

The Aarhus Convention

Implementation and Best Practices as Learned from the European
Union Water Framework Directive

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1. Introduction

Society continues to face complex social and environmental challenges with growing pressure from an increasing global economy (Bush et. al., 2005). At all levels of governance, it is becoming increasingly important to consider economic development, environmental protection and social equity (Bush et. al., 2005). More than ever, the public expects these considerations along with their active involvement in policy-making (Welp, 2001). The public at large depends on government and public administrations to set and implement policy with the protection of human health and environment in mind (Ebbesson, 2011).

Sustainable development is strongly promoted within the European Union (EU) as the cornerstone to environmental policy as described in the 6th Environmental Action Programme (Carter & Howe, 2006). However, more often than not, unelected, non-majoritarian groups such as the European Environment Agency among others make decisions about environmental policies and programmes (Lee & Abbot, 2003). To date, this approach looks to consider expert and unbiased considerations to increasing environmental protection.

On June 25th, 1998, the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters¹ convened in Aarhus, Denmark (The Aarhus Convention, 1998). The strongest motivation of the Convention was to improve environmental protection through increased public participation (Lee & Abbot, 2003). The Aarhus Convention was a new kind of international agreement considering the environment and human rights issues (Bush et. al., 2005). The Convention looked to engage non-experts at all levels of government (Bush et. al., 2005) and recognized the importance of public participation in improving democratic legitimacy while providing useful information to the public and decision-makers (Lee & Abbot, 2003). The Convention saw entry into force in October 2001 and currently has thirty-nine signatories and forty-seven parties, many of which are within Europe and parts of Asia (United Nations Treaty Series, 2015).

This paper looks to provide a cursory understanding of the Aarhus Convention with particular details discussed including background and context for the Convention along with its three pillars: access to information; public participation in decision-making; and access to justice in environmental matters (The Aarhus Convention, 1998). To provide a more robust understanding of the Convention and its implications, the paper looks to examine various EU regulations and their inclusion of access to information and public participation, specifically the EU Water Framework Directive (WFD). In analysing the WFD, the paper aims to provide empirical observations on the best practices of implementing the various aspects of the Convention along with lessons learned.

2. The Aarhus Convention

The Aarhus Convention recalls the importance of past international documents in developing the basis for granting access to information and participatory rights. The Stockholm Convention and the World Charter for Nature illustrate humans' environmental impacts and the responsibility to provide environmental protection (The Aarhus Convention, 1998). However, it was the Rio Declaration in 1992 that first internationally-recognized public participation in environmental matters (Ebbesson, 2011). The non-binding Rio Declaration failed to impose obligations for such participation but set the stage for the Convention and helped develop national laws requiring participation in decision-making (Ebbesson, 2011).

The Convention outlines specific environmental goals supported by the granting of participatory rights and access to information: “the need to protect, preserve and improve the state of the environment to

¹ This convention will be referred to by the more common name: “The Aarhus Convention” including the citation of this convention.

ensure sustainable and environmentally sound development, [and] [r]ecognizing that adequate protection of the environment is essential to human well-being” (The Aarhus Convention, 1998, p. 2).

The legal language provided in the Convention is, at times, vague and permissive (Lee & Abbot, 2003). However, the success and robustness of the document is provided by key definitions of public authority, environmental information and the public concerned (Ebbesson, 2011).

The Convention outlines whom is to be considered public concerned and, therefore, who is granted participatory rights and access to information. The public concerned is defined as “the public affected or likely to be affected by, or having an interest in, the environmental decision-making ... [and] non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have interest” (The Aarhus Convention, 1998, p. 4). The specific inclusion of non-governmental organizations (NGOs) is often seen as controversial in that it outlines only one specific stakeholder group in the definition of public concerned (Lee & Abbot, 2003). Meanwhile, it provides greater protection for NGOs to contribute expert local-knowledge in the decision-making processes with the hopes of increased environmental protection.

