

# Obstacles to effective public participation in strategic environmental decision-making in the countries of the European Union



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**Environmental Pillar**  
WORKING FOR A SUSTAINABLE FUTURE

Pan-European Coalition of Environmental Citizens Organisations



The bread has to be good, but the filling is what makes it a sandwich !



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# Menu of Some of the Problems

- International legislation is unclear or inconsistent
- There is no opportunity for PP
- Conflict between participatory and representational democracy
- Poor transposition into national law
- Narrow interpretation of law
- Advertising of PP is restricted so that the response is low
- The SEA is a tick-box exercise
- The opportunity for PP is being restricted
- The PP occurs after the main decisions are made
- The PP is window-dressing only
- The PP timescales are too short
- There is no explanation as to what happens to the public's submissions

# International Law is unclear or inconsistent

The Aarhus Convention Article 7 is particularly unclear.

*To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.*

Neither the SEA Protocol nor the SEA Directive is compliant with the Convention

- Definition of Public Concerned
- Access to Justice is absent

# Legislation is unclear or inconsistent

## The SEA Protocol

- The tests for inclusion of a decision-making process are too restrictive
- Includes environment and health but not sustainability, or cumulative effects
- Provides for the PP process to be publicly available
- Includes public participation in the screening stages
- Includes provisions for assessment of policies and proposed legislation
- Provides for the public to be informed of the monitoring processes undertaken
- Only relates to the environmental assessment and not the actual plan, programme or policy

# Legislation is unclear or inconsistent

## The SEA Directive 2001/42/EC

- The tests for inclusion of a decision-making process are too restrictive
- Does not include policies and legislation
- Does not specifically include health
- Does not require public participation in the early stages (screening or scoping)
- Excludes financial budgets or programmes
- Lack of legal remedies where PP is restricted, absent or its results not taken into consideration
- Includes a review of both the draft plan or programme and the environmental report

# A level playing field?

- The EU has ratified both the Aarhus Convention and the SEA Protocol
- Aarhus is ratified by all EU Member States
- SEA Directive applies to all EU Member States
- The SEA Protocol has been ratified by the many of the EU Member States, but there are a significant number that have not
- And yet 11 years on the SEA Directive has still to be reframed to reflect the reality of its failure to fully deliver either SEA or public participation as required under Aarhus
- Both the Directive and the Protocol are out of line with Aarhus

# Examples of Barriers

The examples that follow are far from unique, but are intended to illustrate issues that are common across the EU region. The examples are from Ireland Poland and the Czech Republic.



# The Consequences



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# The Consequences

Strategic decisions are being taken with no SEA.

## Food Harvest 2020 (Ireland)

- The dairy output target to see a 50% increase in milk production by 2020 relative to the average volume of production over the period 2007-2009.
- Beef and sheep production - increasing the output value from each of these sectors by 20% by 2020 (set relative to the average of the period 2007-2009).
- The pig sector the target is to increase output value by 50% by 2020.

The EPA and the Environmental Pillar called for an SEA as this will impact on at least 7 but the Government were able to hide behind the SEA Directive

An Environmental Analysis of FH2020 is now being carried out retrospectively but without the range of an SEA and without the PP provisions and without legal status

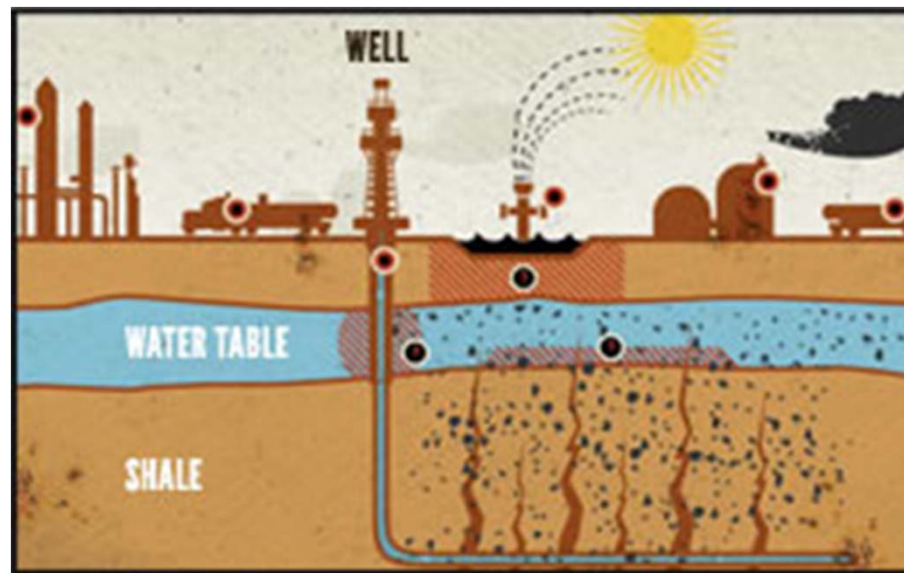
# The Zero Option

The public should have a possibility to provide input/comments and have due account taken of them, at an early stage of decision-making when all options are open, on whether the proposed activity should go ahead at all (the so-called “zero option”). This recommendation has special significance if the proposed activity is a technology not previously undertaken in the country and which is of high risk and/or unknown potential environmental impact.

