

# Legal Framework for Public Participation (General Overview)

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## Agenda

- **Introduction: General principles of international environmental law regarding public participation**
- **The UNECE instruments**
  - (Espoo) Convention on Environmental Impact Assessment in a Transboundary Context
  - (Kiev) Protocol on Strategic Environmental Assessment
  - (Aarhus) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters
- **A new regional instrument: the ECLAC Regional Agreement**
  - Regional Agreement on Access to Information, Participation and Justice in Environmental Matters in Latin America and the Caribbean

# **Introduction: General principles of international environmental law regarding public participation**

## Brief chronology

- **1972:** Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration)
- **1991:** Espoo Convention opened for signature (EiF1997)
- **1992:** Rio Declaration on Environment and Development
- **1998:** Aarhus Convention opened for signature (EiF 2001)
- **2003:** Kiev Protocol opened for signature (EiF 2010)
- **2018:** ECLAC Regional Agreement opened for signature

# Stockholm Declaration (1972) – Non-binding

## Principle 21

“States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”

## Rio Declaration (1992) – Non-binding

- **Principle 17:** Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.
- **Principle 10:** Environmental issues are best handled with the participation of all concerned citizens ... States shall facilitate and encourage public awareness and participation by making information widely available...
- **Principle 19:** States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.

## In Customary International Law

- The obligation for States “to undertake an **environmental impact assessment** where it is a risk that the proposed industrial activities may have a significant adverse impact in a trans-boundary context, in particular, on a shared resource.”
  - Pulp Mills on the River Uruguay (Argentina/Uruguay) ICJ Reports 2010, para. 204
- The “general obligation of States to ensure that activities within their jurisdiction and control **respect the environment of other States or of areas beyond national control** is now part of the corpus of international law relating to the environment.”
  - Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, ICJ Reports 1996, p. 241-242

# The United Nations Economic Commission for Europe (UNECE) Instruments



## UNECE Environmental Conventions Covering Nuclear Activities

- **Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) (1991)**
  - 45 parties: majority of European (incl. EU) and Central Asian countries, plus Canada; to be open for global accession
- **Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) (1998)**
  - 47 parties: majority of European (incl. EU) and Central Asian countries; open for global accession
- **Protocol on Strategic Environmental Assessment to the Espoo Convention (SEA Protocol or Kiev Protocol) (2003)**
  - 32 parties: Europe (incl. EU), Armenia and Cyprus

## Espoo Convention (1991)

- ❑ **Purpose:** to prevent, reduce, control significant adverse transboundary impact via an **environmental impact assessment (EIA)** procedure
- ❑ **Obligations of Party of Origin** (where the proposed activity is located): to undertake an EIA **at an early stage** of project planning
- ❑ **Stages of the EIA Procedure:**
  1. Screening
  2. Notification
  3. EIA documentation
  4. Public participation
  5. Consultations
  6. Examination of the information gathered and final decision
  7. Post-project analysis

## Application of Espoo to Nuclear Activities

### Appendix I of the Espoo Convention

#### 2nd amendment – entered into force in October 2017

2. (b) Nuclear power stations and other nuclear reactors, including the dismantling or decommissioning of such power stations or reactors (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).
  
3. (a) Installations for the reprocessing of irradiated nuclear fuel;  
(b) Installations designed:
  - For the production or enrichment of nuclear fuel;
  - For the processing of irradiated nuclear fuel or high-level radioactive waste;
  - For the final disposal of irradiated nuclear fuel;
  - Solely for the final disposal of radioactive waste; or
  - Solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.

