

Public participation in decision-making in a transboundary context.

Task Force on Public Participation
In Decision-Making
Seventh meeting
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Issues

- General obligations regarding transboundary impact
- Transboundary procedure under Espoo Convention and SEA Protocol: legal nature and key obligations
- Public participation procedure under Aarhus Convention : legal nature and key obligations
- Relevant cases under the Aarhus and Espoo Conventions
- Relationship between Aarhus and Espoo legal regimes
- Defining the public concerned

General obligations regarding transboundary impact

- General principles of international law
 - Trail Smelter case - arbitration tribunal
 - Nagymaros-Gabcikovo and Pulp Mill cases - ICJ
- Rio Declaration on Environment and Development
 - general responsibility for transboundary environmental damage - Principle 2
 - two secondary principles (18 and 19)

Transboundary procedure under Espoo Convention and SEA Protocol: legal nature and key obligations

- Legal nature:
 - Procedure between concerned governments
 - Governed by public international law
 - Applies only between Parties
- Key obligations
 - To notify potentially affected government(s)
 - Carried out transboundary procedure only if the potentially affected government(s) so wish
 - Joint responsibility of governments of concerned Parties for public participation
 - If there is transboundary procedure - public from affected Party (from areas likely to be affected) must have equivalent opportunities (Art.2.6)

Public participation procedure under Aarhus Convention : legal nature and key obligations

- Legal nature:
 - Obligations towards public
 - Non-discrimination clause (art.3.9)
 - Apply mostly rules of domestic law
- Key obligations
 - To conduct early and effective public participation procedure
 - To identify public concerned regardless of whether it its „own” public or foreign public
 - To provide equal opportunities to participate for the entire public concerned

Public and public concerned

- Public
 - One or more
 - Natural or legal persons
 - Including NGOs
- Public concerned
 - Affected or likely to be affected, or
 - Having an interest
 - Including NGOs:
 - Promoting environmental protection
 - Meeting any requirements under national law

Foreign public

- Art. 3.9
 - Within .. 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.
- 2014 Maastricht Recommendations on Public Participation

Cases and legal issues

- ACC-15 Romania and ACC-51 Romania
 - No obligation to translate the notification and other documents into English
- ACC-71 Czech Republic (Temelin NPP)
 - Scope of obligations of the Party of origin under Aarhus in case there is transboundary procedure under Espoo
- ACC-91 – UK (Hinkley Point NPP)
 - Scope of obligations of the Party of origin under Aarhus in case there is no transboundary procedure under Espoo
- ACC-92 – Germany (Hinkley Point NPP)
 - Scope of obligations of the affected Party under Aarhus in case there is no transboundary procedure under Espoo

Obligations under Espoo and Aarhus

- obligations imposed by Aarhus are not dependent on obligations stemming from other international instruments
- whether in a domestic or transboundary context, the ultimate responsibility for ensuring that the public participation procedure complies with the Convention's requirements lies with the competent authorities of the Party concerned.

Good practice

- Modernisation of existing coal-fired power plant in South-West Poland
- According to international technical standards several local communities in Poland, Germany and Czech Republic located within routine impact
- Notification sent but no intergovernmental transboundary procedure under Espoo
- Public concerned in Germany and Czech Republic notified by competent Polish authority
 - via their respective local authorities
 - announcements in Czech and German languages put on the webpage of competent Polish authority
- All documents translated into Czech and German languages and made available on the webpage of competent Polish authority
- Public hearing and applicable rules announced as above
- Public hearing conducted with interpretation into Czech and German languages
- Final decision with the reasoning translated, announced and made available as above