

EIA Temelin 3 and 4 – no public participation possible for German public

- 2008: around 1000 submissions - only few persons were informed.
- 2010: 3000 submissions - Greens of Fichtelgebirge started to inform the public.
- 2012: around 30.000 German submissions - Greens of Fichtelgebirge were more successful to inform the public.
- Conclusion: Information is important!

How was the public informed by authorities in Germany in EIA Temelin?

- German Environment Ministry did not participate.
- Environment Ministry of Saxony informed over website.
- Environment Ministry of Bavaria informed over website and the direct districts to Czech border – map attached. Possible affected area –map attached.
- Result: over 80 million persons were excluded by authorities, nobody is watching a ministries website, not all persons are able to use internet.
- The public and NGOs in all the other federal states were (and are) not believing, that they were asked to participate.
- BUND Bayern is now working with us to make this crazy situation better.

How could German public participate in EIA Temelin?

- The public could not participate at all. All documented in complaint before EU Commission CHAP(2012)02383) and in UN Aarhus Complaint Ref. ACCC/C/2012/71).
- No information or help were given of their own accord by the Ministries
- **Hearing date in Germany was missing.**
- German public was not able to participate on hearing date on 22-06-2013 in Ceske Budejovice, Czech Republic: For example: Friday was a working day, only one day hearing from 10:00 Friday morning to 03:30 Saturday morning, Germans were allowed to start to participate at 16:30, one question and back in row, answers of Czech experts like „we are ruling the fire and the wild animals“, „in case of INES 7 case evacuation only 700 meters around the reactor in between 7 days“, „a city in 180 km distance will not be targeted“, no drinking water was allowed, it was too expensive to travel to Ceske Budejovice, two nights in hotel, not to reach by train or car in one day (by car Marktredwitz- CB 4 hours, by train 8 hours, Hamburg- CB 10 hours by train).

Legal public participating disasters In EIA Temelin

- **EIA was closed on 18-01-2013**
- **Deadline for complaining against EIA procedure is 18-03-2013.**
- **German and Czech public have no access to justice in Czech Republic, because it is not possible to complain against EIA procedure in Czech Republic under Czech EIA law at all.**
- **German public has no access to justice in Germany.**
- **Final EIA report is only published in Czech language.**
- **German is working language in this EIA.**

- German and Czech public – natural persons - cannot complain against urban land permit, which is the only one of the legal processes where one would have the chance to complain against EIA process too.
- Mgr. Martin Šíp: Construction Act defines the participants of each phase permit procedure. Not all the people can be the participants of these procedures, but only persons defined by this Act. The natural person cannot be the participant of the permit procedure of the new blocks.
- This is violating Aarhus 3(9), Espoo 2(6), EIA Directive 85/337/EC, art. 7(5).

Correct public participating (for example Germany) would mean for example:

- Information to the public in the member states, the governments in the member states, the developer and in German “lords of procedure” that Aarhus 3(9), Espoo 2(6), EIA Directive 85/337/EC, art. 7(5) are binding International and European law in the member states.
- Information to the participants and to the public that a transboundary EIA or an SEA is simply an administrative procedure in environmental matters - and it is the wish of this procedure to include the public – and no attack against the neighbors.
- **The responsible state has to inform all possible affected countries** and the ministries of the affected countries have to inform the public – for example EIA Hinkley Point C is such tragedies of no public information and participating.
- **The public should be informed about the possibility in an EIA process like the German border districts what would mean:**
- **Environment Ministry informs over website, over press release and top down to all Federal Environment Ministries.**
- **Federal Environment Ministries inform over their website, over press release and top down to all cities and districts.**
- **Cities and districts inform over their websites, official public information system and over press release the natural persons – the public.**
- **The submissions of the public have to be collected by Environment Ministry of country affected and handed over to responsible state.**
- Help has to be given to the public by the ministries as for example could be found on website of UBA Vienna.
- **All EIA documents (inclusive final EIA report) accessible in language of origin, in German and in English. English is important because if the public has to complain before Aarhus Convention Compliance Committee the public has to translate into English and that is expensive and/or takes a lot of time.**
- **Legal hearing dates are necessary in all countries possible affected.**
- Hearing date starting and ending in acceptable times. 18:00 is long enough and then continuing the next days until everybody had the chance to participate and everything is cleared.
- **Access to information, participating and justice has to be granted, access to justice must be able for the public in their own country.** It is impossible, expensive and discriminating to complain in a foreign country. English as language must be accepted.
- The developer and ministries must accept the public as partner who has legal rights not as a nasty thing that has to be excluded.

Public participating reality in Czech Republic - Text attorney Mgr. Martin Šíp
Whole following text!

The permission of the new blocks of Temelín will be divided in several phases.

- EIA procedure (pursuant to Czech EIA Act n° 100/2001),
- urban land permit (pursuant to Czech Building Act n° 183/2006),
- construction permit (pursuant to Czech Building Act n° 183/2006),
- use permit (pursuant to Czech Building Act n° 183/2006),
- permit of the Czech atomic authority – SÚJB – Dana Drábová (pursuant to the Czech Atomic Act n° 18/1997).

Czech administrative (and judicial) practice of the Temelín blocks 1 and 2 was to enable the access to the concerned public (NGO, natural persons) in only one phase of permit procedure – urban permit procedure (and of course attack before the court the urban permit). **Czech courts told that the EIA opinion cannot be reviewed separately but that it can be reviewed in the frame of reviewing the urban permit (which will come soon).**

Problem is that a lot of health and environmental risks of power plant (radiation risks – the thing that interest the people the most) are not (paradoxical) reviewed in the EIA and process but later (not in the EIA not in process urban permit) but in procedure before SÚJB in the procedure where only participant is ČEZ (owner of power plant; article 14 of the Act 18/1997), all the public is excluded. SÚJB will tell all the time that there are no radiation risks (or that the fall of the big airplane is not statistically probable) and will permit it.