The definition of environmental information outlines the eligible information in which governments and public authorities must provide upon request. This information includes “written, visual, aural, electronic or any other material form on: the state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components ... [and] [f]actors, such as substances, energy, noise and radiation” (The Aarhus Convention, 1998, p. 4). The Aarhus Conventions (1998) also stipulates environmental information to include any information pertaining to human health and safety when impacted by elements of the environment. The definition also includes any information used in the decision-making process including administrative, policies, plans, programmes, economic analysis, etc. (The Aarhus Convention, 1998).

Lastly, the definition of public authority provided by the Convention may be the most important yet. Public authority includes: “(a) Government at national, regional and other level; (b) Natural or legal persons performing public administrative functions under national law...; (c) Any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment ...” (The Aarhus Convention, 1998, p. 4). This expanded definition of public authority includes any person or organisation working on behalf of the public in relation to the environment. To this end, the Convention is neutral to ownership (private vs. public control) and is resilient to privatisation of environmental services such as water, waste and energy (Ebbesson, 2011). Regardless of ownership, any information pertaining to the environment and used to fulfil a public service is accessible under the Convention (Ebbesson, 2011).

2.1 Pillars

The public's access to information is a prerequisite for an informed dialogue and inclusion in decision-making (Ebbesson, 2011). Further, access to justice in environmental matters is important in ensuring access to information and participatory rights in the decision-making process (Ebbesson, 2011). To that end, the Convention sets forth three pillars: access to information; public participation in decision-making; and access to justice in environmental matters (The Aarhus Convention, 1998).

2.1.1 Access to Information

Access to information is the clearest and most robust obligation under the Convention (Lee & Abbot, 2003). Information is the necessary starting point for well-informed stakeholders and necessary for public participation (Kranz, Ridder & Patel, 2006). In his book *Water Law and Policy*, Louka (2008, p. 212) concludes “[t]he right to information forms the backbone of a democratic society and it is a prerequisite for meaningful participation.” The Convention (1998) stipulates that each party shall ensure that public authorities provide environmental information upon request without an interest needing to be stated and done so within one month of the request. Of course, public authorities are able to refuse such a request;

however, the criteria are restrictive and must be provided to the requester within one or two months with the opportunity for an appeal of the decision (The Aarhus Convention, 1998). Refusal of access to environmental information may be made on the grounds of international relations, national defence, public security, intellectual property rights, confidentiality of individual, commercial or industrial information, among others (The Aarhus Convention, 1998). The Convention goes as far as to call for the active collection and dissemination of new information; in other words, parties may not refrain from collecting information to prevent dissemination to the public (Lee & Abbot, 2003). This is particularly salient in industries with increasing privatisation such as water and waste services.

2.1.2 Public Participation in Decision-Making

Public participation is recognised for its inclusion in a democratic society for improving decision-making, increasing awareness of environmental issues and increasing acceptance of policy instruments (Bush et. al., 2005). The Aarhus Convention (1998) recognises the importance of public participation and asserts that public participation in the decision-making process leads to greater environmental protection. Parties to the Convention shall inform the public early in the decision-making process in ways for involvement including the proposed activity, the public authority responsible, the proposed procedure and the potential environmental information available (The Aarhus Convention, 1998). Public participation must be provided when all options are still open and specific procedures for public commentary must be made (The Aarhus Convention, 1998). Once a decision is made, the public shall be informed and provided with a summary of how the decision was arrived at (The Aarhus Convention, 1998).

Public participation allows for a more robust decision-making process in which authorities gather local knowledge and expertise to be included in the process (Bush et. al., 2005). The inclusion of NGOs in the definition of public concerned is important as they play a key role in the delivery of scientific and technical information to the public and decision-makers (Kastens & Newig, 2008). The Convention provides the framework for effective stakeholder interaction including early engagement, access to clear information, transparency, opportunities for involvement and ensures efficient use of time and resources (Louka, 2008).

