

Legal framework for public participation in transboundary water basins

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Legal frameworks for PP

UN ECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes

- Aarhus Convention: UN ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters
- The EU Water Framework Directive

The UN ECE 1997 Convention on the Protection and Use of Transboundary Watercourses and International Lakes

Co-operation expressly takes the form of exchange of data and information, notification, communication, consultations and negotiations between countries sharing transboundary watercourses and international lakes.

“Watercourse States may consider the establishment of joint mechanisms or commissions” as a means of co-operation. The provision in point has no normative force. The same applies to art. 24 of the same Convention, which also refers to the possibility of establishing joint mechanisms, for the management of an international watercourse.

The UN ECE 1997 Convention on the Protection and Use of Transboundary Watercourses and International Lakes

PP provisions through involvement of stakeholders into the work of joint bodies on transboundary watercourses and international lakes

UN ECE Guidelines on public participation 1999 - not binding, impact through learning and information

The UN ECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes

Initially the Convention was adopted in 1992; it set out then more precise guidelines and advanced standards of conduct for the prevention of transboundary impact.

The 1997 Convention common denominator is lower due to the high diversity of the cooperative patterns in the UN ECE region.

The UN ECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes

The First Meeting of the Parties to the Convention of 1997" assistance in setting up joint river and lake commissions appears as the first of five "Programmes Area" within the "Work Plan 1997-2000" adopted by the Meeting."

The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention)

Provisions of the international law are an integral part of the national legal systems in countries that joined the Convention

Aarhus Convention: who should be able to participate? (procedure in environmental matters)

The Aarhus Convention refers to ***the public*** and ***the public concerned*** as the addressees of participation. "One or more natural or legal persons and in accordance with national legislation or practice, their associations, organizations or groups, who are affected or likely to be affected, or having an interest in the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have interest." (Aarhus Conv. Art. 2.4. and 2.5.)

Aarhus Convention – who should involve the public?

- The public authority as defined in Art. 2.2. of the Aarhus Convention;
- Administrative authority – any agency, body or official which is authorised to perform public administration duties by an act, a regulation issued on the basis of an act or a contract under public law (Adm.Proc.Act § 2, 8);
- “developer” or “decision-maker” in the process of environmental impact assessment (Env.IAEMSAct § 8 para. 1 and § 9);
- The ministry, county governor or local government in the planning process (depending on the type of the plan);
- Issuer of environmental permits or developer of a plan/strategy according to specific environmental laws (issuer can be either Ministry of the Environment or county environmental departments, depending on the type of permit/license).

Aarhus Convention: in what type of decisions should the public be involved? (procedure in environmental matters)

1. In decisions on whether to permit proposed activities listed in Annex I;
2. In decisions not listed in Annex I, which may however have a significant effect on the environment.

EXAMPLES from Estonian laws: environmental impact assessment (including strategic EIA), planning, issuing of a water permit, compilation of water management plans, waste plans, waste permits etc.

Aahrus: how to involve the public?

