EFFECTIVENESS OF PUBLIC PARTICIPATION IN ENVIRONMENTAL IMPACT ASSESSMENT

Legal Analysis

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CONTENTS

Introduction

During the last century in Europe, especially after the II World War, with the proliferation of human rights and citizens' constitutional entitlements, members and associations of the public could take part in administrative decision-making procedures on constitutional legal bases. Parallel to that, in the third quarter of the 20th century, environmental protection emerged as an urgent task for our societies. These two historical threads have been intertwined in the concept of environmental democracy. Its first clear formulation was the 1970 National Environmental Protection Act (NEPA) of the USA, and one and a half decades later, after long negotiations with the interested business groups in Europe, Council Directive 85/337/EEC allowed significant participation rights, too. Both early environmental democracy laws were environmental impact assessment (EIA) laws that ensured a strong procedural legal position for the public in the integrated and iterative assessment procedure of the environmental and the related socio-economic effects of the most dangerous projects. Public participation turned out to be a key effectiveness factor of EIA. Members of local communities can gather plenty of facts about the site of the planned project, while professional (mainstream) environmental NGOs import a holistic approach into the permitting procedure that is otherwise far too linear and concentrates only on the economic interests of the investor and some other actors in the EIA cases.

But is this participation position of the public in itself effective enough? Are the members and organisations informed in due time, and are they given enough time to consider the environmental ramifications of the proposed projects? After all, do they really have a say in the decision-making procedure, or do the authorities just wish to tick off one more procedural responsibility with their formal inclusion?

In this paper, we are going to analyse national-level practices concerning the effectiveness of public participation in EIA[1] procedures, with particular attention to the availability of the necessary information, the means used to consult the public, relevant timeframes and the extent to which comments are taken into account, furthermore, the availability of an effective legal remedy for breach of the rules on public participation. To this end, we asked our national correspondents from Austria, Bulgaria, Croatia, Estonia and Hungary to answer questions relating to these aspects of their respective EIA laws and practices. The answers are summarised below.

[1] Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, https://eur-lex.europa.eu/eli/dir/2011/92/oj

We approach the issue in three steps:

- firstly, our more general or overall opinion on the effectiveness of public participation in the EIA procedures with some time perspectives,
- secondly, the specific technical-procedural solutions that might hinder or reinforce this effectiveness and
- thirdly, some concrete examples that highlight one or more typical concerns of us.

Based on the answers of our national researchers we are going to put together some practical suggestions both for the authorities running EIA cases and the members and associations that step up in such administrative procedures.

I. HOW EFFECTIVE IS PUBLIC PARTICIPATION IN EIA IS IN YOUR COUNTRIES?

In this chapter we have collected the comments of our country researchers that concern mostly substantive legal issues and also address some social-economic circumstances that have key importance in the success of public participation in EIA cases.

I.1 (*most general evaluations*) From more than 18 years of professional experience, our Croatian contributor concluded that a core issue is that public attention is of low level and therefore, substantial participation in EIA procedures seldom takes place. Based on her survey of opinion of environmental NGOs, this is a shared experience of this sector in Croatia (CRO).

The Bulgarian response also relied on two decades-long practice but focussed on the progressive side of the picture. The Bulgarian Environmental Protection Act (as amended in 2002) is the framework environmental act transposing the EIA Directive and has been in force for almost 22 years. Many national NGOs started their activity after the change of regime in the region, so their activity in public participation in environmental assessments also have more than 20 years of experience. From this wide and in-depth perspective on the legal and institutional practice of EIA implementation, it could be stated that public participation in EIA procedures has been effective for NGOs and civil society to confront and, in some cases, even stop projects harmful to the environment (BUL).

The Croatian and Bulgarian reports are not diagonally opposite; they rather show the two sides of the same coin. Our responses depend on our expectations, naturally. If we consider that EIA,

often called a 'flagship of environmental law' is an exceptionally good field of public participation (far better than the same set of rights in respect to sectoral environmental laws, let alone other branches of administrative law that still have serious environmental consequences, albeit not called environmental ones), our view will be positive. Indeed, the complex EIA procedures give the NGOs and local communities a say in the decision-making in a clear-cut, well-defined manner, especially when they are supported by other stakeholders, such as one or more concerned municipality councils. On the other hand, EIAs are run only in respect to the largest investments, designed by the largest and most influential economic groups. No doubt, these groups have strong enough influence on the governments either on the field of legislation (inter alia, to achieve so-called priority cases handling that makes public participation harder) or in practical implementation thereof. Life of an environmental NGO can be difficult under these circumstances, the progressive facades of the preamble of EIA laws oftentimes turned into realisation of rough economic interests. Hence the hopes and frustration at the same time from public interest environmental lawyers.

