

Jerzy Jendrośka

Aarhus Convention's requirements for public participation in strategic decision-making and their implementation in practice

Aarhus Workshop on Public Participation in
Strategic Decision-making (PPSD)

3 - 4 December 2007, Sofia, Bulgaria

Content

- PPSD in Aarhus Convention
- Implementation in practice
 - scope of strategic decisions covered
 - procedures employed
- Conclusions

PPSD in Aarhus Convention

- Types of decisions
 - Art 7 - Plans and programs
 - Art.7 - Policies
 - Art. 8 - Executive regulations and other legally binding rules
- Legal nature
 - Art. 7 – „shall”
 - Art. 7 - „shall endeavor”
 - Art. 8 - „shall strive to promote” and „should”

Scope of strategic decisions covered by the Convention

- Art 7 - plans, programs and policies „relating to the environment”
 - „significance” of „relation” irrelevant!
 - „relate” = „may have effect on” ?
- Art. 8 – executive regulations and other legally binding rules that „may have a significant effect on the environment”
 - „significance” test

Strategic decisions „relating to the environment”

- Those which „may have a significant effect on the environment” and require SEA
- Those which „may have a significant effect on the environment” but do not require SEA, for example:
 - those that do not set framework for development consent
- Those which „may have effect on the environment” but effect is not „significant” , for example:
 - those that determine the use of small areas
- Those aiming to help protecting the environment

Public participation concerning plans and programs

- Obligation to identify the public which may participate
- Reasonable time-frames allowing sufficient time for
 - Informing the public
 - For public to prepare and participate effectively
- Early in decision-making
 - When all options are open
 - When public participation can be effective

Public participation concerning legally binding rules

- Procedure:
 - Sufficient time-frames for effective participation
 - draft rules published or otherwise made publicly available
 - opportunity to comment
- Due account taken

Implementation in Poland - approach

- No clear differentiation between plans, programs, policies, executive regulations and other legally binding rules
- Therefore treated in principle in the same way (regardless of legal nature of obligations in Aarhus)
- All draft strategic decisions have to be made publicly available and everyone can submit comments
- Special elaborated procedures for some strategic decisions
- Some NGOs individually notified and requested to provide comments

Examples of plans, programs and policies outside SEA subject to PP in Poland

- National Biosafety Strategy
- National Allocation Plan (for emission trading)
- air management plans
- anti-smog programs
- noise combatting program
- nature conservation plans
- emergency plans for hazardous installations
- National Strategy for Environmental Education
- Regional Programs for Environmental Education
- Regional Programs for Co-operation of Authorities with NGOs
- National Program for Conservation of Forest Gene Resources and Selection of Trees

Examples of strategic decisions subject to Article 8 in Poland

- Draft Law Amending the Environmental Protection Law Act
- Draft new GMO Act
- Draft Regulations Amending Regulations on Projects Likely to Have Significant Effect on the Environment and on the Criteria for Screening

Obligation to identify the public

- The Regulations concerning programs for reducing water pollution from agriculture in Poland require to consult the following:
 - users of given waters
 - users of given area of land
 - organizations of farmers
 - environmental organizations

Reasonable timeframes

- Bad practice
 - until 2005 Polish law fixed 21-days period for commenting on all plans and programs
 - this was considered to be in breach of the Convention
 - the law was changed and now in each case authority preparing plan or program has to in each case specify ‘reasonable time-frames’ with „at least 21-days period for commenting”
- Good practice
 - EU Water Framework Directive in relation to water management plans provides 6 months commenting period

Legislative docket

- After commenting period all comments received from authorities, institutions, industry and the public included in one chart
- The chart is publicly available on the web
- The chart indicates the thrust of each comment and whether it was accepted or not and reasons for doing so

Variety of methods

- Principal method employed in Poland assumes simple consultation of the draft usually electronically
- Sometimes (in particular at regional and local level) more participatory techniques are used whereby stakeholders provide regular inputs at each stage of elaborating the strategic decision

Conclusions

- Range of strategic decisions under Articles 7 and 8 of the Aarhus Convention extends far beyond plans and programs subject to SEA
- Although legal nature of obligations differ one can adopt a similar approach to all strategic decisions
- Providing electronic possibility for the general public to consult the draft assures minimum participation but should be supplemented with more elaborated procedures and techniques to identify and involve the public concerned