



How can public participation in environmental impact assessments be made more effective?

A brief of recommendations based on the practical experiences of Justice and Environment



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Public participation is critical in environmental impact assessments (EIA), as members of local communities can gather plenty of facts about the site of the planned project, and environmental NGOs represent a holistic approach to the permitting procedure that otherwise may concentrate more on the economic interests of the investors and other actors in the EIA. However, the question arises of whether public participation is effective enough: are the members of the public and their organisations informed in due time? Are they given sufficient 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?

Public interest environmental lawyers from 14 European countries in the Justice and Environment network keep a close eye on the new developments in the national and European level legal practice of environmental impact assessment, and continue to highlight the emerging problems of effectiveness, as well as to collect the best practices in this field.

When planning the public participation process in the environmental impact assessment (EIA), both the public authorities and the members of the public must be aware of:

- what decisions might be taken and at which stage of the procedure this happens and the legal effect of such decisions;
- the availability of all necessary information on the procedure
- the availability of all necessary information on the project and the likely impacts thereof;
- the possibilities for the public to participate in the decision-making at each stage and the procedures to be used, the deadlines to be met;
- the options to be discussed and decided at each stage, keeping in mind that the authorities must be open enough to consider new options identified as a result of opinions and comments submitted by the public;
- how the public will be informed about any future steps in the procedure;
- the roles of the different bodies involved in the decision-making, including who is responsible for the various tasks and stages of the public participation procedure and their contact details;
- how to appeal or contest a decision, including the final decision and the development consent;

- the costs, if any, for the public to access information, participate, or contest a decision (development consent, environmental permit). Basically, no fees or charges are set for the public seeking to participate in an EIA procedure. If there are any procedural costs, a schedule and estimated amount of these costs should be made clear at the start of the public participation procedure. In addition, it must be kept in mind that even expert opinions might be needed for the public's arguments to be considered by the authorities (and courts) in merit, and the expert fee can be relatively high.

The primary responsibility of public authorities regarding public participation is to ensure all the necessary information to the public for timely and substantive participation;

- explain the importance of the project from the viewpoint of environmental protection and the socio-economic impacts thereof;
- support the participants in understanding all of the essential ramifications of the case, especially via the non-technical summary of the Environmental Impact Study;
- run a fair procedure where the fair treatment 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 about the possibilities and conditions of access to justice.

In 2024, lawyers of J&E collected their experiences in EIA procedures in Austria, Bulgaria, Croatia, Estonia and Hungary and published a paper to provide recommendations and methods for improving the effectiveness of participation in EIA proceedings. In the present briefing, based on our findings, we give a short overview which can be helpful for the members of the public and public authorities.

KEY ISSUE	RECOMMENDATIONS	
	FOR PUBLIC AUTHORITIES	FOR THE MEMBERS OF THE PUBLIC
<p><i>Timeliness of public participation</i> needs structured, well-designed procedures.</p>	<p>Set longer deadlines to allow more time for the public to be able to substantially contribute to the consultation. Notify the local communities and the relevant environmental authorities as soon as possible. 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. The notified information should be easy to find, easy to access and clearly structured.</p>	<p>Public monitoring of the official journals for learning about EIA relevant cases in time and early participation.</p> <p>Members and associations of the public are suggested to follow the communication channels of the environmental authorities and local municipalities to have the opportunity to take part in the EIA procedures already at the beginning thereof.</p>
<p><i>The merits of public inputs</i></p> <p>The minimum requirement is that the competent public authority should take due account of the outcomes of a consultation process.</p>	<p>Inputs from the public must undergo a factual, professional and legal evaluation. The first step, therefore, is verification of the facts and observations the public raises in the EIA case. In case of relevance, but not satisfactory underpinning, the authority shall demand further evidence bolstering the factual statements. 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. Furthermore, NGO experts might have new, holistic professional views, not seldom deducted</p>	<p>Public participants' contributions can be divided into the following major parts: statement (and proving, if possible) relevant facts, alternative and independent expert approaches, having taken into consideration that the Environmental Impact Study, the basis for the EIA is generally put together by experts commissioned by the applicant.</p> <p>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, public-interest environmental lawyers might be approached for assistance. Furthermore,</p>

	<p>from their worldwide networks. The authorities shall transform these expert opinions into the standard format whenever they seem to shed new light on the case. Legal arguments can also be submitted by the public and it is the responsibility of the authority to evaluate all the facts and expert opinions and arguments notwithstanding which stakeholders have raised them.</p> <p>The authority must also explain how the public's input was taken into account or why it has been omitted in the individual case.</p>	<p>involvement of independent environmental experts has to be considered.</p>
<p><i>Ensuring better quality of expert opinions</i></p> <p>The Environmental Impact Study (EIS) is prepared by the project promoter (the investor). Therefore, a proper controlling mechanism of the investors' experts is key to arriving at realistic professional conclusions and making correct decisions in the environmental permits.</p>	<p>The authorities shall keep a close eye on the activity of the investors' experts' opinion. The authorities are entitled to order additional (independent) experts in cases where doubts arise regarding professional statements in the EIS. Furthermore, a line of disciplinary laws against false, biased or outstandingly poor-quality expert materials is available, too.</p>	