The Estonian contribution carries these double approaches, but slightly reinforces the critical side of the EIA procedures in our countries: In her opinion, public participation in EIA cases in Estonia is generally not very effective. The public's input is rarely the reason that the assessment of the impact of the planned activity is significantly altered or that the planned activity itself is changed in any substantial way or altogether cancelled (although there have been such examples). EIA is often carried out so as to best enable the planned activity, not to objectively assess and weigh the impacts of the activity (EST).

In Hungary, public consultation is mandatory during the EIA procedure. The EIA documentation is published on the environmental authority's website and by the local municipalities concerned by locally customary means. Comments from the public might be sent until the public hearing or by the date set by the authority. The environmental authority shall consider the comments on their merits and include their assessment in the final decision.

Indeed, the effectiveness of public participation can be best measured by its impact on the flow of the procedure (e.g. accepted or refused suggestions concerning evidence) or on the content of the decision. Members and organisations expect the authorities to enter into a complex examination of the reasonably possible environmental and social-economic effects of the planned investment and integrated use of all relevant environmental laws. These expectations not seldom fail. Now, let us look at some general comments on specific aspects of public participation in EIA.

I.2 (*effectiveness of public consultations*) The Bulgarian national implementation report to the Aarhus Convention (2021) refers to a set of methodological guidelines in the field of public consultation that have been developed in 2019, applicable to all sectors of government, not only concerning the environment. A part of the guidelines is called the 'Standards for conducting public consultations' that summarises the main stages of preparation, conducting and evaluation of public consultations, as well as the standards for their practical application by public administration, including the consideration of the contribution of participants in public consultations. The Standards are designed to assist administrations in implementing the defined principles for conducting public consultations as part of the overall process of planning, developing and implementing public policies (BUL).

This development shows, on the one hand, the influence environmental law, and especially the EIA methodology, exerts on the rest of the administrative laws, which is a progressive development of the democratisation of our governance systems. On the other hand, we have some reservations about such general guidelines not focusing on environmental procedures. In many instances, they tend to water down the effectiveness of the participation of well-prepared and especially motivated NGOs and local communities in environmental cases. So that, while we greet such distribution of environmental public participation culture to other fields of administration, there should be further, environment-specific guidance, too. Furthermore, guidelines in themselves lack imperative legal force and, therefore, might result in an imbalanced, unfair legal practice, whereas in certain cases the guidelines are followed, while in others not. On the positive side, however, guidelines might be stepping-stones towards more progressive EIA laws as harbingers of pioneering progressive and more effective legal techniques.

The Hungarian experience in respect to the evaluation of the results of public consultations in EIA procedures is rather positive, too. The original EIA governmental decree back in 1993 stipulated that the contributions from the public participants shall be expressly evaluated in the reasoning part of the environmental permit, from *factual*, *professional* and *legal* side. Although a later 'streamlining' of the EIA laws in Hungary deleted this provision, the legal practice, including relevant court decisions, maintained the view that a substantial reasoning shall encompass these three elements (HUN).

A different, but also realistic observation is that comments from the public are in majority of cases only “taken into consideration” which means often just leaving disregarded. In other words, if there is no clear legal requirement about how exactly the public comments shall be collected, discussed and worked through in the decision, that ambiguity could easily be

misinterpreted by the relevant authorities. It seems that, especially in government investments, public participation in EIA is done only because it is a legal requirement and not with the real intention to accept valid comments and minimise the project's final environmental impact (CRO). Similarly to this the Estonian opinion was that usually very little weight is given to the public's input and their opinions are often dismissed without impacting the activity or the assessment of the impact of the activity (EST).

I.3 (*legal remedies*) On the other hand, when the public comments are not taken into proper consideration by the authorities, it is generally acknowledged that the members of the public or NGOs have the possibility to submit legal remedies to higher-level authorities or to courts directly. In this respect, we have to acknowledge that the authorities are not obliged to fully agree with all of the public comments, but whenever they disagree with them, the authorities should present arguments in the reasoning part of their decision. The lack of arguments for not accepting proposals of the public and NGOs when issuing the final acts is a significant violation of the administrative procedural rules in Bulgaria that could be sanctioned by the courts, which annul the relevant acts for this reason, as unlawful (BUL).

Similarly, the Hungarian Supreme Court has issued a generally mandatory statement. The statement sounds that minor procedural infringements shall not lead to the annulment of the administrative decision, while the cases when some participants were excluded from the case or their rights were seriously restricted, especially when their comments were overlooked or only formally evaluated, these shall represent a serious procedural fault and the decision of the authority shall be null and void (HUN).

However, some researchers raised that, in some instances, there are certain restrictions on access to justice. In Estonia, the public has few means of contesting the EIA, the main one being the option to challenge the final permit that is issued based on the EIA, amongst others. The EIA procedure or report itself can be challenged only in exceptional cases, which rarely happens. Therefore, even if there are shortcomings in the EIA or the permitting procedure, it usually entails no consequences for the developer and the authority overseeing the EIA procedure (EST).

