

**APPLICATION OF THE AARHUS CONVENTION  
IN THE INTEGRATED COASTAL ZONE MANAGEMENT (ICZM) PROCESS**

Alexandre Mercadié  
Université du Littoral  
Dunkerque, France

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INTRODUCTION	3
I DEFINITIONS: MEANING AND SCOPE (Article 2)	5
Party	5
Public authority	5
Environmental information	5
Public	6
Public concerned	6
II ACCESS TO INFORMATION	6
1. General provisions	6
2. ICZM requirements	7
III PUBLIC PARTICIPATION	8
1. Identification of the stakeholders concerned	9
General framework	9
The stakeholders in coastal zones	10
Collaboration and participatory planning	10
2. Establishment of an appropriate framework	12
Course of the participation process	12
Taking account of the outcome of the process	12
Adaptation of the participation process to the requirements of the ICZM	13
3. Involvement of all citizens	15
Public awareness	15
Role of the environment associations (organisations, groups)	15
IV ACCESS TO JUSTICE (Article 9)	16
CONCLUSIONS	17

## **INTRODUCTION**

The objective of this study is to evaluate the future applications of the provisions of the Aarhus Convention in the ICZM process, by analysing the relationships between:

- the Aarhus Convention
- existing Community policy (in particular Directive 90/313/EEC)
- the principles of the future ICZM strategy

The Integrated Coastal Zone Management (ICZM) process is "the full cycle of information collection, policy development, management, implementation and monitoring of the ICZM."<sup>1</sup>

The demonstration programme showed the importance of establishing participation in the planning and management of coastal zones:

"Participatory planning works to build the opinions and perspectives of all the relevant stakeholders into the planning process through collaborative involvement. [...] Through participatory planning, and a focus on common interest, good coastal zone management can reduce conflict and develop consensus."<sup>2</sup>

Traditional forms of coastal zone management involve a "top-down" structure where planning is decided at the top and the policy is implemented at the bottom. Such a process is not suited to the complex problems encountered in coastal zones. From the development stage of the plans and projects through decision making to the implementation of the measures adopted, there must be consultation between all levels of the public authorities, between the various sectors and with the various stakeholders involved.

This process, which is the principle of ICZM, is a complex one to implement. It is therefore important to establish a framework for the participation of the relevant stakeholders and a wider public. The regulations adopted under the Aarhus Convention should make it easier to establish this participation process.

Whether in relation to individual sectors (specific environments: air, water, soil; specific activities: waste, industry, energy, tourism, ...) or plans, projects or programmes, decisions can no longer be taken without consulting the public. This is the aim of the Aarhus Convention which covers access to information, public participation in decision making and access to justice in environmental matters.

The participatory process must meet the objective of full representation of the various stakeholders involved, those with an influence over the decisions taken on coastal zones and those who may be affected by those decisions. Such influence covers all aspects of coastal zones (hydrological, geomorphological, socio-economic, administrative, institutional and cultural systems), so there is a very wide range of stakeholders.

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<sup>1</sup> Lessons from the EC demonstration programme on ICZM.

<sup>2</sup> Towards a European ICZM strategy - General principles and policy options.

The text of the Aarhus Convention may be found at the Internet site of the United Nations Economic Commission for Europe:

<http://www.unece.org/env/europe/ppconven.htm>

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## **I. DEFINITIONS: MEANING AND SCOPE (Article 2)**

It is necessary to evaluate the scope of each definition since the application of an article may in fact vary depending on the different translations or depending on possible interpretations when transposed into national law. Article 2 of the Aarhus Convention sets out definitions of "party", "public authority", "environmental information", "the public", "the public concerned":

### **Party:**

The Contracting Parties to this Convention. There are currently around forty signatory States (including all the Member States of the European Union) as well as the European Community. The fact that the EC is a signatory is a significant event since for the first time the provisions of an international convention will apply to a pan-regional organisation. The Commission is then an integral part of the various administrative levels of the European Union.

### **Public authority:**

This means government at whatever level (national, regional or other). For ICZM, it is essential that the various administrative levels should be taken into account. It should be remembered that those responsible for projects under the demonstration programme are almost unanimous that coastal zone management can be effective only if it has the support of all levels of the administration, as well as all sectoral administrative departments concerned with the coastal zone in question. Such support must at least satisfy the provisions of the Aarhus Convention on access to information and participation of the public in the decision-making process.

The Aarhus Convention completes the definition in Directive 90/313/EEC of 07/06/90 on freedom of access to environmental information (Article 2b), adding the institutions of any regional economic organisation (2.2d) such as the institutions of the European Union.