2.1.3 Access to Environmental Justice

Access to environmental justice ensures appropriate information and participatory rights in environmental decision-making (Ebbesson, 2011). The Aarhus Convention provides the legal justification for a review court to handle questions of compliance (Ebbesson, 2011). The Aarhus Conventions (1998) stipulates that parties must establish a review court responsible for dealing with appeals of the refusal to provide environmental information. The courts' decisions must be binding and the court shall have the power to enforce its decisions (The Aarhus Convention, 1998). Further, it stipulates that "a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration" (The Aarhus Convention, 1998, p. 12).

The language particular to access to justice provides parties with leeway in implementation of this part of the Convention, namely the definition of who is able to trigger review of decisions on access to information (Ebbesson, 2011). The Convention does stipulate that no body may restrict all citizen and environmental groups from appealing decisions to access to information (Ebbesson, 2011). Despite this, the compliance committee responsible for overseeing signatories' compliance "has received more cases concerning non-compliance than any other compliance committee under any international environmental agreement" (Ebbesson, 2011, p. 75).

2.2 Implementation within the European Union

The Aarhus Convention and the European Convention on Human Rights are the main drivers ensuring participatory rights within the EU (Ebbesson, 2011). However, the level of public participation and access to information among EU Member States varies. Romania is seen as among the most corrupt in the EU in restricting participation and access to information (Louka, 2008). Moreover, in recent years, Slovakia

has been restricting the media and the public's access to information (Louka, 2008). Meanwhile, the United Kingdom and the Netherlands have successful access to information legislation yet see varying levels of information requests: 120,000 requests per year and 1,000 requests per year respectively (Louka, 2008).

The European Union has a long tradition of legislation dictating access to information and participatory rights (Ebbesson, 2011). The 1985 Directive on *The assessment of the effects of certain private and public projects on the environment* set the groundwork for Environmental Impact Assessments in the EU and calls for both access to information and public participation (Lee & Abbot, 2003). *Directive 90/313 on Freedom of Access to Information on the Environment* was passed within the EU in 1990 (Lee & Abbot, 2003). The EU provides numerous Common Implementation Strategies (CIS) dealing with public participation in relation to various EU Directives, most notably the Water Framework Directive and Strategic Environmental Assessment Directive (Louka, 2008). Both Directives, passed in 2000 and 2001 respectively, are among the first to institutionalize public participation in specific environmental directives (Kastens & Newig, 2008). Much attention will be given to the inclusion of access to information and public participation within the Water Framework Directive.

3. Water Framework Directive

The WFD is heralded as one of the most significant environmental policies within the EU (Carter & Howe, 2006). The WFD uses numerous methods including regulatory, market-based instruments and public participation to protect, improve and contribute to sustainable and equitable water use amongst inland surface waters, coastal waters, transitory waters and groundwater (European Commission, 2000). Passed by the European Commission in 2000, the WFD is among the first EU Directives passed after the Aarhus Convention and institutionalises public participation in the protection of water as a response to the Convention (Kastens & Newig, 2008; Carter & Howe, 2006). However, among the challenges, the WFD needs to be translated into national and regional law (Kastens & Newig, 2008) and consolidate already existing public participation mechanisms at the local level (Louka, 2008).

The WFD primarily address the first two pillars of the Aarhus Convention: access to information and public participation in decision-making (Louka, 2008). Public participation and access to information are institutionalised within the Directive and included in Preambles 13 and 14, Article 14 and Annex XII (European Commission, 2000). The Directive "relies on the close cooperation and coherent action at [European] Community, Member States and local level as well as on information and involvement of the public, including [water] users" (European Commission, 2000, p. 2). Further, the Directive evokes the subsidiarity principle in that "decisions should be taken as close as possible to the locations where water is affected or used" (Kastens & Newig, 2008; European Commission, 2000, p. 2).