We have to realise that there are tremendous economic and political interests behind the quickest possible finishing of the EIA procedures for large investments and other projects and curtailing legal remedies could be a golden route to these aims. A further sophisticated means of restricting access to justice is *locus standi*. In Hungary, even the members and associations can have standing at courts in administrative cases against the EIA decision (including the

whole procedure and all evidence having taken into consideration thereof), the topics they can interfere with might be restricted. The courts argue that certain aspects of the cases, such as the planned volume of traffic on a road or a railway, or the technical solutions of building a dam, or the selection of the itinerary for transporting rough materials for the construction, lay apart from the scope of issues the civil participants can have a say in (HUN).

In our view, such restrictions in the scope of substances of public participation are contrary to the deliberative nature of the EIA procedures and are not in line with the complex, integrative approach of such procedures in the eyes of the legislative fathers who created the EIA legal institution.

I.4 (*scarcity of resources*) The legal framework could be improved to allow for more effective public participation. However, the administrative capacity of the competent authorities, even under the current legal rules, is always of concern because the governmental bodies responsible for environmental protection are, as a rule, understaffed, with relatively low salaries and a tendency to leave the job after a few years. Another factor is the limited capacity of the public's side, including the financial means of NGOs to participate effectively in the procedures. However, even within these circumstances, in those cases where the laws are closely followed and the procedures of public consultations are duly performed, there are no problems and obstacles for the participation of the public and NGOs (BUL).

We can approach this issue from a slightly different angle, too. Resources allocated to both sides depend, after all, on public policy situations: if there is a growing awareness of the importance of long-range systematic decisions about the near future of our natural and built environment, resources will be allocated by the politicians, state institutions, donors and public contributors to this issue. Once the social attention turns towards other values, such as short term economic competition, ideological issues raised and disseminated by major political forces and alike, resources turned on environmental protection will taper down. EIA procedures are sensitive indicators of such political, cultural changes in our societies.

I.5 (*public participation as an engine for new topics to be included*) One of the relevant factors for the development of public participation in EIA in the next years will be the mode of

implementation of the RED III[2] into the European laws. Since there are significant exceptions from the regular EIA procedure on a project level, public participation on the planning level will gain importance in order to ensure the upholding of environmental protection. To date, this aspect of the RED III has not been implemented into Austrian law and there are no public drafts for an implementation act yet. In the context of the implementation of the RED III, the importance of SEA[3] will grow enormously and the public should therefore also be effectively involved in the SEA procedures (AUT).

We note here that public participants, especially mainstream NGOs, using their international professional networks are the main promoters of substantial consideration of other important topics in the EIA procedures. These topics include raising and analysing realistic alternatives to the ones singled out by the investors or a serious evaluation of the social-economic effects of the planned project.

In this respect, public participants, especially the local communities, strive to achieve the mandatory introduction of such elements into the environmental impact studies, such as measuring and monitoring the already existing environmental burdens before the onset of the investments (basic data). Unless the authorities and the other stakeholders are not fully aware of the status of noise, air pollution, vibration, traffic volume and other relevant parameters, they will not be in a position later to claim that the environmental and socio-economic situation worsened owing to the project (HUN).

II. WHAT ARE THE MAIN PROCEDURAL FACTORS THAT REDUCE OR INCREASE ITS EFFECTIVENESS?

Under this point we discuss some details of procedures, which might gain particular importance in certain cases.

[2] Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652, https://eur-lex.europa.eu/eli/dir/2023/2413/oj

[3] Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001L0042

II.1 (*early participation*) In their study "Benefits of environmental procedures", ÖKOBÜRO has highlighted some positive examples of effectiveness of the EIA procedures in Austria[4]. Six success factors for effective environmental procedures were filtered out, and public participation plays a key role in this. Positive examples illustrate that public participation is particularly effective when it takes place in a timely, structured manner, and is as comprehensive as possible. Early involvement of the public at the planning stage also made it possible to take the expertise and specific viewpoints of NGOs into account in project planning (e.g. route selection) (AUT). We note here that timeliness and structured manner of the procedure are strongly interlinked: whenever the EIA process follows a prescript, regular and therefore foreseeable, calculable pattern, the members and associations of the public can detect the key messages and can start their involvement in the procedures in due time.

II.2 (*insufficient information on the onset of the procedure*) Another, at first glance a technical issue is that the publication of information on the onset of an EIA case often takes place only on some official websites, sometimes even hard to find (CRO).

