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Procedures for consultations with public authorities and public participation

Major legislative dilemmas for Implementing the Espoo Convention and its Protocol on SEA in the UNECE region and ways to address them in national legislation

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Competent authority vs consulted authority

- Competent authority – authority competent to take decision
 - In SEA – authority responsible for adopting strategic document (planning authority)
 - In EIA – authority competent to authorise the project (usually with general competence)
- Consulted authority
 - Types (Environmental authorities and Health authorities)
 - Fixed or consulted ad hoc
 - May have different roles in EIA and SEA!

Competent authority and EIA

- Competent authority responsible for conducting EIA procedure, including public participation
- Delegation of tasks
 - Specialised bodies
 - Local authorities
- Role of developers
- Compare General Guidance...

Consultations in EIA

- Place in EIA procedure
 - Screening
 - Scoping
 - Views regarding
 - Environmental acceptability of the project
 - quality of EIA Report
 - Post-project analysis
- Role
 - Decision-making vs co-decision-making vs consultative role

Consultation with environmental authorities – EIA Directive art.6.1

- Authorities likely to be concerned by reason of their specific environmental responsibilities or local and regional competences
- „are given an opportunity to express their opinion,, - thus not necessarily do have to express such an opinion
- Opinion on both
 - The project
 - EIA documentation
- Detailed arrangements to be made by Member States, including reasonable time-frames

Consultation with other authorities in SEA

- Environmental and health authorities clearly identified at each applicable stage (for example: Environment Ministry, Regional Sanitary Inspectorate etc)
- Decision-making vs co-decision-making vs consultative role
- Role in screening and scoping vs role in adopting the final strategic document
- Role of Foreign Ministry in case of transboundary procedure

Public participation in EIA/SEA

- Mandatory element in EIA/SEA
- Synergy with Aarhus Convention
 - EIA and art. 6
 - SEA and art.7
- Public participation and access to justice

Public and public concerned

- Definitions from Aarhus – now included to other conventions
- Public
 - One or more
 - Natural or legal persons
 - in accordance with national legislation or practice, their associations, organisations or groups
- Public concerned
 - Affected or likely to be affected, or
 - Having an interest
 - Including NGOs:
 - Promoting environmental protection
 - Meeting any requirements under national law

Public participation in EIA

- Meant to implement art.6 of the Aarhus Convention
- Relation with transboundary procedure in the context of non-discrimination clause in the Aarhus Convention (art.3.9)
- Elements of the procedure
 - Informing (notifying) the public
 - Making available relevant information
 - Possibility to submit comments and opinions
 - Taking into consideration the results of public participation
 - Informing the public on the decision and its availability (together with the reasons and considerations on which the decision is based)

Notifying the public in EIA Directive

- Form
 - public notices or by other appropriate means such as electronic media where available,
 - bill posting within a certain radius
 - publication in local newspapers
- Detailed content of the notification
- Relation to art. 6 Aarhus Convention
 - public vs public concerned
 - timely, effective and adequate manner of informing

Mandatory form of notifying the public in Poland and Estonia

- Public notice
 - webpage - (in Public Information Bulletin)
 - notice board in the seat of competent authority
 - notice in the vicinity of project (bus stop, church, local shop etc)
 - press (local or national)
- Individual notification (letter) - to immediate neighbours

General principles – early participation and reasonable timeframes

- Early participation –
 - when all options are open
 - before decision is taken
- Reasonable timeframes -change of approach
 - (original EIA Directive) „appropriate time limits for the various stages of the procedure in order to ensure that a **decision is taken within a reasonable period**”
 - (EIA Directive after Aarhus) „Reasonable time-frames for the different phases shall be provided, allowing sufficient time for informing the public and for the public concerned to prepare and participate effectively in environmental decision-making subject to the provisions of this Article.
- Different phases

Public participation in SEA

- Mandatory element of SEA
- Public participation in SEA stages – experience in EU:
 - sometimes at screening
 - often in scoping (could be combined with commenting on outline/concept for strategic document)
 - always: commenting on SEA Report and the draft strategic document

Public participation – key elements

- Relation to article 7 of Aarhus Convention
- Requirement for “early in the decision-making when all options are possible”
- Public vs public concerned
- Identification of the public which should participate
- Key role of informing the public effectively (not only webpage!)
- Time-frames for public participation
 - Belgium and Italy - 60 days
 - Spain, the Netherlands and Latvia - 40-45 days
 - Other countries - usually 30 days