

Public Participation in EIA procedures

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„EU Environmental Impact Assessment Directive -
challenges and perspectives in the light of the past
experiences and the recent proposal for amendment”

Overview

- Introducing Justice and Environment
- Public Participation – General Issues
- PP and the Aarhus Convention
- PP in the EIA Directive 2011/92/EU
- Possible Shortcomings
- Improvements through COM 2012 (628) final?
- Conclusions

Introducing Justice and Environment

- An association of environmental law organizations
- Broad focus on environmental law
- Registered in Amsterdam
- Chairman in Vienna
- Coordinated from Brno and Budapest

J&E – Mission and Aims

J&E aims for better legislation and implementation of environmental law on the national and European Union (EU) level to protect the environment, people and nature by

- supporting member organizations in their activities,
- identifying and addressing problems in the application of EU environmental law
- assisting other organizations with legal expertise

J&E – Activities

- Legal work
 - Legal analyses
 - Case studies
 - Position papers
- Networking
- Organisational development

The main problems with EU environmental law are transposition and implementation of EU directives.

PP – General Issues

- Goals of PP
 - „better“ decision through more information
 - public acceptance of the decision taken
- Means of PP
 - Information
 - Consultation
 - Negotiation

The Aarhus Convention

- Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters
- Aarhus Convention as a mixed agreement – responsibility for proper implementation? Member States and the EU itself:
ACCC 29.06.2012, ACCC/C/2010/54 (EU) para 97:
„By not having in place a proper regulatory framework and/or clear instructions to implement article 7 of the Convention (... the EU) has failed to comply with article 7 of the Convention; By not having properly monitored the implementation by Ireland of article 7 of the Convention (the EU) has also failed to comply with article 7 of the Convention“

PP and the Aarhus Convention

- Art 6 – PP concerning decisions on specific activities
- Art 7 – PP concerning plans and programmes
- Art 8 – PP concerning executive regulations and legally binding general norms

PP and the Aarhus Convention

Art 6

- scope of application
- participation of the public concerned (public concerned: irrespective of country of nationality)
- reasonable time-frames
- early public participation, when all options are open
- access to information before and after decision-making
- outcome of PP must be taken into “due account”

Article 6 – Scope of application

Article 6

PUBLIC PARTICIPATION IN DECISIONS ON SPECIFIC ACTIVITIES

1. Each Party:
 - (a) Shall apply the provisions of this article with respect to decisions on whether to permit proposed activities **listed in annex I**;
 - (b) Shall, in accordance with its national law, also apply the provisions of this article to decisions on proposed activities **not listed in annex I which may have a significant effect on the environment**. To this end, Parties shall determine whether such a proposed activity is subject to these provisions; (...)

10. Each Party shall ensure that, when a public authority **reconsiders or updates the operating conditions** for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 of this article are applied mutatis mutandis, and where appropriate.

PP and the Aarhus Convention

Article 6

- scope of application: Annex I projects // other projects // update of existing permits
- participation of the public concerned (public concerned: irrespective of nationality)
- reasonable time-frames
- early public participation, when all options are open
- access to information before and after decision-making
- outcome of PP must be taken into “due account”

PP in the EIA Directive 2011/92/EU

- scope of application (Art 4)
 - Annex I projects
(Annex I EIA-D not identical to Annex I Aarhus Convention!)
 - Annex II projects with positive screening
 - screening decisions? (Art 4 (2))
 - decisions on exemptions? (Art 2 (4))

PP in the EIA Directive 2011/92/EU

- public concerned Art 1 (2) e and Art 6 (4)
- reasonable time-frames (Art 6 (3) and (6))
- early and effective opportunities to participate when all options are open (Art 6 (4))
- access to information before and after decision-making (Art 6 and 9)
- PP in transboundary procedures (Art 7)
- results of PP shall be taken “into consideration” in the consent procedure (Art 8)

Possible Shortcomings

- Scope of application: Screening decisions not subject to PP
- Reasonable time-frames – discretion of the Member States?
- Early and effective participation if EIA takes place only after construction has already started?
- PP in transboundary procedures depends on the position of the affected Member State
- Outcome of PP?

Improvement through Commission Proposal COM 2012 (628) final?

- limits possibility to exempt projects from EIA
- introduces detailed information obligations for the developer
- introduces provisions governing time-frames for PP (60/90 days – sufficient?)

Conclusions

- EIA Directive in general provides good framework for PP
- Remaining issues:
 - PP for screening decisions?
 - Extension of time-frames for complex cases?
 - Early and effective PP when all options are open guaranteed?
 - PP rights in transboundary procedures?
 - Outcome of PP?

Thank you for your attention!

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