

ENSURING EFFECTIVE PUBLIC PARTICIPATION

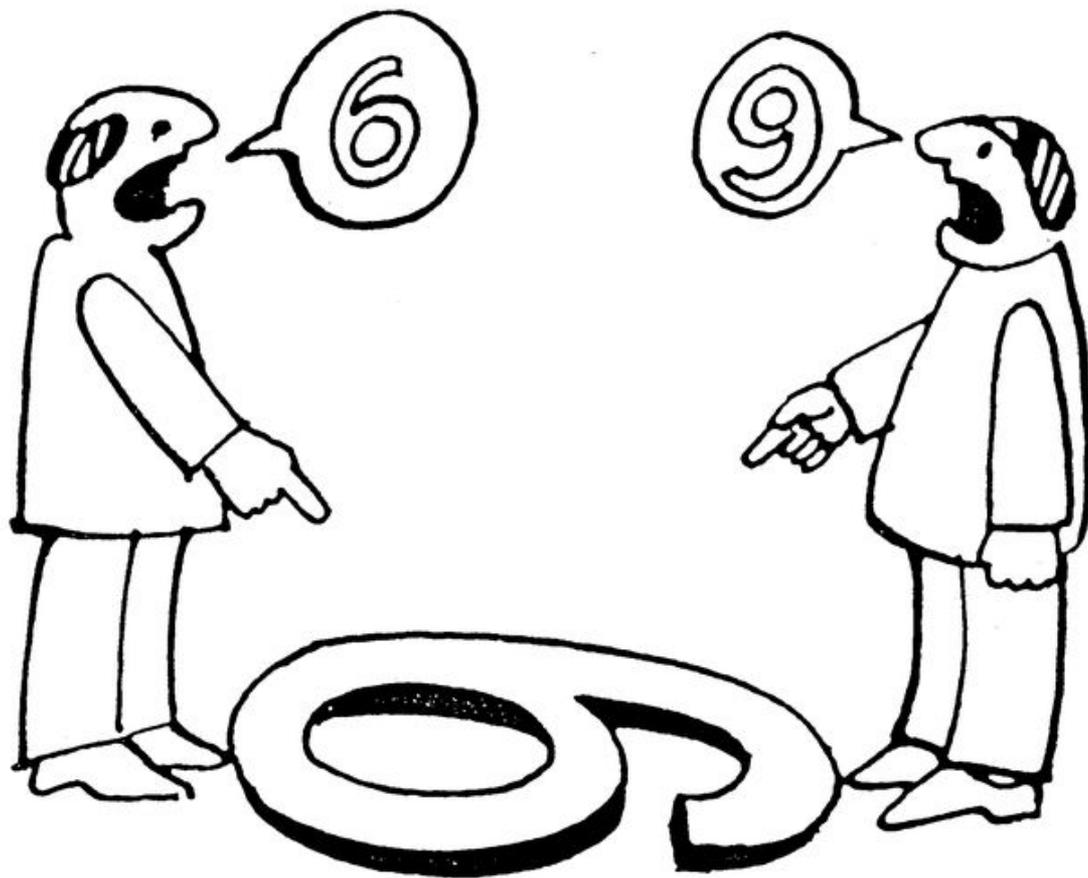
Dmytro Skrylnikov
facilitator

Task Force on Public Participation in Decision-Making

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Item 2



Aarhus model for effective public participation in decision-making:



1 Early, adequate and effective notice



2 Early public participation, when all options are open, and reasonable time frames



3 Access to all relevant information



4 Opportunity to comment and/or be heard



5 Due account to be taken of public participation



6 Prompt notice of decision



7 If operating conditions are reconsidered or updated, the above steps should be repeated, as appropriate



The Aarhus seven-step model on public participation in decision-making



1 Early, adequate and effective notice

Early notice of the environmental decision-making procedure, in an adequate, timely and effective manner of, among other things:

- The proposed activity
- The nature of possible decisions
- The public authority responsible for making the decision
- The public participation procedure envisaged (including time frames and opportunities to participate)



2 Early public participation, when all options are open, and reasonable time frames

Early public participation, when all options are open is a precondition for effective public participation to take place. Reasonable time frames means allowing sufficient time for informing the public and for the public to prepare and participate effectively in the decision-making



3 Access to all relevant information

Access to all information relevant to the decision-making, free of charge and as soon as it becomes available



4 Opportunity to comment and/or be heard

The public is entitled to submit any comments, information, analyses or opinions it considers relevant to the proposed activity, in writing or, as appropriate at a public hearing or inquiry



5 Due account to be taken of public participation

The competent public authority must ensure due account is taken of the outcome of the public participation



6 Prompt notice of decision

The public must be promptly informed of the decision. The text of the decision must be made accessible, along with the reasons and considerations on which it is based