Our Estonian colleagues add that although communication has somewhat improved, the public still often finds out too late about a planned activity and its EIA procedure. Then people have very little time to understand the details of the activity and voice their opinions. Also, not many people have time and capacity to go through hundreds of pages of rather technical text, which is necessary to understand an EIA report (EST). Authorities should take into consideration that local communities and even mainstream environmental NGOs need more time for preparation of their contributions in the case: they need to familiarize themselves with the content of large documents (put together several dozens of highly trained experts at the side of the investor) and find the proper independent experts, consult them and formulate their opinion according to their internal democratic processes.

II.3 (*many experts contradict the public opinion*) EIAs are prepared by more and more experts as the technical background becomes more complex and our knowledge about their multiple environmental effects is developing. This complex situation might form a base for the dismissal

[4] https://www.oekobuero.at/de/news/2023/09/umweltverfahren-leitfaden-f%C3%BCr-eine-gute-praxis/; https://www.oekobuero.at/files/954/ob_studie_nutzen_von_umweltverfahren_20_mai_2023.pdf.

of different or even opposite comments received during the public participation process. We do think that the mere fact that the opinion of an NGO expert is not in harmony with the „official" expert opinions should not be an explanation for entirely overlooking it (CRO). In other words, in such cases, professional contradictions are not really solved, but rather played against each other, in order to allow the investor and/or the authority to cherry-pick the favourable opinions and overlook those that contradict them. Instead, in a better procedural arrangement the authorities should make the contradicting experts negotiate with each other and with other stakeholders in a transparent way.

II.4 (*selection of time and location of public hearings*) Often, meetings with the public are held in small places that are difficult to access from farther away and at times when working people have difficulties coming. Therefore, not many people can attend these meetings (EST). Another typical bottleneck of public participation at the public hearings is that many people are directed to the location who are committed to the investment (especially workers of the investors or locals who are promised to get a job at the factory if it starts to work). Often, they can successfully obstruct local groups and environmental NGOs who want to raise their voices for the long-term interests of the whole concerned community and the environment (HUN).

Indeed, the public hearing is a key procedural stage of EIA, which is really difficult for the investor and even for the environmental authorities. Face-to-face with the angry locals, whose quiet lives will be disturbed and whose real estate might lose a great part of its value soon, is not a pleasant experience, not to mention that the investor will have to cooperate in certain aspects with their would-be neighbours in many aspects. Long-standing legal disputes, public complaints to several authorities might mean a nuisance for the company and could negatively influence its social and economic good-will.

Following some highly publicised and almost scandalous public hearings in 2023 (e.g. in the case of the battery factory in Debrecen[5]), the Hungarian legislator decided to change the rules of public hearings radically.[6] Firstly, in a decree, later in the Environmental Protection Act, new provisions were introduced in, according to which the authority itself decides whether the public hearing may be held without the physical presence of those affected. In this case, public hearings may be held through electronic communications equipment or through publication on a website. This solution may spare both the investor and the representatives of the authorities from the potentially embarrassing situations mentioned above. On the other hand, public

[5] https://hvg.hu/gazdasag/20230110_debrecen_akkumulatorgyar_kozmeghallgatas (in Hungarian)
[6] https://telex.hu/english/2023/04/28/new-decree-makes-public-hearing-without-the-public-present-possible-in-hungary

hearings held without personal presence make it more difficult to bring together local citizens and interested individuals and civil organisations. (HUN)

II.5 (*capacity building*) Two important factors in increasing the effectiveness of public participation are the existence of a central contact person for the project and information campaigns right from the planning stage. The positive examples shown in the Austrian study[7] had both of these elements (AUT). Information campaigns might be run by the relevant authorities or relevant municipalities and by (mostly mainstream, professional) environmental NGOs interested in the given case. It should take place from the very beginning of the project, ideally way before the official onset of the administrative procedure. Content wise, it might encompass spreading neutral information about the planned activity, the foreseeable environmental effects, the geographical extension of these effects, furthermore the major arguments for and against the project that has been raised so far.

In order to increase the effectiveness of public participation, it should also be ensured that access to public participation is available to everyone and is not hindered by financial or human resources. This could be achieved by introducing a *participation fund*. The public should have the opportunity to participate on an (almost) equal footing with the project applicants with this financial backing. Financial resources are needed first of all for hiring experts in several relevant professional fields and in legal matters, as well (AUT).

II.6 (*fair procedural position for the participants*) Rights and procedural entitlements given to the local communities and environmental NGOs that wish to participate in the EIA cases are not only measured in themself, but also in comparison with the procedural position ensured to other participants. This refers primarily to the investor, who sociologically enjoys a series of advantages, from the army of experts and attorneys contracted by her, through the strong political and economic support, to the regular and oftentimes too intimate connection with the authorities. Here thinking only of the “revolving door” effect, which is legal, but might powerfully influence the mind-set of the experts in the authority, or the mere fact that these experts and those hired by the investor used to sit in the auditoriums of the same university.