# Espoo Implementation Committee

- “Non-adversarial and **assistance-oriented**” procedure:
  - **Submissions**: Party to party;
  - **Committee initiatives**: Information from other sources (usually NGOs) or compliance issues arising from the periodic reviews of implementation
  
- Closed** sessions
  
- “**Hearings**” with Parties whose compliance is at issue
  
- Finding and Recommendations** (non-binding) are forwarded to the **Meeting of the Parties to the Convention (MOP)** for adoption

# Espoo Implementation Committee

## Closed proceedings regarding nuclear:

- **Armenia:** Metsamor NPP (S/3)
- **Belarus:** Ostrovets NPP (S/4)
- **Ukraine:** Rivne NPP LTE (CI/4)
- **UK:** Hinkley Point C (CI/5) (pending formal MOP adoption)

## Ongoing proceedings regarding nuclear include:

- **Czech Republic:** Dukovany NPP LTO (2016)
- **Ukraine:** SU, Zaporizhzhya and Khmelnytsky NPPs LTO (2016)
- **Spain:** Almaraz NPP waste storage (2017)

# Espoo Good Practice Recommendations

- Good practice recommendations endorsed by **7<sup>th</sup> MOP** (ECE/MP.EIA/2017/10) in **June 2017**
- **Does not create any obligations** and are without prejudice to the obligations set out in the Espoo Convention.
- Seven chapters: covering all stages of the EIA procedure
- Each chapter includes a **summary of approaches, good practice examples** and **good practice recommendations**
- 12 examples by 9 countries: Austria, Bulgaria, Finland, Germany, Hungary, Poland, Romania, Slovakia, Sweden.
- 15 practical examples in an additional informal document.

## Kiev Protocol (2003)

- **Goal:** to provide early and effective inputs to ensure that environmental considerations are thoroughly taken into account in the development of plans and programmes
- Requires that a **strategic environmental assessment (SEA)** be carried out for certain plans, programmes and possibly policies and legislation that are likely to have significant environmental, including health, effects.
- Parties to the SEA Protocol must integrate environmental assessments into their **development** of plans and programmes at the earliest stages, irrespective of whether these plans or programmes are likely to have an impact on the territory of another state.

## Strategic Environmental Assessment (SEA)

- **Environmental Report (ER):** shall identify, describe and evaluate the likely significant environmental, including health, effects\* of implementing the plan or programme and its reasonable alternatives.
- **Public Participation:** process should serve the purposes of providing information, gathering comments and engaging the public concerned in collaborative problem solving.
- **Transboundary Consultations:** notification required when a proposed plan or programme in one country (the Party of Origin) is likely to have significant environmental effects on the territory of another country (the Affected Party). Must include the draft plan or programme, the ER, including info. on transboundary effects, and info. on the decision-making procedure, including information on a time schedule for comments.

\* **Environmental, including health, effect:** any effect on the environment, including human health, flora, fauna, biodiversity, soil, climate, air, water, landscape, natural sites, material assets, cultural heritage and the interaction among these factors.



## Aarhus Convention (1998)

### Objective

Contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of:

- 1) access to information (Pillar I),
- 2) public participation in decision-making (Pillar II), and
- 3) access to justice in environmental matters (Pillar III)

# Aarhus Convention: Pillar 1

## Access to Environmental Information

**Purpose:** ensures that members of the public are able to know and understand what is happening in the environment around them. It also ensures that the public is able to participate in an informed manner.

**Article 4:** Requires a system that enables the public to request and receive environmental information from public authorities

- Public authorities to make information available upon request
- Time limits for public authorities to respond and supply the requested information (ASAP or 1-2 months)
- Acceptable limitations on disclosure (international relations, national defence, IP, personal data, third party interests, etc.)
- Optional charges

**Article 5:** Requires a system through which public authorities collect environmental info. and actively disseminate it to the public without request

# Aarhus Convention: Pillar 1

## Definition of “environmental information” regarding nuclear activities

- Information on **radiation** and activities and measures affecting or likely to affect the environment [art. 2(3)(b)]
- Information on the state of human health and safety, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected through the environment by **radiation** or activities or measures [art. 2(3)(c)]

# Aarhus Convention: Pillar 2

## Public Participation in Decision-Making

**Why:** people have the right to take part in basic decisions affecting their lives. The quality of these decisions can be improved through the active involvement of the public concerned.

