refuse a particular facilitator — improves the impartiality of the process, reduces tensions and the risk of conflict among participants, increases the confidence of the public to express their opinions and in the final decision and reduces opportunities for corruption. A code of ethics could be adopted;
 - Proportional.** The effort put into public participation in an SEA will depend on the characteristics and nature of the proposed plan or programme, and its potential environmental, including health, effects.

Box 3 - Public participation good practice and challenges: British Columbia and Canada

It was clear from examining the one [environmental assessment (EA)] widely considered to be successful by the First Nations, the proponent and the consultants, that sound, positive and respectful relationships were at the heart of why that EA was successful. Conversely, the failure of relationships has been identified by all participants as being at the heart of why the EA process fails, even if the EA itself eventually receives government approval.⁵

⁴ The criteria set out in this paragraph are based on P. André et al., “Public Participation: International Best Practice Principles”, Special Publication Series No. 4 (Fargo, United States, International Association for Impact Assessment, 2006) and K. Arbter et al., *The Public Participation Manual: Shaping the Future Together* (Vienna, Austrian Ministry of Environment and the Austrian Society for Environment and Technology, 2007).

⁵ Annie Booth and Norman Skelton, “Improving First Nations’ participation in environmental assessment processes: recommendations from the field”, *Impact Assessment and Project Appraisal*, vol. 29, No. 1 (March 2011), pp. 49–58.

12. Techniques for effective public participation in SEA may include:

- Capacity-building:** Explaining planning and SEA processes in a non-technical manner, so that participants understand the main steps of the processes and how their views will contribute to them;
- Clarifying the relevance of the plan or programme and its impacts,** for instance by focusing on its impacts on people’s health;
- Publication of non-technical summaries** of SEA information in a variety of formats;
- Use of informal meetings, workshops, and small group discussions** rather than (or in addition to) formal meetings in official government venues or convention centres;
- Careful use of facilitators** at meetings to ensure that participants are fully respected, are not rushed and have plenty of time to speak, and that silent members’ opinions are elicited.

C. Timing

13. Early and sustained involvement of the public in SEA helps to build trust among participants, improve screening and scoping of the SEA, increase opportunities to modify the plan/programme in response to public comments and opinions, reduce the risk of rumours and give plan-makers more confidence in their decisions. The Protocol on SEA requires “**early, timely and effective opportunities for public participation, when all options are open**” (art. 8, para. 1), “**timely public availability of the draft plan or programme and the environmental report**” (art. 8, para. 2), and the opportunity for the public to express its opinion on the draft plan or programme and the environmental report “**within a reasonable time frame**” (art. 8, para. 4). Involving the public in the identification of plan/programme options and the choice of preferred options is likely to be particularly effective, as it helps to meet these conditions and shows the open-mindedness of the plan-makers.
14. “**Early**” and “**timely**” mean early and timely from the point of view of the public seeking to participate effectively in the SEA process. These requirements also take into account the characteristics of the proposed plan or programme and its potential environmental, including health, effects.
15. **The Protocol does not specify time frames for public participation** at various stages of the SEA process. As such, a national framework may set fixed time frames for each phase, or adopt a flexible approach whereby the plan-making authorities are responsible for setting time frames appropriate to the circumstances of that case⁶. The flexible approach allows plan-making authorities to take into account the specific characteristics of the proposed plan/programme. However, it could result in uncertainty and inconsistency between public authorities. **Thus, if the flexible approach is to be used, the national legal framework could specify:**
- A minimum time for the public to express its opinions** on the draft plan/programme and environmental report (art. 8);
 - A maximum time after the plan/programme is adopted** for the publication of the plan/programme and SEA statement (art. 11, para. 2);
 - Minimum times for any public participation in screening** (art. 5, para. 3) and scoping (art. 6, para. 3)⁷. The minimum times will depend on the complexity of the plan and environmental report, but in all cases should allow for a careful examination of the relevant documents and the development of public views on them.
16. The following points could be considered when laying down such time frames:
- A complex or national-level plan will require more time than a simple or local level programme. The time frame will also be influenced by characteristics of the public and how the environmental report is presented. It is unlikely that a period of less than four weeks will be a “**reasonable time frame**” for any plan or programme;

⁶ See Case C-474/10, *Department of the Environment v. Seaport (NI) Ltd and others*, European Court of Justice, 20 October 2011.

⁷ See Good Examples of EIA and SEA Regulation and Practice in five Countries (Brno, Czech Republic, Justice and Environment, 2008), available from http://www.justiceandenvironment.org/_files/file/2009/06/eia-sea_good_examples.pdf..

- b. The same time frame could be allowed for comments on the environmental report and on the draft plan/programme. The time frame begins on the day that the plan or programme and its environmental report are made publicly available, and the public is properly and effectively notified of this fact. If, for instance, the environmental report is published a week after the plan is published, then the public participation period starts with the publication of the environmental report.
17. Neither the Protocol on SEA 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”*. All options are no longer open where, for instance, 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.
18. The national legal framework could provide for the possibility for repeated opportunities for public participation or for the extension of the time frames, for example:
- Where there is doubt that the public concerned has been notified effectively;
 - Where significant new information comes to light or the circumstances change in some significant way necessitating the public to be provided with a further opportunity to participate.

IV. Public participation at different stages of strategic environmental assessment

19. The general principles of section III above apply to each of the different stages of strategic environmental assessment as set out below.

A. Screening

20. At the screening stage, to the extent appropriate, each Party shall endeavour 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 may avoid later accusations that the plan or programme was prepared without the full range of necessary information.
21. Annex III to the Protocol on SEA provides criteria for determining the likely significant environmental, including health effects, of a plan or programme. A screening document containing information according to annex III could be produced. *Screening questions related to annex III could elicit information from*

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22. If Parties find it appropriate to provide opportunities for public participation in screening, then the public could be notified of these opportunities as set out in box 4 below.

Box 4 - Good practice for public notification under article 5, paragraphs 3 and 4, article 6, paragraph 3, article 8, paragraph 2, and article 11, paragraph 2

- Under article 8, paragraph 1, notification must be “early, timely and effective” (see sect. III above).
 - Public notice could be placed on the website and/or the public notice board of the public authority competent to take the decision. This could be supplemented with other active forms of notification, including:
 - Public notice in the mass media (radio, television, newspapers) corresponding to the geographical scope of proposed activity (from international to local). It 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;
 - Public notices on noticeboards in places highly frequented by the public concerned and customarily used for the purpose (e.g., at community halls, schools, post offices, etc.);
 - An article in a newsletter put out by the planning authority;
 - Mail shots/individual notification.
 - The notification of the public could address:
 - The opportunities for the public to participate, taking care to describe the scope of the public’s ability to influence the outcome realistically so as to avoid exaggerated expectations;
 - An overview of the public participation process, including a summary of the most important information;
 - The precise details as to where to submit comments or questions;
 - The timeline for the transmittal of comments or questions, taking into account that the means of notification used may have an impact on the timing for the notification to effectively reach the public concerned;
 - The means by which comments or questions can be submitted (orally or in writing, electronically, etc.);
 - How the plan/programme affects, and is affected by, other plans/programmes and projects.
 - Public authorities could ensure that the notification and all accompanying information remain available to the public throughout the public participation process, so that members of the public learning of the planning and SEA processes later on still have access to all the information they need to be able to participate effectively.
23. Regardless of whether a plan or programme is found to require SEA, article 5, paragraph 4, requires that information on the screening outcome must be made available to the public in a timely manner. The recommendations for public notification set out in box 4 could also be followed for this.