In Hungary, for instance, public interest environmental lawyers of EMLA have experienced in several cases that comments, objections, or suggestions from civil participants or municipalities

[7] https://www.oekobuero.at/de/news/2023/09/umweltverfahren-leitfaden-f%C3%BCr-eine-gute-praxis/; https://www.oekobuero.at/files/954/ob_studie_nutzen_von_umweltverfahren_20_mai_2023.pdf.

are simply forwarded to the investor, and the investor's evaluation is included or attached to the final decision as „a response to the public contributions“ (HUN). Such practice, in our opinion, is diagonally opposite to the principles of fair administrative procedure, first of all to the equality of the clients in a case.

In Croatia, one of the main factors reducing effectiveness of public participation in EIA is that in the majority of cases only the minimal legal requirements are met, for example only minimum of 30 days allowed for participation and sometimes even less (CRO). That brings us a little bit further than fairness to the realm of equity: the due support owing to the weaker parties in an administrative case.

III. CONCRETE EXAMPLES OF GOOD AND/OR BAD PRACTICES IN EIA PROCEDURES AND DECISIONS

In order to corroborate our practical (procedural and substantive) observations in respect to public participation in EIA procedures we bring some examples, in form of short case studies.

III.1 (*Croatia*) The Croatian team raised two bad examples in public participation in EIA procedures for hydro energy systems (HES) and liquid natural gas (LNG) terminals. In the Kosinj HES case[8] comments were issued to the environmental authority from the national level professional environmental group, Zelena Akcija (ZA), as well as from local groups, but they were mostly disregarded. The primary reason for this was the fact that a large number of experts were involved in the preparation of the EIA, and most probably, the professional content of the comments was blurred and overwhelmed by complicated expert explanations. The same happened concerning public participation in the EIA procedure for the LNG terminal on the island of Krk[9]. In both cases, the same superficial evaluation took place in the court procedures. Although the courts did not state it explicitly, in both cases, they neglected the strong evidence

[8] EIA decision for HES Kosinj (only in Croatian): https://mzozt.gov.hr/UserDocsImages/ARHIVA%20DOKUMENATA/ARHIVA%20---%20PUO/2017/17052018_-_rjesenje_ministarstva_od_14_svibnja_2018_godine.pdf

[9] EIA decision for LNG terminal (only in Croatian): https://mzozt.gov.hr/UserDocsImages/ARHIVA%20DOKUMENATA/ARHIVA%20---%20PUO/2017/11042018_-_rjesenje_ministarstva_od_11_travnja_2018_godine.pdf

supporting the NGO comments because of the fact that 35 experts supported a totally different view as professional evidence (CRO).

The Croatian team provided a positive example, too. The EIA decision on an incinerator of medical waste of KBC Zagreb (Rebro hospital) progressively and carefully took public opinion into consideration[10]. It seems that only large public pressure mated with good political will is needed to stop a harmful project during public consultation in EIA. These were exactly the key factors in the case of a waste management facility (incinerator) for KBC Zagreb (CRO).

III.2 (*Bulgaria*) The Bulgarian experts establish the fact that given the big number of EIA procedures and the limited resources of the NGO experts and activists to participate in EIA procedures, often the national NGOs could focus only on bigger and infrastructural projects (priority cases). On the other hand, smaller projects with big local impacts could provoke public response from local communities. That happened in the case of the tungsten (W) mine by the community in Velingrad municipality. The protest lasted for more than 10 years. Finally, the mayor made up his mind recently and appealed to all political parties, non-governmental and civil associations, as well as citizens to save Velingrad from tungsten mining[11]. The NGO BlueLink followed the case in 2015-2016[12]. While starting with this positive example, the Bulgarian expert added that bad practices may include publishing the notice for public consultations during the holiday season, so that the effective time for comments is limited. Unfortunately, these manoeuvres happen in numerous cases (BUL).

III.3 (*Estonia*) Our Estonian colleagues also start with a rather good practical example. During the pandemic, EIA meetings began to be held with an opportunity to join online, and this creative practice has sporadically continued ever since. This has made it easier for NGOs and other interested parties to attend the EIA meetings, even if they take place outside major towns. We note that this topic was elaborated in more detail in J&E's paper last year on public participation during the pandemic times (EST).

[10] EIA decision for medical waste of KBC Zagreb (in Croatian) https://mingo.gov.hr/UserDocsImages/UPRAVA-ZA-PROCJENU-UTJECAJA-NA-OKOLIS-ODRZIVO-GOSPODARENJE-OTPADOM/Puo/22_05_2023_Rjesenje_KBC_Rebro.pdf

[11] The Municipality of Velingrad again refused to open a tungsten mine - News (bnr.bg)

[12] Волфрамова мина край с.Кръстава, Велинградска община | Extractive and Energy Industry Watch (bluelink.net) You could read about the other cases incl. EIA procedures here: Регистър на казусите | Extractive and Energy Industry Watch (bluelink.net).