### **Environmental information:**

What information specific to the coastal zones is not covered by the Aarhus Convention?

The definition omits no type of environmental information: on the natural environment, on human activities (diverse emissions, documents of all kinds), on human health and on the state of the cultural heritage ...

However, there is no explicit reference to information which is not strictly environmental. However, some of this (sociological, economic, demographic ...) may serve as an indicator of the state of the environment or changes thereto.

Directive 90/313/EEC is concerned only with information held by the public authorities (Articles 2 and 3.1). That is why one of their roles is to make available environmental information, particularly that held by bodies under their control (Article 6). However, a certain amount of information is outside the control of the public authorities, particularly that held by independent bodies.

Does the Aarhus Convention improve the situation? It is not possible to give a definite answer on the basis of the definition alone: the Convention applies only to public

authorities (public administration and persons carrying out functions directly or indirectly therein). Thus, the Aarhus Convention does not cover independent bodies.

Nevertheless, the Aarhus Convention states that the authorities must possess environmental information which is relevant to their functions and that mandatory systems must be established to keep them informed about activities which may significantly affect the environment (Article 5.1: collection and dissemination of environmental information).

However the reference to "relevant information" is not sufficiently explicit to compel the public authorities to concern themselves with information held by independent bodies. Moreover, no criterion is laid down to determine activities which have significant effects which are the subject of such information.

The Aarhus Convention lays down that the public authorities must make environmental information available to the public in a transparent way and ensures that such information is effectively accessible (Article 5.2). Although transparency and accessibility are assured, the measure is not sufficiently binding to cover all types of environmental information.

Finally, it is clear that some of the shortcomings found in the Directive 90/313/EEC which can be quantified in terms of ICZM persist in the Aarhus Convention. It is therefore important to identify which sources of environmental information are significant for coastal zones and who possesses information outside the control of the public authorities.

### **Public:**

The definition of public covers all natural and legal persons. It therefore encompasses the broadest public possible. However, "public" should not be regarded as a straightforward representation of civil society. Thus, it also covers associations (organisation, groups).

### **Public concerned:**

The public concerned in coastal zones may be considered to be persons directly affected such as professionals, elected representatives or non-specialist persons (inhabitants, tourists, etc.). The Aarhus Convention defines "public concerned" as the public affected or likely to be affected by environmental decision-making. This definition is sufficiently broad to encompass the various constituents of the public concerned in coastal zones.

## **II. ACCESS TO INFORMATION**

Before the participatory process can begin, it is necessary to obtain environmental information.

### **1. General provisions**

The provision of adequate information is the key to effective participation. Even if the information provided in accordance with the Aarhus Convention is considered adequate, does it allow effective participation? Indeed, the demonstration programme on ICZM showed that incomplete, inaccurate or unreliable information or information provided too late in the process would lead to serious difficulties with regard to the participatory process. Moreover, it is necessary to observe a certain timetable: information is useful only if it is provided to the right people at the right time.

In the face of the need for prior information, the provisions of the Aarhus Convention are sufficiently demanding:

- obligation on the public authorities to provide information on request (Article 4.1),
- obligation to make information available as soon as possible and at the latest within one month (Article 4.2),
- grounds for refusing a request must be given (Articles 4.3 and 4.4),
- access to justice (Article 9.1): any person whose request for information under Article 4 of the Aarhus Convention (Access to environmental information) has not been dealt with satisfactorily has access to a review procedure.

## **2. ICZM requirements**

Among the requirements expressed is the provision of information in a form which makes it possible to make the public aware of the benefits and problems in order to convince it of the need to participate in an ICZM initiative. It is therefore necessary to:

1. identify the public concerned to ensure that the information is made available in a way which allows better understanding. From a technical point of view, certain points are specified in the Aarhus Convention (Articles 5.2 and 5.3): provisions on the type and scope of information, practical details, access free of charge;
2. ensure that information is presented in a way which can be understood by everybody. The Aarhus Convention requires a non-technical summary of the specific measures to be provided (Article 6.6d);
3. publicise such provision of information. The Aarhus Convention lays down that sufficient information must be provided to the public "about the basic terms and conditions under which such information is made available and accessible and the process by which it can be obtained" (Article 5.2a).

The time factor is crucial in all information, participation and access to justice procedures, as the environment in general and coastal zones in particular are extremely sensitive to any assaults, particularly those leading to irreversible damage. The proposal by the Commission to add to Directive 90/313/EEC a requirement that a report on the state of the environment be published every three years was rejected - Article 7 of the Directive is more a form of recommendation since at that time all Member States already provided general information on the state of the environment. Article 5.4 of the Aarhus Convention is much more specific in this connection ("at intervals not exceeding three or four years ... national reports on the state of the environment ..."). As the dynamics of coastal zones are extremely rapid, major changes to their environment can appear from one year to the next. Perhaps, therefore, reports should be drawn up at more frequent intervals.