**Article 6:** public participation in decisions on specific activities, which are Annex 1 activities (see below) or other activities with a potential significant effect on the environment, for example, decisions on the proposed siting, construction and operation of certain types of facilities, often over a certain size, as well as other activities for which an EIA procedure including public participation is required under national law

[See also Art. 7 (development of plans, programmes & policies) and 8 (preparation of laws & regulations)]

### Article 6 Covered Activities (Annex 1)

Nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors (except research installations for the production and conversion of fissionable and fertile materials whose maximum power does not exceed 1 kW continuous thermal load) ...

# Aarhus Convention: Pillar 2

## Public participation requirements under Article 6

- Conduct public participation early in decisions on activities with a possible significant environmental impact
- Give notice to the public concerned
- Establish reasonable time frames for phases of public participation
- Provide all relevant information to the public concerned
- Provide opportunities for the public to make comments
- Take due account of the outcome
- Inform the public of the final decision with reasons

## Aarhus Convention: Pillar 3

### Access to Justice

Parties' obligations to ensure that the public has **access to review procedures** to challenge:

- Refusals to provide requested information [art. 9(1)]
- Legality of decisions, acts or omissions related to decision-making [art. 9(2)]
- Acts or omissions by private persons or public authorities which contravene national law relating to the environment [art. 9(3)]

All review procedures must be **fair, timely, equitable, not prohibitively expensive** and provide **adequate and effective remedies** [art. 9(4)].

## Aarhus Compliance Committee

### Proceedings regarding nuclear have included:

- **Slovakia:** Mochovce Units 3 & 4 (ACCC/C/2009/41) (dec. 2011)
- **Belarus:** new nuclear power plant (ACCC/C/2009/44) (dec. 2011)
- **UK:** Hinkley Point C (ACCC/C/2013/91) (dec. 2017)
- **Netherlands:** Borselle NPP LTO (ACCC/2014/104) (ongoing)
- **Hungary:** Paks NPP LTO (ACCC/C/2014/105) (ongoing)
- **Czech Republic:** Dukovany NPP LTO (ACCC/C/2016/143) (ongoing)

### Non-admissibility for some cases:

- **Belgium:** Tihange NPP LTO (PRE/ACCC/C/2017/145) (lack of information)
- **Spain:** Almaraz NPP (PRE/ACCC/C/2017/152) (corrective actions)

# **Towards an United Nations Economic Commission for Latin America and the Caribbean (ECLAC) Instrument**



## ECLAC REGIONAL AGREEMENT

- ❑ Negotiations started in 2014 under the auspices of the **United Nations Economic Commission for Latin America and the Caribbean** (ECLAC).
- ❑ **Adoption of the first regional agreement to protect rights of access in environmental matters in Latin America and the Caribbean** by representatives of 24 ECLAC countries at the 9<sup>th</sup> meeting of the negotiating committee on 4 March 2018 in Costa Rica.
- ❑ Regional Agreement to be open for signature to **all countries in Latin America and the Caribbean** (33 countries) at the UN Headquarters from 27 September 2018 to 26 September 2020.
- ❑ **First international legally binding instrument to promote Principle 10 of the Rio Declaration outside the UNECE Region.**
- ❑ First **Conference of the Parties** to be held no later than one year after the entry into force of the Regional Agreement.

## Useful Links

- **Espoo Convention & Kiev Protocol website:**  
[www.unece.org/env/eia/welcome.html](http://www.unece.org/env/eia/welcome.html)
- **Espoo Good Practice Recommendations:**  
[www.unece.org/fileadmin/DAM/env/documents/2017/EIA/MOP7/28\\_04\\_2017\\_ece\\_mp.eia\\_2017\\_10\\_e.pdf](http://www.unece.org/fileadmin/DAM/env/documents/2017/EIA/MOP7/28_04_2017_ece_mp.eia_2017_10_e.pdf)
- **Aarhus Convention website:** [www.unece.org/env/pp/welcome.html](http://www.unece.org/env/pp/welcome.html)
- **Aarhus Convention Implementation Guide:**  
[www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus\\_Implementation\\_Guide\\_interactive\\_eng.pdf](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf)
- **ECLAC Regional Agreement website:**  
[www.negociacionp10.cepal.org/9/en](http://www.negociacionp10.cepal.org/9/en)

## Thank you for your attention!



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