Public participation and access to information under the Directive is primarily concerned with the development of the River Basin Management Plans (RBMPs), the mechanism for regulating water through the WFD (Carter & Howe, 2006). RBMPs are developed for each watershed or catchment area within the EU known as River Basin Districts (European Commission, 2000). These districts do not follow traditional political or geographical boundaries but rather natural hydrologic boundaries; therefore, they tend to be transboundary and require intense collaboration amongst diverse stakeholder groups (Carter & Howe, 2006).

3.1 Access to Information Under the WFD

The public's right to information under the WFD pertains primarily to information used in the development and implementation of the RBMPs (European Commission, 2000). Under Article 14 of the Directive, Member States are required to grant public access to information following a specific timeline: timetable for RBMP development and implementation program at least three years out; overview of significant water management issues addressed in RBMP at least two years out; and draft copies of the RBMP at least one year out (European Commission, 2000). Further, the RBMP must include "a summary

of the public information and consultation measures taken, their results and the changes to the plan made as a consequence...” (European Commission, 2000, p. 67).

In implementing the WFD, local catchment areas have used a variety of methods to supply information to the public including the media, phone helplines, interactive websites, stakeholder forums and road shows. (Bush et. al., 2005). Others have worked closely with water suppliers to provide information available as a part of water bills ensuring a local focus (Lennard, 2005). While many see the good in providing public with adequate information, it has been challenging due to the lack of human and financial capital and the difficulty in translating information or data in its raw form to a medium understandable to the public (Louka, 2008). Given the financial and temporal constraints, it is difficult to provide information to those with hearing or vision impairments and those without access to a TV or computer (Bush et. al., 2005). Further, there is a lack of understanding in the requirements placed on public authorities to provide the necessary information leading to a lack of compliance (Louka, 2008).

3.2 Public Participation in Decision Making Under the WFD

Public participation is one of the most pressing and challenging aspects of the WFD (Kranz, Ridder & Patel, 2006). For successful public participation, one needs a combination of formal and informal engagement to ensure representation by all stakeholder groups (Louka, 2008). Article 14 of the WFD deals explicitly with public information and consultation and stipulates “Member States shall encourage the active involvement of all interested parties in the implementation of this Directive...” (European Commission, 2000, p. 16). This Article deals primarily with the formation of the RBMPs and requires that public participation be included in their development including characterisation of water bodies, summary of environmental pressures, definition of environmental objectives, evaluation of economic analysis and the development of controls and procedures for water use and pollution (European Commission, 2000). Further, this article sets the minimum requirement for participation and comments at six months prior to any decision on proposed documents, plans, policies or programmes (European Commission, 2000).

The WFD distinguishes between public engagement and stakeholder engagement favouring engagement with specific and well-defined stakeholder groups with interest in water management (Louka, 2008). Key actors include individual water users, agricultural associations and farmers, industry and business, water suppliers and water regulatory boards (Kastens & Newig, 2008). Successful public participation in water management occurs in different capacities depending on local context (Ebbesson, 2011). Empirical evidence shows that best participation occurs when an event such as a road show or stakeholder forum targets a particular geographical or demographic area and is piggybacked with other events of community interest (Bush et. al., 2005; Lennard, 2005). Targeting specific stakeholder groups helps in the dissemination of useful information amongst their networks and increases participation in events (Bush et. al., 2005). However, the most successful public participation stems from a mutual understanding between public authority and stakeholders as to the goals and intended outcomes of the interaction and a commitment to include participation in decision-making (Kastens & Newig, 2008).

Despite the success of public participation already in the development of the RBMPs, Member States have seen barriers to successful stakeholder participation (Louka, 2008). Firstly, it is difficult to get stakeholder groups to meetings due to lack of interest, weather, time of meeting and location (Lennard, 2005). Those that make it to a stakeholder forum or road show may be fearful to contribute due to imposed financial obligations in line with polluter-pays principle or to bring up issues in contrast to the feelings of the majority (Kastens & Newig, 2008; Louka, 2008). The participatory process has been known to drive stakeholders apart by making differences in opinions more pronounced (Louka, 2008).