On the question of confidentiality of proceedings, the Aarhus Convention is in line with the exceptions in Directive 90/313/EEC on information refused. In the directive this confidentiality is not limited to the legislative or regulatory process because it includes the proceedings of the local authorities (Article 3-2). The Aarhus Convention stipulates, however, that such confidentiality must be provided for under national law (Article 4-4(a)).

To ensure that participation is effective, such information must be relevant. The Aarhus Convention lays down conditions governing access to, collection and dissemination of environmental information. The quality of such information is defined in general terms: up to date, relevant, transparent (Articles 5.1a and 5.2).

As regards a list of grounds invoked to justify refusal of a request for information, an important point was added in the Aarhus Convention concerning confidentiality of commercial and industrial information: "within this framework, information on emissions which is relevant for the protection of the environment shall be disclosed." (Article 4.4d). This provision did not figure in Directive 90/313/EEC although Parliament had requested it when the Directive was being drawn up. It is too early to say whether this provision is sufficiently forceful to prevent some polluters from concealing the extent of their emissions on the pretext of confidentiality of commercial and industrial information, an excuse which is used too often. Sufficient means should indeed be provided to ensure that this provision is genuinely binding (lists of information, controls by independent authorities, etc.).

For coastal zones, such information is of very great importance, particularly in cases of conflicts of interest (e.g. : co-existence of industry and aquaculture near the same water source).

In the ICZM process, information (in the broadest sense) promotes enlightened participation and cooperation which in turn are means of collecting information. Environmental information is one of the components of this process and is bound to receive particular attention thanks to the provisions of the Aarhus Convention.

### **III. PUBLIC PARTICIPATION**

If coastal management is to be a transparent, coherent, accessible and quantifiable process, public participation in the preparation and implementation of ICZM plans and programmes must be promoted. The applicable provisions of the Aarhus Convention are those in Article 7: Public participation concerning plans, programmes and policies relating to the environment.

Of the principles to be pursued in connection with coastal management, public participation, to be effective, must: provide a clear framework; fix rules; ensure representation of all stakeholders; apply clear and transparent procedures; reflect the local context; take account of time frames; have sufficient resources; be flexible. It must also allow the development of mutual trust between the various stakeholders.

ICZM requires a framework for an effective participation process since it involves a wide range of stakeholders and the integration requirements confront it with the complexity of administrative and institutional factors. The initiative for drawing up plans and programmes generally lies with the public authorities, thus providing the bases on which discussions can take place. However, an ICZM initiative sometimes comes from private, non-institutional stakeholders. Nevertheless, the public authority has the duty to organise the participation process. To do this, it has to:

- know the persons directly concerned,

- offer them an appropriate framework for participation,
- involve all citizens.

## **1. Identification of the stakeholders concerned**

For participation to be effective, there has to be clear identification, amongst the public at large, of the stakeholders concerned at the appropriate level. Taking account of all the protagonists ensures effective participation and avoids conflicts at a later stage, which often arise when a person or group of persons affected directly or indirectly by the decisions has not been consulted.

To ensure this, it is necessary to define which "public" is the principle target of the participation process.

### General framework

The public referred to by the Aarhus Convention is vast since it is taken in the broad sense of its definition (Article 2.4). The public concerned (Article 2.5) means that "affected or likely to be affected by the environmental decision making [...]". It is then all the parties involved directly and the public residing, even temporarily, in coastal zones who will have to be involved in the decision-making process concerning those coastal zones. Thus the provisions of the Aarhus Convention meet the fundamental objectives of participation in ICZM.

However, Article 7 lays down that the competent authorities, taking into account the objectives of the Convention, will have to identify the public which may participate. It is not certain that the interpretation of "identified public" will restrict participation only to the parties concerned. This choice is a matter for the public authority which, given the lack of details concerning this process, has a great deal of discretion in this operation. Nevertheless it must take into account the objectives of this Convention. Moreover, targeting a specific part of the public would contradict the broader definition of the "public concerned" (Article 2.5). Access to the process is not limited to persons directly concerned by the ICZM plans and programmes. However, they would be given priority, for practical reasons, in order to achieve more effective participation.

The English version of the Convention gives an indication on this point. It refers to the public identified ("the public which may participate shall be identified"). When this article was drafted, it appears indeed that the objective was to identify the public concerned.