7 If operating conditions are reconsidered or updated, the above steps should be repeated, as appropriate

If the public authority reconsiders or updates the operating conditions for the activity, the above requirements should be applied again as appropriate

- *if “the legal framework seeks to delegate any administrative tasks related to a public participation procedure to persons or bodies other than the competent public authority, it should be borne in mind that the ultimate responsibility for ensuring the public participation procedure complies with the requirements of the Convention will still rest with the competent authority (Maastricht Recommendations, p.28),*

Meaningful and early public participation

- Early public participation when all options are open (6.4)
- “When all options are open” - when any option could still be chosen as the preferred option.
- Public participation on the “zero option” (the option of not proceeding with the proposed activity, plan or programme at all, nor with any of its alternatives)
- Multi-stage decision-making

- The incorporation of art. 6.4, into the text of article 7 means that Parties must provide for early public participation on plans and programmes relating to the environment when all options (including the so-called “zero option”) are open and when due account can be taken of the outcome of the public participation.

- Each Party shall strive to promote effective public participation at an appropriate stage, and while options are still open, during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment.
- To this end, the following steps should be taken:
 - (a) Time-frames sufficient for effective participation should be fixed;
 - (b) Draft rules should be published or otherwise made publicly available; and
 - (c) The public should be given the opportunity to comment, directly or through representative consultative bodies. (Art.8)

Some examples of situations when all options might no longer be considered open could include:

- When a public announcement of a preferred option has been made even though the plan or programme has not yet been adopted;
- When a formal decision on the issue has been taken by a public body (including representative bodies like local, regional or national parliaments);
- When a decision maker has promised to constituents that they will pursue or avoid particular options;
- When a public authority has concluded contracts or agreements with private parties related to a decision subject to the Convention which would have the effect of foreclosing options prior to meaningful input from the public

The availability of all relevant documents to the public

- All information relevant to the decision-making
- Exceptions to disclosure
- Access to examine the relevant information
- Overcoming barriers to access to information
- Access for examination free of charge and copies at no more than a reasonable charge
- Providing information as soon as it becomes available

Effective notification and time frames for public participation

- Adequate, timely and effective notification (6.2)
 - ✓ Adequate notification
 - ✓ Timely notification
 - ✓ Effective notification
- Methods of notifying the public
- Reasonable time frames to inform the public and for the public to prepare and participate effectively (6.3, 7, 8)

The different phases of a public participation procedure for which reasonable time frames are required may include:

- Informing the public concerned about the commencement of the procedure (6.2);
- Enabling the public concerned to become acquainted with the documentation (6.6). This period should be long enough to allow the public to request additional information in accordance with article 4.1 and 4.2, that it considers may be relevant to the decision-making on the proposed activity;
- Enabling the public to submit any comments, information, analyses or opinions that it considers relevant (6.7).
- Considering the comments, information, analyses or opinions submitted by the public (6.8);
- Taking the final decision, while taking due account of the outcome of public participation (6.8);
- Preparing the statement of reasons and considerations on which the decision is based;
- Preparing the text of the decision;
- Notifying the public of the decision, together with how the public may access the text of the decision and the statement of reasons and considerations on which it is based (6.9).

Ensuring that greater account is taken of the comments from the public in the final decisions, and ensuring the appropriate provision of feedback on how the public's comments have been taken into account in the decisions

- Procedures for the public to submit comments (6.7)
- Granted to “the public” and not to the “public concerned”
- Public should be entitled to submit any comments, information, analyses or opinions that it considers relevant to the proposed activity
- Public is not required to provide:
 - proof of residence, citizenship or domicile
 - any evidence as to its sources of information or any justifications or reasoning for its views
- Written and oral submission, online consultations

- Taking due account of the outcome of public participation (6.8)
- Art. 6.8 incorporated into the text of Art. 7
- The result of the public participation shall be taken into account as far as possible (Art.8)
- Taking due account of comments may result in:
 - ✓ Amending the proposed decision in the light of the public's comments
 - ✓ Taking additional measures, for example, to mitigate or monitor potential harmful effects of the proposed decision;
 - ✓ Selecting an alternative option on the basis of the public's input;
 - ✓ Rejecting the proposed decision entirely.

Evidence of taking due account of the outcome of public participation

- The obligation to take “due account” under article 6, paragraph 8, should be seen in the light of the obligation in article 6, paragraph 9, to “make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based”.
- Statement of reasons should include, as a minimum:
 - ✓ A description of the public participation procedure and its phases;
 - ✓ All comments received;
 - ✓ How the comments received have been incorporated into the decision, identifying clearly which comments have been accepted in the final decision, where and why, and which have not and why not.
- Prompt notification of the decision(6.9)
- Access to the decision along with the reasons and considerations on which the decision is based (6.9)