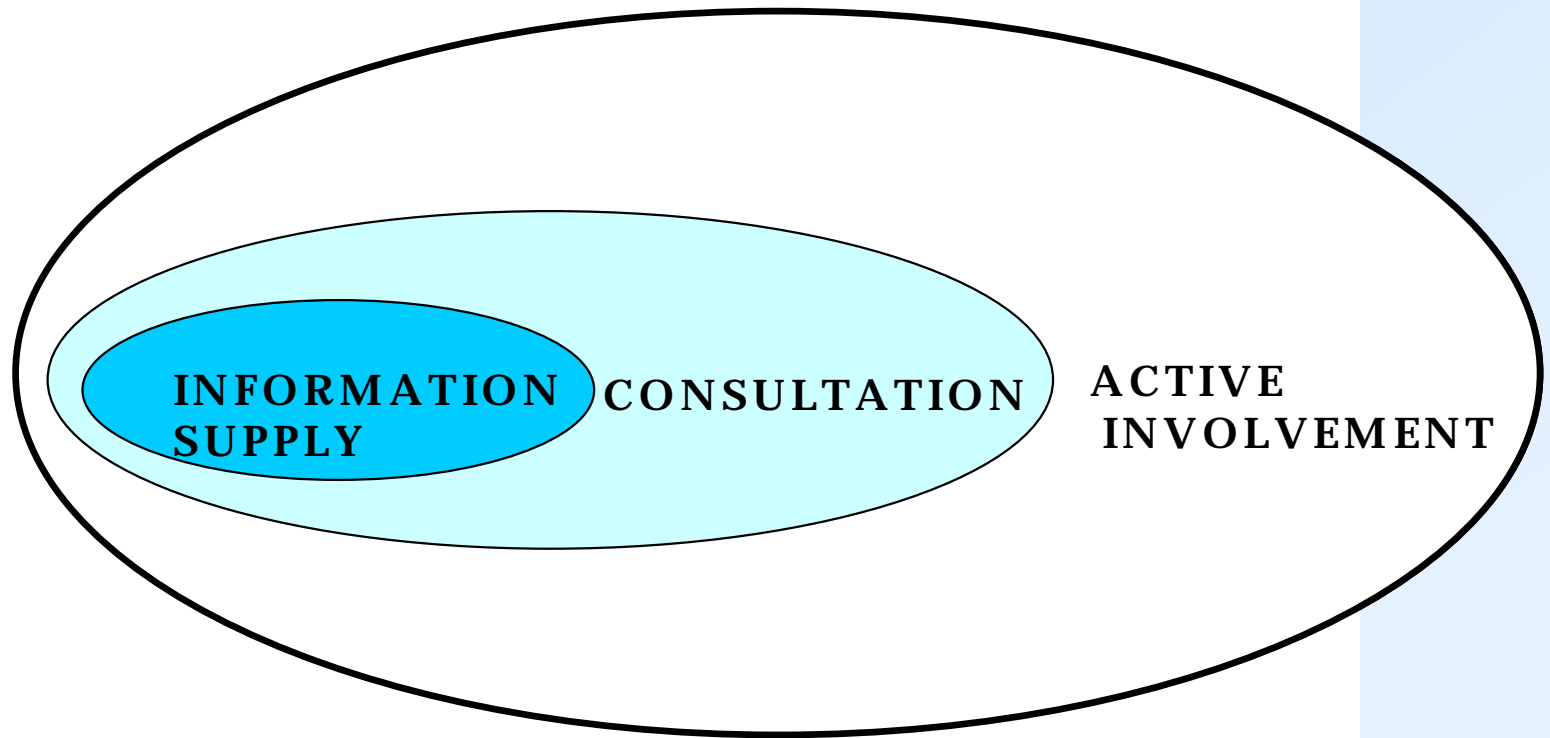
The prospective applicants are encouraged to identify the public concerned, to enter into discussions and to provide information before applying of a permit;

- Public should be able to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity;
- In the decision, due account should be taken of the outcome of the public participation;
- In preparation of executive regulations and/or generally applicable legally binding normative instruments, the results of the public participation shall be taken into account as far as possible.

Principles of the Aarhus Convention on transboundary waters

For transboundary waters the requirements of the Aarhus Convention are addressed in the *UNECE Convention on Environmental Impact Assessment in a Transboundary Context*

Public participation with respect to the requirement of the WFD



Public participation with respect to the requirement of the WFD

Article 14. Public information and consultation

Member States shall encourage the active involvement of all interested parties in the implementation of this Directive, in particular in the production, review and updating of the river basin management plans.

Public participation with respect to the requirement of the WFD

Article 14. Make available to public

- A work programme for the production of the plan
- An interim overview of the significant water management issues identified in the river basin
- Draft copies of the river basin management plan

WFD implementation timetable

- 2000 Directive entered into force Art. 25
- 2003 Transposition in national legislation Art. 23
- 2003 Identification of River Basin Districts and Authorities Art. 3
- 2004 Characterisation of river basin: pressures, impacts and economic analysis Art. 5
- 2006 Establishment of monitoring network Art. 8
- 2006 Start public consultation (at the latest) Art. 14
- 2008 Present draft river basin management plan including a summary of programmes of measures Art. 13
- 2009 Finalise river basin management plan including programme of measures Art. 13 & 11
- 2010 Introduce pricing policies Art. 9
- 2012 Make operational programmes of measures Art. 11
- 2015 Meet environmental objectives Art. 4
- 2021 First management cycle ends Art. 4 & 13
- 2027 Second management cycle ends, final deadline for meeting Objectives Art. 4 & 13

Public participation with respect to the requirement of the WFD

- For international waterways a requirement to establish an international water basin (decided by national authorities);
- Point 6 of Article 3 allows involvement of an international body, like a Management Committee, as competent authority for implementation of the WFD: 6. Member States may identify an existing national or international body as competent authority for the purposes of this Directive.