The Aarhus Convention lays down that prospective applicants should be encouraged to identify the public concerned, to enter into discussions with it and to provide information (Article 6.5). This provision which is not binding underlines the responsibility of all parties to promote participation.

### The stakeholders in coastal zones

Participation as envisaged in coastal zones involves on the one hand the administrative partners concerned in the various sectors and various levels of authorities and on the other NGOs, associations and individual persons. In the search for a consensus for ICZM, participatory planning seeks to involve a very wide range of parties (individual citizens, interest groups, private sector etc.).

The "non-specialist" public must be able to play a proper role. Even if it is not as well versed in the concepts and applications of ICZM as professionals, policy makers and decision-makers, its opinion may be crucial since it is also concerned with the main issues at stake (social, economic, ecological).

The objective of both the Aarhus Convention and ICZM is to involve the whole of civil society in the decision-making process. This is the express will of all signatories to the Aarhus Convention (Article 2.4 and 2.5) and is a response to the finding that the opinion of the public at large is still ignored on occasion. In establishing a decision-making process specific to coastal zones, mechanisms are required which prevent the exclusion of part of the public and which meet the requirements of the Convention (hence the importance of the definition of the public concerned in connection with ICZM). The possible objective of the clarifications made in Article 7 concerning the public concerned would not be to exclude part of the public but to ensure that all stakeholders are identified and participate which is vital for actual and effective participation in ICZM plans, programmes and policies.

If such an interpretation proves correct, the Aarhus Convention would have the effect of reinforcing the need, in the ICZM process, to identify in the broader public those individual stakeholders affected by specific actions. For example, it may be necessary to identify the various parties in the private sector since pressure groups active in coastal zones may either limit or facilitate implementation of the ICZM strategy.

Issues relating to ICZM may appear in a cross-border context, involving parties with different nationalities (cross-border pollution, tourist flows between Member States, conflicts between countries using a common marine area - fishing for example). There may then be the problem of the language barrier which limits both the understanding of information and the establishment of a common framework for participation. The Convention does not introduce any specific provisions on this point. However, it stipulates that its provisions apply without discrimination as to citizenship, nationality or domicile (Article 3.9).

### Collaboration and participatory planning

In the context of the demonstration programme, collaboration has a double meaning: "cooperation" between administrations and the "participation" which is directly covered by the provisions of the Aarhus Convention. Participation as understood in ICZM corresponds to "the involvement and collaboration of the private sector, NGOs, citizens, groups and other institutional organisations or individuals affected by or concerned with coastal management"<sup>3</sup>.

An important factor in making participation effective is to combine the efforts of the public and the authorities. To achieve this, the Aarhus Convention sets out the requirements for carrying out the actions needed for participation:

- promotion of awareness among the public, recognition of organisations promoting environmental protection (Article 3)

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<sup>3</sup> Lessons from the EC demonstration programme on ICZM.

- provision of information on the environment (Article 4)
- obligation to collect and disseminate such information (Article 5)
- notification of the public when a decision-making process is initiated (Article 6.3)
- participation of the public from the beginning of the procedure (Article 6.4).

Five different degrees of collaboration have been identified:

- The first three fall under the Aarhus Convention: provision of information, collection of information (Article 5), joint work (participation of the public under Article 6, 7 and 8).
- The fourth degree - joint decisions - is partly taken into account by the Aarhus Convention thanks to the fact that the results of the participation procedure are taken into consideration when the decision is taken. This is an obligation for decisions concerning specific activities as well as plans, programmes and policies; it is not binding for decisions concerning regulations and normative instruments (Article 6.8 applying to Article 7, but not to Article 8 where that provision is limited to cases where this is possible).
- As regards the final degree of collaboration, autonomy (where people take the initiative for an action independently of external institutions), this goes well beyond the participation defined in the Aarhus Convention which is on the initiative of the public authorities.

The main limit in the Aarhus Convention concerning collaboration stems from the absence of provisions on cooperation between the various administrative partners. However, they are obliged to collate environmental information from the various existing sources (Article 5), which therefore requires them to carry out at least this work jointly.

It is also necessary to find the financial means for the participation process, which is partly the role of the public authorities. However, this process, which is costly in terms of both time and money, must call on other partners prepared to make a financial contribution. Accordingly, the participation of the financial institutions should not be overlooked. They very often exercise a great deal of influence over decisions which may go as far as complete control. The Aarhus Convention, which, it should be remembered, covers participation organised by the public authorities, does not deal with this aspect.

