

Visibility Actions and Training on the Implementation of the Aarhus Convention in Malta

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1. Introduction

With the purpose of strengthening environmental democracy and improving the implementation of the public's environmental rights, the Malta Environment & Planning Authority (MEPA) and the Austrian Environment Agency (Umweltbundesamt) have compiled tailored guidelines on the rights and obligations related to the Aarhus Convention. These guidelines offer practical and tailored advice for civil servants, for industry and for the public to ensure that public authorities are accountable for environmental decisions.

The guidelines for civil servants and for the general public were presented during visibility actions organised for civil servants (24.-25.03.2009) and for NGOs, local councils and the public (26.03.2009) in Malta. The initially foreseen training and awareness-raising seminars have been enhanced to the extent of visibility actions, in order to address as many civil servants and members of the general public as possible, in compliance with the core contents of the Aarhus Convention. Nominated civil servants from public agencies and institutions, the general public and its representatives (11 NGOs, the Association of the Local Councils and all 68 Local Councils in Malta) were invited. Of these, 18 civil servants, 1 NGO, 18 Local Councils and 3 members of the general public confirmed their attendance. The visibility actions were attended by respectively 18 civil servants, 2 representatives of the NGOs, 8 representatives of the Local Councils and 3 members of the general public.

In addition to the circulated invitations, the visibility actions were advertised in advance to the general public in the Sunday Times of Malta on 22.03.2009. The guidelines for the general public were also daily advertised through six to eight airings of radio spots in English and Maltese on the radio stations Super One and Bay Radio during the period of 26.03 – 02.04.2009, coinciding with the visibility action for the general public. An invitation to the press for all three seminar days was issued on 23.03.2009. A press release on the visibility actions and the guidelines was issued on 26.03.2009.

The visibility seminars aimed at clearly informing the stakeholders on their rights / obligations, respectively – the right to obtain environmental information, to participate in environmental decision-making and to access mechanisms of judicial redress in environmental matters. Amongst other issues, the guidelines discuss what environmental information can be requested by the public, and how it is to be made available by public authorities. They also inform the public



as to what information cannot be disclosed, as per the provisions of the Convention and related EU and national legislation.

Further to the basic contents of the guidelines, the visibility seminars focused also on specific legal and practical details, case examples and discussions. In particular, a case study on the possible siting of a landfill facility was used to illustrate the three pillars of the Convention, though other examples were drawn in to highlight specific points of best practice. In the following section, a summary is offered of the main issues presented to the attention of the participants during the 3-day visibility seminars.

During the visibility actions, the pilot inter-institutional environmental web portal www.ambjent.org.mt initiated and developed under the auspices of this Twinning project was also presented and discussed in detail.

Another relevant initiative that was presented, although not under the auspices of the current project but advantageously coinciding with the visibility seminars and allowing for synergies to be exhausted, was the promotion at both visibility seminars of the consultation strategy on the implementation of the Water Framework Directive (WFD) in Malta. The promotion included a summary of the key elements of the WFD, the milestones of the implementation and of the current state achieved in Malta, i.e. identification of the main issues of concern and the key measures. This step will be undertaken in the context of active involvement of civil servants and the general public, within the framework of a forthcoming consultation process which will be launched in April 2009, and whose output will be integrated in the implementation strategy. A number of comments were made by the participants already during the visibility seminars, however not directly addressing the scope of the seminars. The public, while being assured that such comments were being noted by the speaker to be included in the consultation process discussed in the presentation, were informed that this was not the appropriate forum for these comments.

All presentations, relevant links and respective guidelines are attached to this document. These materials will be recorded on CDs and distributed among the participants within two weeks afterwards was announced at the visibility seminars. The guidelines for the general public are also available online and are free of charge:

see <http://mepaweb/Environment/index.htm?aarhus/mainpage.htm&1>.



2. Presented Basic Contents of the Guidelines

The following contents of the guidelines for civil servants and the general public were presented, tailored to the different perspective of each visibility seminar:

Access to Environmental Information and Related Access to Justice in Environmental Matters

1. Summary of the key rights of the general public granted and the obligations for civil servants stipulated with regard to the Access to Environmental Information in the Aarhus Convention.
2. Summary of the key Maltese legal provisions for Access to Environmental Information; new approaches for addressing exceptions for Access to Information, accompanied by helpful practice hints.
3. Key contents of the European Pollutant Release and Transfer Register (EPRTTR) as defined by the Convention.
4. Analysis of key legal justice remedies in relation to Access to Information and some practical considerations in this regard.
5. Best-practice examples throughout these topics.

