



Improving EP&R in the EU: the Aarhus

Convention perspective

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Introduction



- **Purpose**
 - **Consider different EP&R initiatives in the context of the Aarhus Convention**
 - **focus on transboundary issues**
 - **draw recommendations for improving the current situation**
- **Outline key requirements of Aarhus Convention that must be met**
- **How this is done in EU is a matter of policy**
- **Broad range of discretion for implementation under Article 3(1) (necessary “legislative, regulatory and other measures”)**

Key considerations when applying Aarhus to EP&R #1



- **“Environmental issues are best handled with participation of all concerned citizens, at the relevant level.” (Principle 10)**
 - **So the better the public participation, the better the decision**
- **Aarhus = harmonisation of environmental democracy at international level**
 - **Best practice can be scaled up**
 - **Key norms setting the framework for the public enshrined at international level**
 - **Public should have confidence that environmental democracy is protected in a transboundary context**

Key considerations #2



- **Aarhus provides a basis for transboundary cooperation**
 - **Links with sister Conventions, for example the Espoo Convention**
 - **Work under the Convention focuses, inter alia, on transboundary issues (see recent ACC cases)**

Non-discrimination



- An overarching principle that applies to all of Aarhus
- Article 3(9) “...without discrimination as to citizenship, nationality or domicile...”
-but not distance
- Access to information, public participation, and access to justice, amongst Parties to Aarhus, should always be on the basis of non-discrimination

First pillar: access to environmental information (Article 4) – key considerations

- Environmental information in Article 2(3)
 - Broad definition
 - Probably covers nearly all information relating to nuclear installations
 - [see C-321/96: Wilhelm Mecklenburg v Kreis Pinneberg – Der Landrat]



Article 4 exceptions



- Most exceptions must be applied taking into account the public interest served by disclosure.
- Majority of grounds for withholding information - confidentiality of the proceedings of public authorities, International relations, etc., justice/fair trial, commercial confidentiality, intellectual property rights; personal data; information that was voluntarily supplied, protection of the environment –
 - apply in a restrictive way,
 - taking into account the public interest served by disclosure

Dissemination of information (Article 5(1)(b))



- Article 5(1)(b) Mandatory systems are established so that there is an adequate flow of information to public authorities about proposed and existing activities which may significantly affect the environment;
 - Mandatory
 - Flow to public authorities

Article 5(1)(c)



- *“In the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected.”*
- imminent threat; but must be met strategically: i.e. there must be a system in place before the threat occurs
 - information which could enable the public to prevent or mitigate; and
 - immediate dissemination

Key procedural rights under Article 6 that must be protected



- Article 6 must be applied in a way that delivers, in particular, the following
 - *Public submits comments, information, analyses or opinions.* (Article 6(7))
 - *due account is taken of the outcome of the public participation* (Article 6(8))

Article 6 public participation



- Identify “the public concerned”, i.e. the people who need to be notified of an activity and to participate in decision making
- Article 2(5) *"The public concerned" means 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."*
 - likely to be affected **by the environmental decision making**, (not likely to be affected by the project)
 - having an interest
- Also NGOs promoting environmental protection

How to notify the public concerned?



- *“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....”*
 - Early
 - Timely
 - Effective
- “Effective” must mean so as to enable the public to exercise their rights

Not a foregone conclusion



- Article 6(4) “Each Party shall provide for early public participation, when all options are open and effective public participation can take place.”
 - Early
 - Effective
 - The issue should not have been decided, in whole or in part

Time frames



- 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.*
 - Reasonable
 - sufficient time for informing the public
 - Must allow the public to prepare and participate

Appropriate procedures to enable the required outcomes to be delivered



- Article 6(7). *“Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity.”*
- To be read in the light of the key procedural rights
 - Public must be able to submit comments; not just a presentation
 - Public’s opinions must be taken into account, so they must be registered or recorded in some way

Rights of access to justice to challenge any breach



- Article 9
 - Access to information (paragraph (1))
 - Public participation (paragraph (2))
 - More general: challenge acts and omissions that breach environmental law (paragraph (3))
- On any of these three points, a case should not come to the Aarhus Compliance Committee