Additional practical provisions may be necessary when the participation process for ICZM is implemented. Such provisions will always have to meet the requirements regarding access to information and participation in the decision-making process laid down in the Aarhus Convention.

## **2. Establishment of an appropriate framework**

There must then be participation from the beginning of the process of preparing strategies and decisions (Article 7). The provisions of the Aarhus Convention apply both to decisions relating to specific activities (Article 6) and to the preparation of executive regulations (Article 8).

### Course of the participation process

As regards decisions on specific activities, the public must be informed at the beginning of the decision-making process "in a timely manner" (Article 6.2), so that it can prepare its participation in the decision-making process (Article 6.3).

Thus provisions must be adopted to allow public participation from the very beginning of the procedure (Article 6.4).

"Timely" should be understood as the most appropriate time to inform the public when the decision-making process is actually initiated. In practical terms, and in spite of a certain lack of precision, this provision does not allow the public authorities much room for manoeuvre.

The public is also invited to participate in decision-making procedures concerning plans, programmes and policies relating to the environment (Article 7). The preparation of ICZM strategies must allow local people and organisations to give their opinion on any decision which, taken at a high level, is likely to have a major impact at their level. This is particularly recommended with a view to achieving the objective of better cooperation and coordination between the various administrative levels. The Aarhus Convention makes this objective possible, since the provisions of Articles 6.3 and 6.4 apply to Article 7.

The preparation of executive regulations and legally binding normative instruments which may affect the environment in coastal zones must also be accompanied by a participation process (Article 8) which provides for sufficient time frames, the publication of draft rules and the opportunity for the public to comment.

### Taking account of the outcome of the process

The opinions expressed during the participation process must be taken into account when the decision is taken. This is the object of Article 6.8 (which also applies to Article 7).

This is also the case in Article 8 under which, however, results are taken into account "as far as possible". Once again, the wording is vague. There is then the fear that a party may not take adequate measures to ensure that the outcome of participation is properly taken into account. The objective of this provision is to allow effective participation without hindering the decision-making process. In most Member States, there are no legal provisions allowing public participation in the preparation of executive regulations. If extreme measures impose wide-ranging participation, this process could lead to significant delays in the publication of legal texts, which is contrary to the need to act quickly in response to environmental concerns. This is why such precautions must be taken.

If this interpretation is followed, public participation in ICZM will also guarantee the applicability of any legal measures adopted.

Moreover, there must be continuity of this participation process in management and monitoring. The public must be informed of decisions taken at the end of the participation process and the grounds for those decisions (Articles 6.9 and 6.10). This concerns only decisions relating to specific activities and not those concerning plans, programmes and policies (Article 7).

Management and monitoring can be carried out thanks to the publication of environmental information. The Aarhus Convention proposes reports on the state of the environment (carried out every three or four years - Article 5.4). However, such a frequency of publication does not provide for genuine continuity, if only in terms of information given to the public. Measures supplementing the Aarhus Convention must therefore be taken to ensure that the public concerned can monitor the management of coastal zones and thus make for good practice.

If the opinions expressed during the participation process are not taken into account in the decisions, or are not given sufficient consideration, the members of the public concerned have a right of recourse to a judicial review. This concerns the provisions of Article 6 and therefore extends to Article 7 for infringements of Article 6.8.

Participation is a process which requires a change in the habits of stakeholders in coastal zones. Its introduction will therefore be a gradual process. However, the fact that this may be a slow process may guarantee its long-term success.

#### Adaptation of the participation process to the requirements of ICZM

To meet local needs and cover the wide range of possible situations, the participation framework must be sufficiently flexible.

Such flexibility appears to be taken into account by the Aarhus Convention. Firstly, because the wording of certain provisions is general (Article 7). Secondly, because the wording of the more normative provisions retains genuine flexibility (Article 6). For a proper assessment at this type of provision, an analysis of the delicate interpretation of Article 6.1(b) is useful:

1) "In accordance with its national law" allows room for manoeuvre in each Member State, which should ensure a more effective response to the particular requirements of the various coastal areas. The flexibility which exists here should not limit participation. Its requirements must be respected. The choice of means is simply left to the Member States to meet this objective.

2) "which may have a significant effect on the environment", no criterion (except that these activities are not listed in Annex I) is specified here to define which activities would be involved, what effects would be measured. The current state of coastal zones does not allow laxity in this area. There are two interpretations:

- These effects must be as significant as those referred to in Annex I
- They may be less significant, so that the article is applied to a wider range of activities.

