



Section A4.3: SEA of plans & programmes – Public participation

Resource Manual to Support
Application of the UNECE Protocol on
Strategic Environmental Assessment

A4.3 Public participation

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- Legal obligations
- Possible practical considerations



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A4.3.1 Legal obligations

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- Article 8 - Public participation
 1. Each Party shall ensure early, timely and effective opportunities for public participation, when all options are open, in the strategic environmental assessment of P/Ps.
 2. Each Party, using electronic media or other appropriate means, shall ensure the timely public availability of the draft P/P and the environmental report.
 3. Each Party shall ensure that the public concerned, including relevant non-governmental organizations, is identified for the purposes of paras. 1 and 4.
 4. Each Party shall ensure that the public referred to in para. 3 has the opportunity to express its opinion on the draft P/P and the environmental report within a reasonable time frame.
 5. ...

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5. Each Party shall ensure that the detailed arrangements for informing the public and consulting the public concerned are determined and made publicly available. For this purpose, each Party shall take into account to the extent appropriate the elements listed in annex V.
 - Further provisions in preamble; articles 1(c), 2.6 & 2.8 (in 'definitions'), 3.2, 3.3, 3.6 & 3.7 (in 'general provisions'), 5.3 and 5.4 (in 'screening'), 6.3 (in 'scoping'), 7.2(a) (in 'environmental report'), 10.4 (in 'transboundary consultations'), 11 ('decision') & 12.2 (in 'monitoring')
 - In Directive, see Articles 6(1), 6(2), 6(4) & 6(5), plus
 - preamble; Articles 2(b) & (d), 3(7), 7(2), 8 & 9(1).
 - Annex V – Information referred to in article 8, paragraph 5
 - no corresponding provision in Directive



- Public concerned, including relevant NGOs
 - have opportunity to express opinion on draft P/P & environmental report within reasonable time frame
 - to be identified – not the public in general
- Detailed arrangements for informing public & consulting public concerned
 - to be determined & made publicly available
 - take into account annex V



- The public's rights
 - General public rights
 - Public rights to information
 - Public rights to participate



- General public rights
 - to certain information
 - to consultation on draft P/P & environmental report (concerned public)
- Also, in article 3 (similar to Art. 3 of Aarhus Convention)
 - Assistance & guidance from officials & authorities
 - Recognition & support for relevant associations / organizations / groups (e.g. NGOs)
 - Exercising rights under Protocol
 - without being penalized / persecuted / harassed
 - without discrimination as to citizenship / nationality / domicile
- Other European Community law (not SEA Directive) provides similar rights



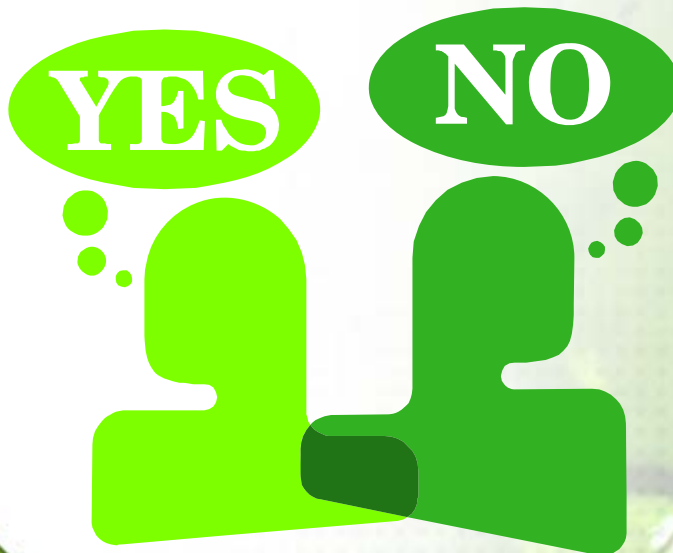
- Rights to following information
 - Conclusions of determination of significant effects
 - Draft P/P & environmental report (timely availability)
 - On detailed arrangements for informing public & consulting public concerned
 - Adoption of P/P, etc
 - Monitoring results



A4.3.1 (cont'd) – Public rights to participate

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- Besides right to be informed, public concerned has right to contribute to decision-making process by
 - Expressing opinion on draft P/P & environmental report
 - Having comments taken into account in decision on P/P
- Early, timely & effective opportunities provided, when all options open
- Possibly public participation in determination of significant effects & in scoping (not mandatory)



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- The public
 - Who are they?
 - What are their general rights under the Protocol?
 - How can information be made available to them?
 - How can they participate?



- And who is *public concerned* that must have opportunity to express its opinion on draft P/P & environmental report within reasonable time frame?
- *Public concerned* not defined
 - but see Aarhus Convention: public affected / likely to be affected by / having an interest in environmental decision-making (equivalent to Directive)
 - includes relevant NGOs – promoting environmental protection & meeting any requirements under national law? (Aarhus)
 - may vary from one P/P to another
- Protocol requires public concerned *identified* (not chosen)



- Definition of *the public* same as in Aarhus Convention & in Directive (but not Espoo Convention)
- Definition refers to any natural / legal person
- Often association / organization / group of natural / legal persons itself has legal personality, & is directly covered by definition
- Associations / organizations / groups without legal personality (including NGOs) may also constitute *the public* (depends on national legislation)



- Protocol specifies *public concerned* has opportunity to express its opinion on draft P/P & environmental report.
- In some situations (e.g. country-wide P/P), public with an interest / likely to be affected may be very similar to public in general – *identification* to take this into account
- NGOs may differ in their field of interest
 - some more active on national level, some more active on regional / local level / on specific issues
- In identifying relevant NGOs, might tailor to P/P nature & contents & interests of NGOs
- NGOs with purely local concerns need to be identified even for P/Ps relating to distant localities, if clear that their interests affected by such P/Ps



- Consider all population groups that might be affected by plan or programme
- Make efforts to involve population groups likely adversely affected in public participation
- These groups may include disadvantaged groups
 - people having low incomes
 - the disabled
 - the homeless
 - refugees
 - etc.