Public Participation in Environmental Decision-making and Related Access to Justice in Environmental Matters

1. Analysis of the key provisions of the Convention and in the Maltese law for Public Participation in Environmental Decision-making, survey of Public Participation and of new ways to develop multi-participative strategies.
2. New best practice concepts for EIA, SEA, permitting and legislation, e.g. how to ensure that indeed the public concerned is entirely addressed, reasonable timeframes for public participation, involvement of stakeholders at an early stage, etc.
3. Suggestions on how to explain how to address public participation discussed at the example of a regional landfill proposal.
4. Ideas on how to measure success and improve public participation schemes, e.g. to obtain comments, whether all the affected public had been informed and able to participate in the preparation, what the reasons could be for the public to be satisfied or not with the public participation, etc.
5. Indication of the Maltese procedures with regard to the framework of related Access to Justice for procedural decisions, referring also to EIA, SEA, permitting and the development of legislation.
6. Best-practice examples.



3. Discussion

Below, a discussion is offered of the questions raised by the participants during the visibility actions.

3.1. Visibility seminars for civil servants, 24.-25.03.2009

1. Whether environment consultation reports should be released in the context of access to environmental information under the Aarhus Convention:

A consultation with a legal expert is recommended to be undertaken. Should the report address not solely environmental issues, a court / judge should decide the extent of the information to be released.

2. Whether the names of the objectors should be given on the case officer's report or whether protection considerations may apply:

In case the objector is a private person, data protection and personal security considerations apply so long as this does not undermine the public interest, i.e. for example, the name of the objector should not be stated in the case officer's report unless this is in the public interest. In the case of the objector being e.g. an NGO, the name of the institution should generally be given in the report.

Further to this, in the case of environment information referring to personal data, the consent of the person concerned should generally be obtained for releasing this information. If the information, including the personal data in question, is held by another institution than the one to which the request for information has been addressed, the former can deny access to the information. For example, if an environmental report contains personal data related to environmental pollution (e.g. lead levels in the blood of a particular individual), it is noted that in case an organisation holds this report, the organisation is entitled to deny access to the report, in view of it containing personal data. In the event that consent is obtained from the individual to access this data, then the individual should be fully informed as to how it is or will be used.

3. When applying for licences, hunters supply their personal information. In the event that an NGO requests this information under the provisions of the Aarhus Convention, is the NGO permitted to obtain this information?

In this case, the responsible institution (respective Ministry) should release only the total numbers of the licences applied for/granted, but not the personal data of the individuals.



4. Whether companies funded primarily by public funds should release information free of charge to the government, or can a cost can be applied?

A cost in this case can only be applied in the event that the company in question is considered a private consultant to the government or has otherwise incurred costs in providing this information that exceed those costs that are normally incurred by Government bodies when releasing information.

5. Whether a distinction exists under the Aarhus Convention between the tools employed to generate/view environmental information and the information per se (e.g. the software applied to generate/view maps of pollution and the pollution information per se)?

By way of best practice, in the case of information technology programmes, the tools (i.e., the software) cannot generally be disseminated unless the software is accompanied by a licence. Information that is generated by the software that is not subject to the licence can be freely disseminated.

6. Whether a NGO may request environmental information/an investigation of environmental issues by the competent authority, which are not treated within the EIA

This approach is not eligible, because the scope of the issues, information and impacts to be considered within the EIA is identified during the scoping review procedure prior to the EIA. As a general rule public authorities have already given the opportunity to consultees to identify all EIA-relevant issues as part of the scoping procedure. Hence, raising new issues upon the completion of the EIA process is to be discouraged on the basis that they should have been raised previously.

7. Whether the Boards within MEPA are independent from MEPA?

The Planning Appeals Board, among the Boards within MEPA, is independent from the institution.

8. Whether internal communications between parts of the same organisation (e.g. between the Environmental Protection Directorate and the Planning Directorate) are exempt from public disclosure under Aarhus?

Such communications are indeed exempt from public disclosure under the provisions of the Convention.



3.2. Visibility seminars for the general public, 26.03.2009

1. Whether information on chemicals used by a company may be released

Companies, which are subject to the provisions for disclosure of this type of information, such as the European Pollutant Release and Transfer Register (EPRTTR), are obliged to provide this type of information (free of charge). Those that are not participants in EPRTTR must also release such environmental information unless they can use a valid legal basis for exception (e.g., to protect intellectual property rights or commercially confidential information).

The public were given further opportunity to raise questions, but no further issues were raised.

4. Conclusions

4.1. Access to Environmental Information

1. By facilitating the access to environmental information through the launch of the pilot inter-institutional environmental web portal <http://www.ambjent.org.mt> within less than a year, the practice in Malta sets a commendable example on international level of fast action towards an optimal implementation of the Aarhus Convention under its first “pillar”.