The list in Annex I mentions 22 activities: it is a combination of the drafts of Annexes I and II of Directive 85/337/EEC (amended by Directive 97/11/EEC) on the assessment of the effects of certain public and private projects on the environment (EIA) and Annex I to Directive 96/61/EC concerning integrated pollution prevention and control (IPPC). The objectives of the two directives differ, which gives rise to difficulties of interpretation.

In the short term, the objective is to align the relevant articles of the two directives on Annex I of the Aarhus Convention. The two IPPC and EIA directives will then have

more or less the same annexes. Thus the EIA procedure will apply to any project covered by the IPPC directive.

In the longer term, a horizontal directive incorporating (among others) the provisions of Article 6 of the Aarhus Convention will allow the other directives concerned to be aligned.

It should be borne in mind that the Aarhus Convention has the same aim as the EIA directive, namely that the environmental impact assessment procedure is restricted to the most important projects.

It would be left to each Member State to judge whether to apply the provisions of Article 6 to activities with less significant effects than those listed in Annex I of the Aarhus Convention.

The clarity of collaboration and participatory planning procedures may also be compromised by the absence of a common language. The various stakeholders in the different sectors use identical terms to describe different things. The various projects of the demonstration programme underlined the absence of this common language to begin discussions and thus initiate the ICZM process. This is a totally new concept not found in the administration, hence the difficulty in implementing it.

This technical problem is an obstacle to the participation process since if it is hoped that the protagonists will sit down at the same table and take joint decisions, a common definition of terms which could lead to confusion must be found. For plans, programmes and policies (Article 7), the Aarhus Convention states: "to the extent appropriate, each party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment". Of these efforts, a common language is vital. This requirement must be underlined, since the Aarhus Convention is not sufficiently clear on this point.

Of identified requirements for more effective management of coastal zones, a legal definition of such zones is essential. It should enable the coastal zone area to be taken into account as a single geographical and administrative entity encompassing both the land and sea areas. Article 8 of the Aarhus Convention concerning the public participation in the preparation of executive regulations and/or legally binding normative instruments could apply to the Member States in this specific case.

As regards the establishment of a legal framework concerning coastal zones, the Commission would be concerned by these provisions only if it proposes a legally binding instrument (such as a directive). However, the need to take account of the specific circumstances of the coastal zones of each Member State inclines more towards a less binding instrument.

The exchange of information and participation of the parties concerned, which allows greater transparency, should make for full compliance of the principle of "precaution". Those in charge of regulation will be able to act in good time more effectively with a better knowledge of all the problems. Regulatory instruments will be better adapted to existing problems and more likely to be accepted by the public if they are based on its opinions.

### **3. Involvement of all citizens**

Involving the public in the ICZM process is an excellent way of legitimising ICSM initiatives. What, then, is needed is to: promote awareness among a broad public; recognise the role of associations as intermediaries; provide sufficient access to judicial procedures in the event of non-compliance.

### Public awareness

For the involvement of the public to succeed, it must be willing to exercise the rights afforded by the Aarhus Convention. Accordingly, sources of information must be:

- duly communicated (Articles 4.1, 5.1c, 5.2, 5.4 to 5.7, 6.2°)
- easily accessible (Article 5.3)
- inexpensive to consult (Article 4.8, 6.6).

Thus, those people who are directly concerned and interested may find that the Aarhus Convention provides an adequate framework for their action, but additional efforts may be needed to promote awareness among the rest of the public: publication of articles in the press, scientific “popularisation”, publications, posters etc.

Under the Aarhus Convention there is no obligation to provide information which has been “popularised” to make it accessible to a wider public. However, among the general provisions is an obligation on each party to promote environmental education and environmental awareness among the public (Article 3.3). The aim of promoting awareness is to enable the public to learn how to access information, participate, seek judicial reviews. Moreover, it is also the best means of ensuring greater respect for the environment through a change in attitudes and behaviour.

The Aarhus Convention also stipulates that information relating to specific activities consulted by the public concerned should include a non technical summary (Article 6.6d) enabling it to express an opinion having understood the main issues, although it should not be limited to such a summary if the public wishes to grasp the problems arising in all their complexity.

Nevertheless, there are no such summaries giving the public an insight into the issues relating to plans, programmes and policies or legal provisions.

### Role of environmental associations (organisations, groups)

Of persons concerned by ICZM issues, there may be the question of the representation of future generations and persons not physically present in coastal zones (i.e. tourists). This may be assured by certain environment protection associations (and possibly consumer associations). The aim of the Aarhus Convention is, among other things, to defend the interests of future generations (Article 1) by guaranteeing the public rights of access to information, participation in decision-making and access to justice in environmental matters.