A4.3.2 (cont'd) – What are the public's general rights?

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- *Each Party shall endeavour to ensure that officials and authorities assist and provide **guidance** to the public in matters covered by this Protocol (art. 3.2).*
 - Officials in public service, so should help to activate public's use of these instruments, by providing information, guidance & encouragement
 - “*endeavour to ensure*” may not soften obligation
 - acknowledgement that it is impossible to ensure officials & authorities assist & provide guidance, because subjective whether individual officers actually give assistance & guidance in particular case
 - require steps be taken towards ensuring they provide such assistance mentioned
 - provide means for assistance, & opportunities for them to provide such assistance
 - encourage them to do so through official policies & capacity-building measures

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A4.3.2 (cont'd) – What are the public's general rights?

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- Public participation vital to give SEA legitimacy & value
- Difficult motivating public participation in SEA
 - do not underestimate effort required to provide 'information, guidance & encouragement'



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A4.3.2 (cont'd) – What are the public's general rights?

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- *Each Party shall provide for appropriate recognition of and support to associations, organizations or groups promoting environmental, including health, protection in the context of this Protocol (art. 3.3).*
 - Need to assure legitimate associations / organizations / groups (e.g. NGOs) may be formed
 - Some States require registration of such groups etc
 - Some other States explicitly recognize non-registered (*ad hoc*) groups
 - Form of *support* might vary, including
 - direct support (e.g. grants)
 - indirect support (e.g. tax relief, advantages in participation)

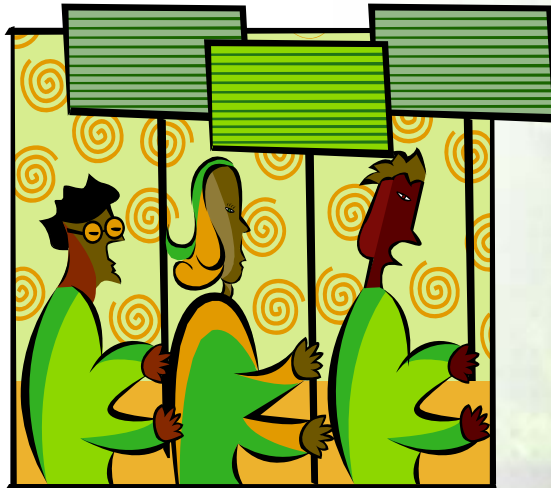
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A4.3.2 (cont'd) – What are the public's general rights?

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- *Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Protocol shall not be **penalized, persecuted or harassed** in any way for their involvement. This provision shall not affect the powers of national courts to award reasonable costs in judicial proceedings (art. 3.6).*
 - intended to prevent penalization (apart from through the courts) / persecution / harassment against persons participating in SEA as members of public



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A4.3.2 (cont'd) – What are the public's general rights?

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- *Within the scope of the relevant provisions of this Protocol, the public shall be able to exercise its rights 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 (art. 3.7).*
 - intended to prevent discrimination on basis of citizenship / nationality / domicile



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- Only public availability required
- Might also arrange publicity & easy access to information
- Effective dissemination might be by
 - public notice (e.g. in a newspaper)
 - individually (e.g. mail shots)
- Protocol suggests use of *electronic media*
 - but need *effective* opportunities for public participation
 - so may be inadequate if only via electronic media
 - may exclude important segments of the public such as poor, isolated (e.g. rural) & elderly who might not use Internet
- Dissemination methods & means of making information publicly available - see *Chapter A5*



A4.3.2 (cont'd) – How can the public participate?

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- Opportunity for public concerned to express opinion on environmental report & draft P/P
- May contribute to quality of information available to decision-makers
- May reveal important new information leading to substantial changes to P/P & so its likely significant environmental effects
 - might need revision of environmental report &, if justified, fresh public participation
- Opportunities for public participation *when all options open*
 - when reasonable alternatives may be chosen to be proposed for adoption / submission to legislative procedure
- Draft P/P & report made available to public in general, but opinions only of *concerned public* must be taken into account

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A4.3.2 (cont'd) – How can the public participate?

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- **Time frames** for public participation take into account need
 - to give *early & effective* opportunity for such participation &
 - for public concerned to have opportunity to express opinion *within a reasonable time frame*
- Experiences with consultation procedures for domestic & transboundary EIA may provide guidance, e.g. EIA time frames might guide
- Recommend time frames in legislation &, for any given P/P type, same time frame be allowed for comments on environmental report & on draft P/P
- Directive specifies draft P/P must be accompanied by environmental report during consultation – not explicit in Protocol that two documents be made available together

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A4.3.2 (cont'd) – How can the public participate?

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- Different **time frames** for different types / complexity of P/P
- Enough time for opinions to be properly developed & formulated on lengthy, complex, contentious or far-reaching P/Ps
- Adequate time for planning authority to take views into account before deciding on P/P
- Sometimes requests for more information – time frame for public participation may also need to take into account time for responsible authority to respond
- Might combine public participation in SEA with public participation within P/P development
 - might allow consideration of suggestions for amending P/P within single commenting & review process

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