It is why we intend systematically attack all the phases of the permit procedure of block 3. and 4 (EIA opinion, use urban permit, construction permit, use permit, SÚJB permit HOWEVER we know that the actions will be finally rejected) and why we want to show the paradoxical practice and finally use the bad decisions of administration against herself and use it before the Czech courts and maybe before the Aarhus Committee. Our fight described above had some little success before the Czech courts (concerning the permit of atomic waste storage – “Lager”).

Why we started systematically to attack all the phases of permit procedure? Why not to concentrate only to the phase where the public is legally accepted (urban land permit which)?

We have a large practice that the authority bodies reject our objections and refers us that the questions attacked by us were resolved in the previous procedure (phase of permit) or that it will be resolved later (in the following phases). In fact they were resolved never.....

Because when you will the participant of the urban land permit, the administration body permitting the new blocks (Ministry of Industry) will reject your (health and environmental) objections against the new blocks and will tell you that it was a question of EIA process and that EIA opinion is OK. On the end of all permit procedure, we can show to the courts or to the Aarhus Committee that in no phase, effectively, our objections were accepted. It is desperate and expensive (energy and fees) fight but it is

one of the way how to fight against it. Unfortunately we have a large experience (block 1. And 2., waste storage etc.).

II. Block 3. and 4. – EIA, urban land permit procedure

EIA process on new Temelín blocks was achieved on 18.1. 2013. This day Czech Ministry of Environment issued an affirmative (agreeing) EIA opinion.

As I informed you, under Czech law, it is not possible to contest the EIA report by the legal action before the court and there is a high probability that it will be rejected. Pursuant to the Czech EIA Act this opinion is not a formal administrative decision which could be reviewed by the court. EIA report is not a decision of the administrative body (EIA report is only factually published by the Ministry).

Despite it, we intend to do this action against EIA report in order to exhaust all the legal ways and to have the information on the arguments of the courts. We are using the information obtained from these “lost” judgments in the following phases of the authorisation process (and we had some little success). We calculate the term for file the action from the publishing date of EIA report (the action must be filed before 18 March 2013).

As I explained, we intend to file the action against the EIA opinion because “security” and to be systematic and complete. And we want to use the arguments of authority bodies in the following procedure (inter alia in the urban land procedure where we will be accepted as the participants).

Another problem is that **only NGO'S and cities NOT natural persons** can bring action before the court against the urban land permit (and in the frame of it against EIA opinion). It is one of the reasons why we want to make action against EIA opinion (excluding natural persons of judicial review). We will argue by Aarhus Convention and European Directives.

The Court will issue a (negative) decision of our action and he will have to give some legal opinion. However he will only decide (and argue) on the question whether the plaintiff is a participant of the procedure and whether he has an “active legitimation” (right to bring an action). The Court will not deal with our substantive objections (whether Temelín is dangerous or not). We can use it in the following permit phases.

The problem is that the **action has not the dilatory effect**. The permit procedure will continue and on my opinion will be achieved before the court will decide whether urban land permit (and EIA opinion) is OK or not (we have the large experiences from nuclear waste storage and a lot of administrative and judicial decision on it).

III.

EIA process before Czech Ministry of Environment is achieved. Further, the permit process of new blocks will continue (will pass to the following phases) pursuant to the Czech Construction Act. Construction Act defines the participants of each phase permit procedure. Not all the people can be the participants of these procedures, but only persons defined by this Act. (e.i. the city or NGO concerned by the project if the law award him such position of participant). The natural person cannot be the participant of the permit procedure of the new blocks.

As we wrote above, you (*city, district*) can attack the urban land permit. You must be active in the urban land procedure and give your objections against nuclear power plant and against EIA opinion. Administrative body will reject the objections by its decision (final urban land decision) and you can file an action against it before the court.

Important! The cities and NGO's can bring the legal action against the urban land permit, regardless of fact whether this person was against the EIA opinion or not. The "active legitimation (possibility to bring legal action)" in the action against urban land permit (and EIA procedure) does not depend on question whether the subject filed an action against EIA opinion (date is 18.3. 2013). On the other side, the action can file only the participants defined by law e.i. cities and NGO's (see above), not all the persons. Also, if you are NGO or city, you can file the action against urban land permit (and against EIA opinion) later and without the obligation to file the action against EIA opinion now.

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Otevřeli jsme novou pobočku v Písku

Text Jan Haverkamp Greenpeace

Over European law also stand international treaties - and especially where the EU is party to those treaties, it is the European Commission that has to guard over their implementation. Nevertheless, also European law prescribes that Germans have the right on equivalent access to the public participation procedures in transboundary EIA procedures.

Here's the law:

Aarhus 3(9): Within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate in decision-making and **have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile** and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.

Espoo 2(6): The Party of origin shall provide, in accordance with the provisions of this Convention, an opportunity to the public in the areas likely to be affected to participate in relevant environmental impact assessment procedures regarding proposed activities **and**

shall ensure that the opportunity provided to the public of the affected Party is equivalent to that provided to the public of the Party of origin.

EIA Directive 85/337/EC, art. 7(5). The detailed arrangements for implementing this Article may be determined by the Member States concerned and shall be such **as to enable the public concerned in the territory of the affected Member State to participate effectively in the environmental decision-making procedures** referred to in Article 2(2) for the project.

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