The definitions of public and public concerned (cf. I *Definitions*, Articles 2.4 and 2.5) allow for sufficient representation of environmental protection associations (organisations, groups) in the participation process.

The specific role of associations among the public is taken into account by the Aarhus Convention (Article 3.4). Each party is required to ensure that its national legal system provides for appropriate recognition of and support to such associations.

There is a need to simplify the legal procedures governing participation of associations/NGOs in the preparation of texts. At the same time, controls and quality must be tightened up to get the full benefit from the participants. The wording of the Aarhus Convention appears to support this opinion.

- Public concerned (Article 2.5);
- General provisions (Article 3.4);
- Public identified (Article 7), although in this case the decision on whether a particular association participates is made by the public authority.

On this point, the Convention sets a good example. During the process of preparing the Aarhus Convention, certain NGOs concerned with environmental protection were invited to participate.

Like the rest of the public, associations also have rights of access to justice.

#### **IV. ACCESS TO JUSTICE (Article 9)**

In order to defend its interests, the public must not only have access to review procedures but it must also be informed of the possibility of initiating such procedures (Article 9.5).

The right of recourse to judicial bodies is much more extensive under the Aarhus Convention than in Directive 90/313/EEC. In the latter only a short article takes account of this aspect of right to information (Article 4). The Aarhus Convention goes further on the subject (Article 9.1) and extends it to the following aspects: collection of information, participation, review procedures, etc. One may reasonably hope for progress with regard to access to justice for environmental protection associations, the possibilities of which vary greatly in the European Union in spite of the provisions on right of recourse in Directive 90/313/EEC which are not however new.

The public may bring an action in the event of non-compliance with Article 6 (specific activities) if it has an interest in acting or if it can claim impairment of a right (Article 9.2). It is stipulated that NGOs meeting the conditions of Article 2.4 are deemed to have a sufficient interest to act. Thus certain NGOs concerned with environmental protection are recognised as having the right to plead. This gives them a leading role in the ICZM process where thanks to such recognition, they have the position of a special interlocutor because they meet the criteria required to initiate proceedings.

Still on the question of access to review procedures, the Aarhus Convention takes account of non-typical bodies allowing a rapid and inexpensive procedure (Article 9.1, second paragraph); This innovation which allows greater openness, flexibility and speed, is a vital factor in giving greater consideration to the public interest. It meets the need to act quickly before projects have had an irreversible effect on the environment.

There is also provision for public participation in the review of compliance with the Convention (Article 15). This reflects the importance of public monitoring of the application of environmental law.

ICZM requires this type of body and it must be extended to the whole participation process, with the aim, among others, of resolving conflicts of interest (setting up for example mediation bodies to attempt to resolve conflicts other than by litigation - amicable solutions, savings of time and money by avoiding costly judicial proceedings, possible establishment of better cooperation between the parties, of partnerships).

The provisions of the Aarhus Convention concerning access to a review procedure should be covered by Directive 90/313/EEC once it has been revised.

## **CONCLUSIONS**

The participation process aspired to in ICZM exemplifies the application of the Aarhus Convention in two ways.

Firstly, it fully embodies both the letter and the spirit of the Convention.

Secondly, the concept of integrated management which by definition involves all the parties concerned directly or indirectly, ensures that no limits will be placed on participation.

The ICZM process, which calls for extensive public participation in the decision-making process shows that negotiation and mediation before decisions are taken reduces conflicts and thus minimises the need for judicial proceedings. The method results in savings in energy, cost and above all time which is crucial given the risk of irreversible damage to the environment.

The existence of severe judicial penalties in the event of non-compliance with the provisions of the Convention on dissemination of information and participation will ensure that these are as effective as possible.

The framework proposed for the participation process must be sufficiently flexible to take account of the wide range of existing participation mechanisms and the different ways of interacting with the public. In this area, the Aarhus Convention allows the parties sufficient freedom of choice.

The Aarhus Convention provides the bases for effective public participation in environmental decision-making. Thus, the conditions are met to ensure the necessary inclusion of the environment in all decisions taken in connection with ICZM. The omissions raised here are due above all to the nature of the Aarhus Convention itself which lays down general provisions to ensure effective participation in the decision-making process.