2. A further example of best practice on international level is the information and update system for the progress of major developments and of development permit applications, offered by MEPA. Full details on applications are provided for public access, including even complaints entries. For major developments, any interested member of the public is automatically electronically updated once he/she has subscribed for this service. This approach illustrates an exceedingly facilitated and timely access to information for the general public, allowing consequently for equally timely participation in e.g. public consultations.

4.2. Public Participation in Environmental Decision-making

1. In Malta, commendable practice on public consultation and participation exists in the case of EIA procedures. The procedures are transparent and clear and detailed. A further valuable attribute of the EIA procedure in Malta is the tendency of formulating policy options, i.e. of following the principle of aiming at alternatives (options). These techniques and approach are recommended to be applied also to SEA procedures, which have recently been introduced within the environmental permitting in Malta.



2. It could be recommended to introduce sustainability principles (e.g. to consider the reproduction rate of renewable resources when employing them) in the SEA, in line with new developments in the strategic international context.
3. A further consideration recommended in the field of public consultation refers to an early launch of negotiations on conflicting issues between the parties involved. Following this strategy will provide for preventing grave disagreements in the end of the project. A commendable option in cases of strong contradicting interests may further suggest to not directly include the parties themselves, but to entrust the negotiation process to neutral representatives, at least in the first instance, in order to facilitate the achievement of a joint proposal.
4. For small countries like Malta it should not be excluded that NGOs might reach a point of “consultation fatigue” due to the small number of NGOs and the large spectrum of issues to be consulted on in public.
5. A fundamental prerequisite for successful public participation is to build trust among the parties. One of the best ways to involve stakeholders is to constitute “representative consultative” bodies, for example, stakeholder committees to draft legislation. Electronic or physical rooms for discussion also help.
6. Also, the positive effect of the media employed actively and as early as possible in the process could be considered, i.e. already in the pre-decision phase of environmental approvals.
7. It could also be considered that stakeholders often might not distinguish between the results of the consultation process and the process itself, transferring their attitude to the achieved process results on the quality of the process.
8. It could be taken into consideration that incentives and even drafts of future pieces of legislation on public consultation for sectors of distinct trade interests would first emerge from the industry (ideally in consultation with other key stakeholders), due to the imminent relevance of the development of the legal framework for the industrial sector.
9. Generally, it is recommended to consider training in negotiation skills for key MEPA staff, in order to facilitate them in dealing with issues related to the implementation of the Aarhus Convention and in therefore preventing court-based procedures.



10. It is also generally recommended to evaluate participation exercises afterwards, in order to enable identification of on strengths to further build on. A key question to be addressed to the general public in this context is whether the public understands the reasons for making the plan/project/ programme, in order to ensure that a clear distinction is made between the process and the result.

11. In case of uncertainty whether to apply the SEA regulations or not, it is recommended to opt for applying them, because courts tend to interpret the term “plans and programmes” widely.

4.3 Access to Justice in Environmental Matters

1. While the Development Control Commissions (DCCs), MEPA Board and similar entities need not be independent from MEPA, since they represent an integral part of the permitting process, the Planning Appeals Board should further remain an independent body. This recommendation is addressed also to the bodies designating the members of the Planning Appeals Board.

2. In terms of the third “pillar” of the Convention, namely Access to Justice in Environmental Matters, the suitability of the Appeals Board as an instrument should be emphasised, because they represent a cost-efficient means for legal redress (since the procedure does not require the employment of a lawyer and is not subject to the legal formalities of a Court) and from the legal point of view, they can offer a pre-stage to judicial review in this process.

5. General Conclusions

1. It is generally noted that Malta is broadly in alignment with the legal provisions of the Aarhus Convention. In the event that the Convention may not be applied, the right of appeal is provided for within the MEPA institutional mechanisms that can be utilised, and finally, judicial review is provided for, even though it is not suggested that the latter is used before other means for remedies are exhausted.



2. The generally low number of the participants having attended both visibility seminars, despite the publicity employed, may suggest that in the epoch of multimedia, seminars may often not be the only form to disseminate knowledge and to induce discussion, e.g. television and internet broadcast could be considered to be a more appropriate option for this purpose.

References

Official Journal of the European Union, Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (Aarhus). L 041 , 14/02/2003 P. 0026 – 0032 (28 January 2003)

Official Journal of the European Union, 17 November 2003b, Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information, L 345 , 31/12/2003

Official Journal of the European Union, Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE). L108, Volume 50 (25 April 2007)

