Role of private actors and project developers

Task Force on Public Participation in Decision-Making
Fifth meeting
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Responsibility for public participation

• Competent authority
  – Authority competent to permit specific activity
  – Authority competent to prepare/adopt strategic document

• Local authorities – in case of activities with local impact but permitted by other authorities

• Foreign authorities – in case of transboundary impact

• Specialised bodies

• Private actors and developers

• Statutory division vs delegation of tasks
Project developers

• Role of art.6 para 5 vs mandatory public participation
• Interested in promoting the project – therefore by definition not objective!
• Experience
  – Manipulations with defining „the public concerned”
  – Inaccurate performance of procedural obligations
  – Biased approach towards public comments
• Special situation with public authorities
  – Being developers
  – Being promoters
Private actors

• Private actors involved in public participation
  – EIA consultants
  – SEA consultants
  – NGOs
  – Specialised private firms (negotiators)

• Pros
  – Expert knowledge
  – Experience with public participation

• Cons
  – Approach often depends on who hires them
Opinions of ACC and Espoo IC

• “it is implicit in certain provisions of article 6 of the Convention that the relevant information should be available directly from public authority, and that comments should be submitted to the relevant public authority (article 6, paragraph 2 (d) (iv) and (v), and article 6, paragraph 6)” and therefore “reliance solely on the developer for providing for public participation is not in line with these provisions of the Convention” (Aarhus CC - ECE/MP.PP/2008/5/Add.6, para. 78; see also ECE/MP.PP/2011/11/Add.2, para. 77)

• “the organization of public participation under the Convention was the responsibility of the competent authority6 and not of the proponent” (Espo IC - ECE/MP.EIA/IC/2010/4, para. 19 (b))
Practical solutions

• Criteria for delegating responsibility
  – Impartiality
  – Not representing any interests related to the decision
  – Specialisation or vast experience with public participation
  – Proximity to public concerned

• Role of developers
  – Paying for costs of public participation
  – Involvement into some activities under the control of competent authority
Maastricht Recommendations

• Delegating tasks in a public participation procedure - paragraphs 27–36
• Encouraging developers to engage with the public concerned before applying for a permit (article 6, paragraph 5) - paragraphs 82–84
• Annex - table