Apart from barriers, public participation can be seen as counter-productive to the effective management of water. The management of water, often seen as a technical, environmental issue, requires participation by non-experts in the deliberation and decision-making process under the WFD (Louka, 2008). The participatory process in political decision-making is often geared toward stakeholder satisfaction instead of the pursuit of public good due to its inherent political nature (Louka, 2008). This may prevent relevant

environmental information being used as the basis for sound water management decisions. Further problems include co-opting (interest groups leveraging power over public authorities for the use of their own agenda) and lack of participation among minority groups (Louka, 2008). Meetings have been predominantly Caucasian, older middle-class families with long history of public engagement (Lennard, 2005). It has been difficult to facilitate representative involvement in the participatory process and begs the question: *who is responsible for taking initiative to ensure public participation, engaged citizenry or public authorities?* In other words, the public must take some onus for participation.

4. Discussion

The Aarhus Convention is a landmark international convention establishing the importance of access to information and public participation in environmental matters (Bush et. al., 2005). Through implementation of Convention commitments, parties have learned that public participation is not simply a 'tick-box' but requires true commitment, public trust and comes with a sizeable price tag (Bush et. al., 2005). While national laws and regulations dictate public participation, institutional culture in governance lags behind (Louka, 2008). In order to overcome challenges of public participation, parties must provide the adequate institutional framework, prepare for the participation process and reach an agreement among stakeholders on the roles and intended outcomes of engagement (Louka, 2008).

The Water Framework Directive is among the first EU Directives to implement public participation as required in the Aarhus Convention. The Directive addresses the first two pillars of the Convention including access to information and public participation in decision-making as outlined in the WFD (European Commission, 2000). The WFD recognises the need for integrated water management and the role of stakeholder engagement in reaching the ambitions of the Directive. The successful collaboration among the various actors in water management (supply, sewage, agriculture, industry, energy, environmental protection, etc.) shows the potential for cross-sectorial collaboration (Kranz, Ridder & Patel, 2006). For instance, international, national, regional and local governments may proceduralise public participation to include formal mechanisms dealing with water, soil, land-use, coastal-zone management, forestry and transboundary conservation jointly (Kranz, Ridder & Patel, 2006). This may increase efficiencies while reducing costs associated with public participation and prevent participation fatigue by members of the public with regards to the environment (Carter & Howe, 2006; Louka, 2008).

In the implementation of public participation dictated by the WFD, widespread knowledge gaps exist among practitioners at the local and regional level (Kranz, Ridder & Patel, 2006). Much literature has been written with regards to organising effective public participation including CIS Guidance from the EU; yet, the literature seems overwhelming, contradictory and confusing. Terms such as 'participative democracy,' 'deliberative democracy,' 'social learning,' 'decision support tools' and 'information and communication tools' represent the various terminology and schools of thought pertaining to public participation. However, such expansive literature complicates the implementation of public participation amongst non-experts in government and contributes to the lack of compliance and knowledge gaps (Kranz, Ridder & Patel, 2006).

Despite this, Sweden, Germany and the UK, among other Member States, have seen successful public participation in regards to the implementation of the Water Framework Directive in line with the Aarhus Convention (Hering et. al., 2010). Through the implementation of the Water Framework Directive, it has been demonstrated that public participation does lead to increased environmental protection as asserted in the Aarhus Convention (Kranz, Ridder & Patel, 2006). Further, the Directive has demonstrated the importance public participation and local knowledge in developing strong environmental protection while leading to increased compliance (Lennard, 2005). The Aarhus Convention addresses environmental and human rights issues and asserts the importance of access to information in public participation (The Aarhus Convention, 1998). Therefore, the role of education in developing a 'knowledge society' is of great importance in fostering greater participation in decision-making in the years to come.

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