*Para 13. Draft Recommendations on Public Participation in Decision-making in Environmental Matters 21/10/2012*

# The Reality

The Irish Government is to commission a major independent academic research on the likely impacts of Fracking. The research is to be coordinated by the Irish EPA.

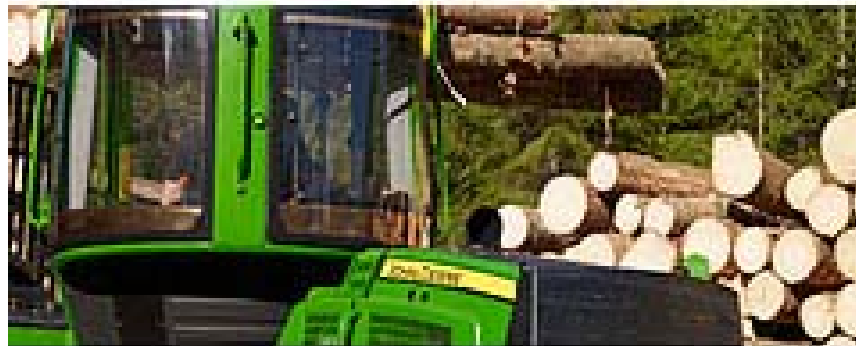
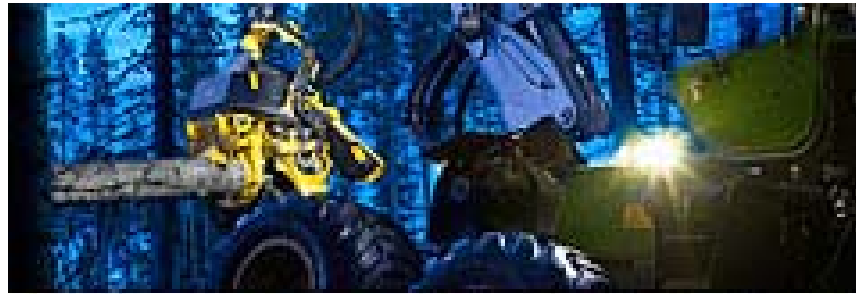


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# The Consequences

There is no public participation on the terms of reference for this, even though its recommendations will form the basis for Government policy on the use of this technology, which is likely to be proposed in about 10 of the 26 counties of Ireland as well as having transboundary impacts in Northern Ireland.





# The public authority lacks the will, the skills and/or capacity to provide PP

Road, forestry and regional planners' work for biodiversity conservation and public participation: a case study in Poland's hotspot regions. Malgorzata Blicharska, Per Angelstam, Hans Antonson, Marine Elbakidze & Robert Axelsson (2011): Road, forestry and regional planners' work for biodiversity conservation and public participation: a case study in Poland's hotspot regions, Journal of Environmental Planning and Management, 54:10, 1373-1395

This study indicates that planners from the three investigated sectors did not effectively support the implementation of existing international policies concerning biodiversity and PP. Creating new national policies will probably not change the situation. What is needed across the EU is support and education for public officials, as well as the public to enable informed transparent and well designed PP to take place.





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# Lack of transparency and of consideration of public submissions in the Czech Republic

- The public and the public concerned are not defined in the legislation
- Early participation is allowed, but submissions are often rejected without proper explanation
- The affirmative SEA opinion on the Operational Plan for Transport was issued three days after the close of the PP process!!
- In SEA for land use planning, the public can only contribute their opinions when the SEA is already completed.
- In the report of the City of Brno land use plan only one paragraph was used to describe the PP process, with no explanation of how the submissions were assessed and included or not in the agreed plan.

<http://justiceandenvironment.org/files/file/SEA%20WP07%20Czech%20Case%20Study.pdf>



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# The PP timescales are too short

Timescales are often too short as a result of bad public administration. Last minute consultations

Time-lines often do not allow for the access to information time scales

Timelines in the UK. The key change is that whereas the previous Code contained clear guidance that consultations should normally last for at least 12 weeks (with consideration given to longer timescales where appropriate for example during the summer and Christmas holidays), the new principles state that “The amount of time required...might typically vary between two and twelve weeks” and that “In some cases there will be no requirement for consultation at all.” The new guidance will take effect in early autumn 2012.

<http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>



# Thank you

## Go Raibh Maith Agaibh