<p><i>Integrated approach of EIA laws</i></p>	<p>EIA laws form an integral part of the whole legal system, bound to the rest of it with thousands of ties. Consideration of the strong interrelationship between environmental and non-environmental but closely related sectoral laws shall be ensured in all cases.</p>	<p>A systemic approach can also serve the purposes of members and associations of the public participating in EIA procedures. Direct references to the constitutional level requirements in individual cases may not always be successful in continental legal systems. However, they can be used in the legal remedies, together with references to the principles of sustainable development, which are mostly enshrined in primary EU legislation and in national environmental laws. Moreover, all the principles of sustainable development, in particular the precautionary principle and the polluter pays principle, are widely referred to in ECJ rulings.</p>
<p><i>Capacity building</i></p>	<p>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,</p>	<p>Mainstream environmental NGOs might have different roles in capacity building, directly and indirectly as mediating the authorities efforts to the local communities. Compared to the environmental authorities, a big advantage of these NGOs is their independent position and more in-depth experiences with working with different local groups.</p>

	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).	
<i>Developing and updating guidelines for PP in EIA</i>	<p>Experiences show that no specific tools constitute best practices applicable to all cases. The most appropriate techniques of involving the public into environmental decision-making depend on the circumstances of the case, and practices may need to be adapted to meet the particular context.</p> <p>Implementation guidelines for the practice of public participation in EIA procedures can make EIA laws more effective under specific conditions: their content has to be revised from time to time, reflecting the collected experiences in connection with the solutions suggested in them; consequential implementation of the guidelines shall be monitored.</p>	Environmental NGOs shall be aware of the content of relevant guidelines that might be relevant in the field of public participation and have to spread out this information to grassroots organisations and local communities taking part in EIA cases. Major environmental NGOs regularly dealing with EIA cases shall initiate consultations with the relevant authorities responsible for the advancement of the content thereof.
<i>Regular systemic feedback on the effectiveness of public participation</i>	A general evaluation of the effectiveness of public participation should be made by the authorities regularly. The assessment might consider the effectiveness of the procedures in facilitating the engagement of the public and its effectiveness in using that engagement in the decision-making process.	Based on their own cases, environmental NGOs should put together their statistics and case studies on public participation, and they shall discuss the results with authorities and other NGOs.
<i>Building up societal support for public</i>	Results and effectiveness of public participation in	Awareness raising about and support of public

<p><i>participation</i></p>	<p>the EIA procedures should be highlighted to the decision-makers, as well as to the general public through targeted media campaigns. If there is a growing awareness of the importance of long-range systematic decisions in the EIA cases, which 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 to flourish their capacities in these procedures.</p>	<p>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.</p>
<p><i>Management of resources</i></p> <p>Both public authorities and the public have limited time and resources, flexibility in the choice of tools and techniques and tailoring them to the nature of the decision and its context will increase the effectiveness of the public participation procedure.</p>	<p>The tools and techniques used should be proportional to the complexity and potential impact of the decision.</p> <p>Selection of time and location of public hearings 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 life will be disturbed and whose real estates might lose a great part of their values soon, is not a pleasant experience, not to mention that the investor will have to cooperate in certain aspects with their would-be neighbours. Long- standing legal disputes, public complaints</p>	<p>For the public we also suggest to elaborate an action plan for participation which covers</p> <p>Possible action (legal and non-legal steps)</p> <p>Timeline</p> <p>Addressee (authority, court, operator, experts, local government etc.)</p> <p>Public concerned, stakeholders involved (e.g. NGOs, municipalities, community members, volunteer experts)</p> <p>Resources required (time, cost, skill)</p> <p>Responsibility/focal person - contacts</p>

to several authorities might mean a nuisance for the company and could negatively influence its social and economic public image and good-will.

For activities of high potential environmental significance or affecting a large number of people, more elaborate procedures may be appropriate to ensure effective public participation. Ensuring the opportunities for the public to submit written comments, public inquiries or hearings (more formal, including submission of formal evidence and the possibility for cross-examination in many countries) or public debates or meetings (less formal, possibly with facilitated group processes) may be appropriate. The public authority should have the power and resources to organize a hearing in any case it considers appropriate to do so, including upon request from the public.

The EIA is one of the most important legal tools of environmental protection. Despite all the difficulties, the public is willing to influence the content of the environmental permit for investments with significant environmental effects. Public authorities and the investors in the project often fail to consider the public's contribution as a possible support for achieving a better decision and instead try to eliminate public participation or restrict it to the legally required minimum. In our view, there is a possibility for fruitful cooperation between the public (including locals and the environmental NGOs supporting them), the investors and the competent public authorities.



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