A bad example from Estonia of not properly taking public comments concerning an EIA report into account was the EIA procedure of the new Enefit280-2 shale oil plant[13]. The Environmental Board rejected all comments made by environmental NGOs that pointed out shortcomings in the EIA, such as topics that were left out of the assessment. Among these missing topics was an assessment of the plant's greenhouse gas emissions. These omissions were in close connection with the rights and best interests of children that are especially vulnerable to climate change. However, the UN Convention on the Rights of the Child gives rise to the obligation to set children's best interests first in all decisions concerning them, including climate-related decisions. To all of these comments, the Environmental Board responded that as the impact of air pollutants on people's health in general had been assessed and no danger was found, then there was equally no threat to children's rights, and no more thorough assessment would be necessary (EST).

III.4 (*Austria*) The Austrian J&E experts pointed out that while the positive examples show the overall effectiveness of public participation, there is still potential for improving it. This is shown by the fact that the public was often not involved at the planning stage (highlighting the importance of public participation in SEA) and the information provided to the public was not sufficiently comprehensible to guarantee effective participation. That happened amongst others in the EIA for the 380 kV Salzburg power line, where the generally comprehensible summary of the environmental impact statement required under the EIA Act was not, in fact, generally comprehensible due to its excessive length[14] (AUT).

III.5 *(Hungary)* As a good example of the effectiveness of public participation, the grassroots coalition formed against a planned gravel pit in Madocsa was mentioned[15]. A local NGO and the municipality joined forces to protect the environment and defend the interests of residents protesting against the mine. The environmental authority did not ensure equal treatment for the mining company and locals. Several procedural steps were taken without taking the objections and opinions of the members of the public (who also had legal standing in the procedure) into account. That is why, the volunteers of the NGO made great efforts to obtain information on all

[13] https://kotkas.envir.ee/permits/public_detail_view?search=1&permit_status=ISSUED&object_name=enefit280-2&permit_id=148234 (in Estonian)

[14] https://repositum.tuwien.at/bitstream/20.500.12708/4822/2/Nikisch%20Martin%20-%202017%20-%20OEffentlichkeitsbeteiligung%20in%20umweltrelevanten...pdf, 62.

[15] https://atlatszo.hu/orszagszerte/2023/07/26/madocsa-kavicsbanya-2-0-elutasitottak-a-ceg-kornyezetvedelmi-engedelykerelmet/ (in Hungarian)

the details of the proceedings in time to provide due responses and comments to the authorities. This vigilance resulted in the environmental authority following the procedural laws and principles they were subject to, which was otherwise not the case in that permitting process.

IV. SUGGESTIONS

In making our suggestions for A. public authorities (both in their legislative and general directing role and in their implementing role) and for B. civil participants in the EIA procedures, we harness the experiences collected in the survey of the situation of public participation in EIA in Austria, Bulgaria, Croatia, Estonia and Hungary. We do think that our statements below are general enough to be used in other EU countries, too. The order of our suggestions loosely follows the line of the above discussions in Chapters 1-3. Also, we handle the suggestions for authorities and civil participants in unity by making cross-references at due places.

A. Suggestions for public authorities

1. (*regular systemic feedback on the effectiveness of public participation)* A general evaluation of the effectiveness of public participation shall be made at least bi-annually. Statistics about the cases where the public participated shall be divided into cases where no meaningful contribution happened and no substantial change the members and associations of the public could achieve on the final decision, as well as cases where the public participants could raise new, significant elements (facts, professional or legal references) which enriched the content of the decision. Statistics should be completed with case studies both on the side of best practices and on the side of failures in public participation in the EIA cases.

2. (*monitoring of the actual use of guidelines*) Implementation guidelines for the practice of public participation in EIA procedures can make EIA laws more effective under specific conditions: their content have to be revised time to time, reflecting the collected experiences in connection with the solutions suggested in them; consequential implementation of the guidelines shall be monitored, too: those authorities that have a tendency to overlook the instructions given in the guidelines (especially in priority cases) shall be consulted with, and be subject to disciplinary measures as a last resort. Naturally, if a significant number of authorities find the guidelines non-satisfactory, the respective sections of them shall be re-negotiated and changed, reinforced, re-explained if necessary.

3. (*analysing the public inputs in merit*) The analysis of and reflection on the public inputs in the EIA cases shall be divided into three parts: factual, professional and legal evaluation. The first step therefore is verification of the facts, observations the members and organisations of the public raise in the EIA cases. In case of relevance, but not satisfactory underpinning, the authority shall demand further evidence bolstering the factual statements of the public participants. The authorities should be aware, however, that the means and devices in the hands of local communities and NGOs are not always enough to raise perfect evidence – the authority shall be responsible for finishing and solidifying the meaningful facts referred to by the participants. Second, NGO experts might have new, holistic professional views, not seldom deducted from their world wide networks. The authorities shall transform these expert opinions into the standard format whenever they seem to shed new light on the case. Third, legal arguments are allowed from the participants, but not demanded. It is first of all the responsibility of the authority to evaluate legally all the facts and expert opinions, notwithstanding which stakeholders have raised them.