As regards the specific question of future ICZM strategy, it should be borne in mind that:

1. ICZM must conform to the Aarhus Convention:

- consultation on projects organised as part of participatory collaboration will have to comply with Article 6;
  - any strategy, plan or programme implemented under ICZM will have to take account of Article 7;
  - the provisions of Article 8 will have to be taken into account only if the European ICZM strategy leads to the implementation of a legally-binding instrument such as a directive). It should be stressed that the consultation phase of the demonstration programme is a precursor in terms of public participation.
2. ICZM will have to supplement the Aarhus Convention if necessary:
- as the financial aspect is not covered by the Aarhus Convention, it must be taken into consideration particularly when establishing the ICZM participation process;
  - there will have to be close monitoring of the wording and then the implementation of the horizontal directive on the amendments necessary to existing Community law to take account of the Aarhus Convention and the incorporation of those provisions in the wording of the new legislation. In this connection, a problem of “timing” has arisen concerning the time needed to implement this directive (at least three years) and the new jurisdiction which will be established in that period.

**Application of the provisions of the Aarhus Convention  
in the integrated coastal zone management (ICZM) process - Summary**

ICZM process	Benefits of the Convention	
<b>I. DEFINITIONS (Art. 2)</b>		
Public authorities	Public administrations: the various levels (national, regional) are involved	
Information	Collection of information under the control of public authorities  Collation of information: concerns a wide range of activities  Transparency, accessibility	Information in the ICZM process  Information which is covered
Public	Covers a broad public and its representatives (associations, organisations, groups)	
Public concerned	Does not exclude any part of the public  According to requirements, a specific section of the public can be targeted	

## II. ACCESS TO INFORMATION

1) General provisions	Provision of information on request (4.1), as soon as possible (4.2)	
	Grounds for refusal/rejection (4.3 and 4.4)	
	Possibility of review (9.1)	
2) ICZM requirements	Obligation to make information available in an appropriate way (5.2 and 5.3)	
	Comprehensible presentation (6.6)	
	Notification of dissemination (5.7)	
	Obligation to draw up a national report on the state of the environment (5.4)	Length of intervals
	High quality information (5.1 a and 5.2)	
Obligation to provide all the relevant information, even that protected by industrial and commercial confidentiality (4.4d)	Commercial and i may serve as a exc application of 4.4d)	

<b>III. PARTICIPATION</b>		
<b>1) Identification of the parties concerned</b>		
General framework	A broad public is targeted (2.4 and 2.5) Responsibility placed on prospective applicant (6.5) Application of principle of non-discrimination (3.9)	Ambiguous interpretation (differences between  Problem of language account where neces
Coastal zone stakeholders	Identification of stakeholders in coastal zones (7) and interested parties in other areas  Does not, however, overlook the public at large (2.4 and 2.5)	Extra effort needed stakeholders
Participatory collaboration	Obligation on the administration to meet the minimum conditions allowing participation (3, 4, 5, 6.3, 6.4) Joint work (6, 7, 8) Decisions taken jointly (6.8 and 7)  Cooperation by the authorities in collecting and processing information (5)	Opinion of public taken No provision for external autonomy  No other provision administrative partnership No financial provision

<b>2) Establishment of an appropriate framework</b>		
Course of participation process	<p>Basic provisions (6)</p> <p>Public participation in decisions on PPPs (7)</p> <p>Need for cooperation between the various levels of administration to comply with 6.3 and 6.4</p> <p>Possibility of public participation in the preparation of executive regulations, etc (8)</p>	
Consideration of results of the process	<p>The opinions expressed are taken into account for authorisations (6.8) and PPPs (7)</p> <p>Continuity of participation in the management and monitoring of specific activities (6.9 and 6.10)</p>	<p>For executive re interpretation (as fa</p> <p>No continuity assur</p>
Adaptation of participation process to requirements of ICZM	<p>Flexible framework (6.1b and 7): "in accordance with its national law" makes it possible to adapt to the specific characteristics of the various coastal zones while meeting the requirements of the Convention.</p>	<p>Lack of clarity c having "a signific</p> <p>Activities having a into account in a bir</p> <p>Extra effort needed</p>

<b>3) Involvement of all citizens</b>		
Promoting public awareness	<p>Information necessary for involvement of the public is available (4, 5, 6)</p> <p>Obligation under general provisions – Environmental education and awareness (3.3)</p> <p>Non-technical summary for specific activities (6.6d)</p>	There is no provision for public understanding by a regulatory or executive regulation
Role of associations	<p>Recognised as representing the public (2.4, 2.5), including future generations and tourists (otherwise unrepresented).</p> <p>Obligations on the public authorities to give such recognition (3.4)</p>	For PPPs (7), it is required that persons concerned are represented
<b>IV. ACCESS TO JUSTICE</b>		
	<p>The public is informed of its opportunities for action (9.5)</p> <p>Recognition of right to plead for associations, groups or persons with an interest in taking action or invoking an impairment of a right (9.2)</p> <p>Non-typical bodies taken into consideration (9.1)</p>	

