

Section V

PARTICIPATION OF THE PUBLIC

under the

UNECE INDUSTRIAL ACCIDENT CONVENTION

**TRAINING SESSION ON DRAWING UP NATIONAL
IMPLEMENTATION REPORTS**

Warsaw, Poland, 12-13 September 2005

Provisions on public participation:

Art. 9, para 2:

"The Party of origin shall, in accordance with the provisions of this Convention and whenever possible and appropriate, give the public in areas capable of being affected an opportunity to participate in relevant procedures with the aim of making known its views and concerns on prevention and preparedness measures, and shall ensure that the opportunity given to the public of the affected Party is equivalent to that given to the public of the Party of origin."

Provisions on public participation:

Art. 9, para 3:

"The Parties shall, in accordance with their legal systems and, if desired, on a reciprocal basis provide natural or legal persons who are being or are capable of being adversely affected by the transboundary effects of an industrial accident in the territory of a Party, with access to, and treatment in the relevant administrative and judicial proceedings, including the possibilities of starting a legal action and appealing a decision affecting their rights, equivalent to those available to persons within their own jurisdiction"

Comparing PP provisions: the Seveso II Directive (96/82/EC)

- ✦ Consultation is foreseen in the following cases:
 - ✦ Art. 11 (Emergency Plans):
 - ✦ Para. 3: *"Without prejudice to the obligations of the competent authorities, Member States shall ensure that the public is consulted on external emergency plans."*
 - ✦ Art. 13 (Information on Safety Measures):
 - ✦ Para. 5: *"Member States shall ensure that the public is able to give its opinion in the following cases:*
 - ✦ *- planning for new establishments covered in Art. 9*
 - ✦ *- modifications to existing establishments under Art. 10, where such modifications are subject to obligations provided for in this Directive as to planning*
 - ✦ *- developments around such existing establishments.*

Comparing PP provisions: the Aarhus Convention

- ✦ Right, for the interested public, to participate to decision-making related to authorization of specific activities, mostly industrial, having significant environmental impact
- ✦ Right to provide comments and remarks, which have to be taken into account by public authorities
- ✦ Use of the EIA national procedures to implement such provisions
- ✦ Possibility to participate also in the development plans, programs and policies

Who is the “public”?

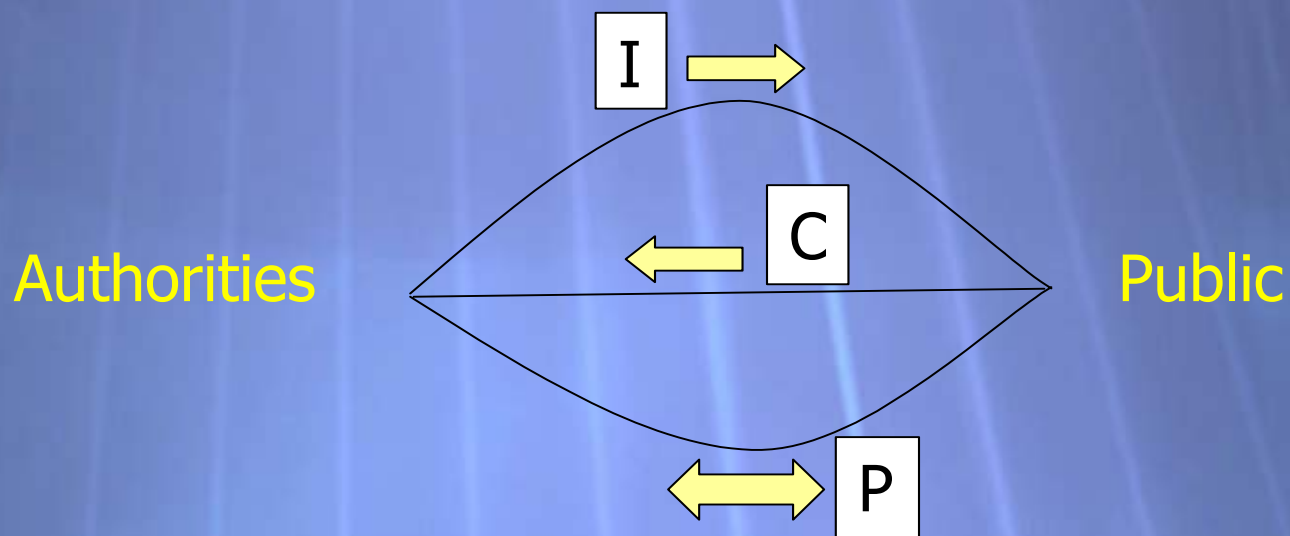
Definition from the Aarhus Convention

(Art. 2. Para 4):

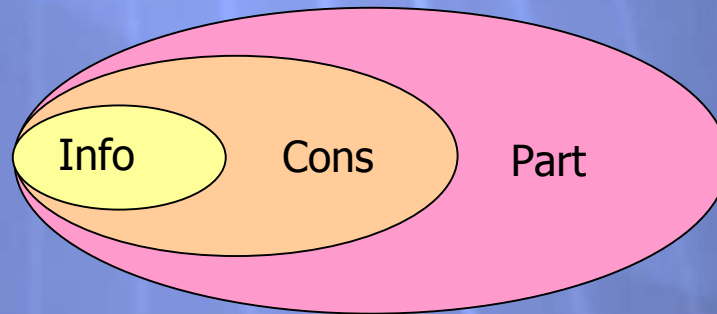
“The public” means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups”

Different levels of participation

Basis: Information (**I**)
1st level: Consultation (**C**)
Higher levels: Active involvement, participation in planning development, shared decision-making, self-determination (**P**)



Meaning of “consultation”



★ Consultation:

Gathering information or opinions from the public to develop solutions based on this knowledge; there is no obligation to take on board these inputs.

Conditions to allow PP

- ✦ Organizational and institutional setting:
 - ✦ establishment of competent authorities, technical bodies, committees, etc.
 - ✦ definition of their functions and roles in the process of public involvement
- ✦ Establishment of procedures: laws, regulations
- ✦ Identification of tools: documents, media, internet, public hearings, questionnaires, interviews, etc.

Questions from the implementation report:

Question no. 22:

Provide information on how your legislation ensures that your own public capable of being affected by an accident can participate in establishing and implementing preventive, preparedness and response measures.

Answer to Q. 22

Review of existing laws:

- ✦ ORG (role, responsibilities):
 - Info
 - Cons
 - Part

- ✦ PROD (laws, regulations)
 - Info
 - Cons
 - Part

- ✦ TOOLS
 - Info
 - Cons
 - Part

Questions from the implementation report:

Question no. 23:

Is the possibility of participation given to the potentially affected public in neighbouring countries equivalent to that given to your own public?

Answer to Q. 23

- ✦ Review of existing bilateral agreements and protocols
 - Info
 - Cons
 - Part
- ✦ Coordination among local institutions/organizations
 - Info
 - Cons
 - Part
- ✦ Joint emergency drills

Questions from the implementation report:

Question no. 24:

Do natural or legal persons capable of being affected by an industrial accident in the territory of another Party have access to the relevant administrative and judicial procedures in your country?

Answer to Q. 24:

- ✦ Complex issue, technical nature
- ✦ The EU is discussing a proposal for a Directive covering the third pillar of the Aarhus Convention (access to justice)
- ✦ Examination of national legislation having a more general scope of application could be useful for our specific case
- ✦ Ratification of Aarhus Convention should help to face the issue, with indication of national provisions for implementation