4. (*integrated approach of EIA laws*) EIA laws form an integral part of the whole legal system, bound to the rest of it with thousands of ties. Organic fitting to a lot of general level laws and legal principles, as well as strong interrelationship with environmental and non-environmental but closely related sectoral laws shall be ensured in all cases. From the first group we should mention constitutional legal principles, the principles of administrative law (such as the equality of the clients, furthermore, in the majority of the examined legal systems, a mandatory support for the weaker party) and principles of environmental law (the so called Rio Principles or the principles of sustainable development).

5. (*building up societal support for public participation*) In close connection with the above Point A.1, results and effectiveness of public participation in the EIA procedures should be highlighted to the decision-makers, as well as to the general public through targeted media campaigns. As we have mentioned in the main text, if there is a growing awareness of the importance of long range systematic decisions in the EIA cases themselves, that are about the near future of our natural and built environment, resources will be allocated by the politicians, state institutions, donors and public contributors to this issue. Furthermore, if the society realizes that public participation in EIA is a key contributor to its effectiveness, members and associations might gain more informational, financial and institutional support in order to flourish their capacities in these procedures. A caveat emerges here: such support should be independent from those authorities which have decisive roles in the EIA procedures, otherwise there is a danger that the participants will be “tamed”, in other words, they would tend to align their procedural moves to the needs and expectations of the authorities.

6. (*the family of EIA like legal institutions*) We have touched upon the topic of Strategic Environmental Assessment in the main text, and this topic leads us together to the system of EIA like institutions: starting from semi-official environmental assessments of the major (partly State owned) banks before their financial support decisions, through the decision of the municipality councils ensuring territory for the projects, the EIA, IPPC, several levels of sectoral permitting procedures, up to environmental supervision and the final environmental examination of facilities subject to dismantling. Such a system of interrelated EIA like legal institutions shall be made more coherent both on the level of legislation and in the practical implementation, too.

7. (*timeliness of public participation*) Timeliness of public participation needs structured, well designed procedures. Taking into consideration that the public needs more time for their substantial contributions (see those factors in the main text), notification of the local communities and the relevant environmental authorities should take place in the earliest possible time. Moreover, the tools of notification shall be selected according to the needs of the participants and not exclusively according to the available means of the authority.

8. (*ensuring better quality of expert opinions*) Perhaps the largest contradiction built in the system of EIA laws is that the Environmental Impact Study (EIS), the central document of the procedure is prepared by one of the clients, the requester. Naturally, she is the person who knows exactly what she wants to establish, where and under what technical conditions. It might (or might not) follow that she is the most aware of the environmental effects and their social-economic consequences on the site and the neighbouring zones. Even if she has the best knowledge on these, in principle, it is far from being sure that she will be willing to share this fully with the rest of stakeholders in the EIA cases, including the authorities themselves, too.

A proper controlling mechanism of the experts of the investor is therefore a key to arriving at realistic professional conclusions and bringing correct decisions in the environmental permits. Naturally, public participation is one of the main guarantees against one folded, biased EIA expert opinions, but the authorities shall additionally have a close eye on the activity of the investors' experts themselves, too. The authorities are entitled to order for additional (independent) experts in the cases, whenever doubts arouse against the professional statements in the EISs. Furthermore, a line of disciplinary laws against false, biased or outstandingly poor quality expert materials are available, too.

9. (*capacity building*) Quality and effectiveness of public participation is in a great part a responsibility of the environmental authorities, not only of the participants themselves. Authorities should assist the concerned public with factual, professional and legal-procedural

information in general (within the frames of awareness raising) and in a case specific manner, too. Financial and institutional help supports the local communities and environmental NGOs for their long term, continuous activities, gathering experiences, networking and active involvement in the relevant cases. Finally, the system of capacity building is perfect only when the authorities are especially attentive at the slightest signs of harassment, blackmailing, threatening the members and associations because of their participation in the EIA cases (these activities might be called capacity destroying, signalling the fact that they work in the opposite direction to capacity building and maintaining).

B. Lessons to be learnt by the public

1. (*regular systemic feedback on the effectiveness of public participation)* Environmental NGOs should put together the same statistics and case studies biannually, as mentioned in Point A.1. Based on their evaluation, they shall enter into discussions of the results on both sides, authorities and NGOs.

2. (*monitoring of the actual use of guidelines*) Environmental NGOs shall be aware of the content of relevant guidelines that might be relevant in public participation and also have to spread this information to grassroots organisations and local communities that take part in EIA cases occasionally. Based on the evaluation of the effectiveness of the guidelines, the community of mainstream NGOs regularly dealing with EIA cases shall initiate consultations with the relevant authorities responsible for the advancement of the content thereof.

3. (*the merits of public inputs*) Public participants shall be mindful that their contributions shall be divided into three major parts: statement (and proving, if possible) relevant facts, alternative and independent expert approaches, having taken into consideration that the Environmental Impact Study, a basis for the whole EIA procedure is generally put together by scientists and experts commissioned by the investor. All the ramifications of legal consequences of all the facts and expert opinions in the EIA cases might not be at hand for all the environmental NGOs, let alone local communities. However, in priority cases, public interest environmental lawyers might be approached for assistance.

4. (*timeliness of public participation*) All environmental NGOs and other civil participants shall be aware that legal remedies are very sensitive issues for investors because of one major reason: time. For a billion Euro worth investment, every single day delay costs a tremendous amount of money. Strategically: in those cases where the question is to build the project on the

way the investor designed it or not build it at all, there is small room for negotiating in favour of environmentally more friendly details, no major changes can be imagined, the only possible way ahead is the legal remedy. However, whenever the project leaders are able and willing to realise that certain changes are unavoidable, negotiations instead of legal remedies might be more beneficial. These negotiations shall be started way earlier than the first instance decision is brought: since that, time works against the participants and for the investor.

5. (*integrated approach of EIA laws*) The systemic approach, as briefly described above in Point A.4, can also serve well the purposes of the members and associations of the public taking part in the EIA procedures. Direct constitutional level references in individual cases might not always be successful in continental legal systems; however, legal remedies dealt with the previous B.4 point can use them, together with references to the sustainable development principles, which are mostly enacted in the primary EU laws and the national level environmental acts. Moreover, all the sustainable development principles, especially the precautionary and the polluter pays principle, have ample references in the CJEU decisions.

6. (*building up societal support for public participation* Awareness raising about and support of public participation in EIA procedures should be a priority for the strategic activities of the mainstream environmental NGOs in each country. Once the institutional frames of the relevant media activities and support to the participants are in place, the NGO community shall offer further important independent control mechanisms.

7. (*public monitoring of the official journals for learning about EIA relevant cases in time*) Members and associations of the public shall follow the communication channels of the relevant environmental authorities and local municipalities. Otherwise, they are exhibited to the good-will and preparedness of the officials in every individual case. This alertness relates not only to the narrow sense EIA cases but the whole “family of EIA institutions” enlisted in Point A.6 above.

8. (*capacity building*) Mainstream environmental NGOs might have different roles in capacity building described above in Point A.9, directly and indirectly as mediating the authorities’ efforts to the local communities. Compared to environmental authorities, a significant advantage of these NGOs is their independent position and more in-depth experience working with different local groups.

V. CLOSING REMARKS

National experiences show that despite all difficulties, environmental impact assessment remains the most important legal institution of environmental protection, and the members and associations of the public are still willing and able to spend their time and scarce resources in order to influence the content of the environmental permit for large investments with significant long-range environmental effects. Environmental authorities, not to mention the investors in the project, often fail to consider this public activity as a possible support for achieving a decision of better quality and rather try to eliminate public participation or restrict it to the legally required minimum. Our conviction is that contrary to this attitude, there is a possibility for fruitful cooperation between the local communities and the NGOs supporting them on one side, and the investor and the environmental authority on the other.

Apart from the suggestions we made in the previous Chapter IV. we highlight the importance of capacity building once more. Whenever and wherever the authorities are discontent with the quality of public participation, they should be aware that this is partly their fault. Capacity building is their responsibility primarily: public participation will result in better decisions and fruitful cooperation with the stakeholders in the long run once the environmental authority and/or the other authorities that are included in the EIA cases act in harmony with the following requirements:

- ensure all the necessary information to the public for timely and substantive participation;
- explain the importance of the project from the viewpoints of environmental protection as well as for the well-being and financial security of the concerned communities;
- support the participants in understanding all of the important professional ramifications of the case, especially with the help of the non-technical summary of the impact study;
- assist the public in finding and financing their own independent experts and environmental lawyers;
- run a fair procedure where the equal handling of all parties takes place, including the selection of time and location for the public hearing;
- consider the public comments in their decision and analyse them in the reasoning part from factual, professional (concerning several fields of expertise, relevant in the case) and legal viewpoints;

- call the attention of all participants to the possibilities and conditions of access to justice.

Public interest environmental lawyers from 14 European countries in the Justice and Environment network have a close eye on the new developments in the national and European level legal practice of environmental impact assessment.[16] They continue to strive to highlight the emerging problems of effectiveness and to collect the best practices in this field.

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[16] J&E has published so far 29 studies on several aspects of EIA on its homepage https://justiceandenvironment.org/publications/?_selection_2=environment-impact-assessment