

# Public Participation in Waste Management Related Decision-Making

Waste Management

Public Toolkit

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### Public Toolkit

#### Introduction

The purpose of this toolkit is to make an effort to **empower the citizens and civil society organizations** in order to be able to participate more effectively and with more capacities in environmental decision-making procedures, with special regard to waste management related processes.

Waste management decision-making is special in many regards.

First of all, it embraces a number of **very different decision-making types**, ranging from legislative through strategic to individual. Laws on waste management, recycling strategies or administrative permits for landfills are all important and relevant components of the entire waste management decision-making system and each can trigger a public participation action.

Secondly, waste management decisions are quite **complicated and interrelated**, with relationship also to production cycles and the overall economic policy-making. This makes this field a **highly politicized and technically complicated** one where public input is frequently limited to the role of users of waste management services instead of being an equal partner in decision-making procedures.

And finally, waste management decisions are often **define environmental policy for a longer time**, setting targets for 5+ years or even longer, defining strategies for waste management for large areas for decades and defining locations for long term investments that are robust elements of the entire waste management landscape.

With this in mind, we would like to give a brief overview of the public participation opportunities that are guaranteed by the European Union's waste management related legislation.

#### The Aarhus Convention

[The Aarhus Convention](#), as the "mother" of all public participation legislation in the UNECE area and a great inspiration for EU access legislation sets the baseline for participatory rights.

Article 6 sets requirements for public participation in **decisions on specific activities**. These decisions are those that

- (a) affect any of the activities / installations that are listed in Annex I of the Aarhus Convention, or
- (b) affect any activity / installation that may have a significant effect on the environment if so defined by national law.

The rights guaranteed for the public by the Aarhus Convention are the following<sup>1</sup>:

- the public should be informed early in an adequate, timely and effective manner, amongst others, of the proposed activity, the opportunities for the public to participate and the time and venue of any envisaged public hearing;
- the public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in and for the public to prepare and participate effectively during the environmental decision-making;
- public participation should be early when all options are open and effective public participation can take place;
- access should be given to the public free of charge and as soon as it becomes available, to all information relevant to the decision-making and the description of the potential environmental impacts of the planned activity;
- the public should be allowed to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity.

Article 7 sets requirements for public participation during the **preparation of plans and programmes relating to the environment** (and, certainly, relating to waste management as well). The rights guaranteed for the public by the Aarhus Convention are the following:

- within a transparent and fair framework, the necessary information has to be provided to the public;
- the public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in and for the public to prepare and participate effectively during the environmental decision-making;
- public participation should be early when all options are open and effective public participation can take place.

The Aarhus Convention is generally applicable and quite universal in its scope; therefore it is the first question that has to be decided: is the Aarhus Convention applicable in the case? The answer is yes in cases where strategic decisions are made or individual (activity or installation related) decisions are made that relate to the items listed in Annex I of the Convention.

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<sup>1</sup> This is a brief summary of the respective provisions only, therefore we recommend everyone interested in the detailed requirements to read the full text of the Aarhus Convention on the website of the UNECE: [www.unece.org](http://www.unece.org).

## The Public Participation Directive of the EU

The so-called [Public Participation Directive](#)<sup>2</sup> of the EU has introduced the requirements of the Aarhus Convention into EU law. This Directive again applies to the permitting procedure of those activities / installations that fall under either the Environmental Impact Assessment (EIA) or the Integrated Pollution Prevention and Control (IPPC) regime of the EU.

This directive guarantees the following rights to the public:

- the public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures;
- the public shall be entitled to express comments and opinions when all options are open before the decision is taken;
- reasonable time-frames for the different phases of public participation shall be provided, allowing sufficient time for informing the public and for the public concerned to prepare and participate effectively in environmental decision-making.

This directive is applicable in those cases where an SEA is required for the preparation of a plan or programme, or an activity or installation falls under the scope of the EIA or the IPPC (presently called Industrial Emissions) Directive.

## Selected Waste Management Directives

In the following section, we will focus on how sectoral waste management directives (regulating general waste management or specific streams of waste e.g. mining waste or specific activities) regulate public participation.

### The Waste Framework Directive

The [Waste Framework Directive](#)<sup>3</sup> is the general, overarching EU directive that regulates the **basic frameworks of waste management** within the Union. It devotes relatively little attention to public participation, also due to the fact that these rules are to be found in the Aarhus Convention, the Aarhus Directive, and the sectoral waste management directives. It says the following:

- the general public shall have the opportunity to participate in the elaboration of the waste management plans and waste prevention programmes, and have access to them once elaborated;
- the plans and programmes shall be placed on a publicly available website.

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<sup>2</sup> Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC.

<sup>3</sup> Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives

The Waste Framework Directive only requires public participation in connection with planning and programming in waste management, therefore a reference thereto is only relevant in those cases.

### The Incineration Directive

The [Incineration Directive](#)<sup>4</sup> regulates the thermal treatment of wastes in the EU. It contains a few provisions that regulate public participation in this very sensitive field often stirring up public resistance, i.e. the location of new waste incinerators and the related permitting processes.

- applications for new permits for incineration plants shall be made available at one or more locations accessible to the public, such as local authority offices, for an appropriate period to enable it to comment on them before the competent authority reaches a decision;
- that decision and any subsequent updates shall also be made available to the public.

In addition to this quite brief regulation of public participation, the directive also contains **reference to existing / operating incinerators** that requires the following:

- for incineration plants with a nominal capacity of two tons or more per hour, an annual report provided by the operator to the competent authority on the functioning and monitoring of the plant shall be made available to the public;
- this report shall give an account of the running of the process and the emissions into air and water compared with the emission standards.

The Incineration Directive is a good tool to enforce public participation regarding both planned and existing incinerators.

### The Mining Waste Directive

The [Mining Waste Directive](#)<sup>5</sup> regulates all those wastes that generate from mining and other **extractive or related processing activities**. This contains a quite detailed regulation of public participation opportunities, probably because this area (generation of wastes from extraction) is also a highly sensitive issue, giving rise to many local environmental disputes.

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<sup>4</sup> Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste.

<sup>5</sup> Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC.

- the competent authority (environmental authority or mining authority) shall draw up an external emergency plan specifying the measures to be taken off-site in the event of an accident;
- the public concerned has to be given early and effective opportunities to participate in the preparation or review of the external emergency plan;
- the public concerned has to be entitled to express comments within reasonable time frames;
- information on safety measures and on the action required in the event of an accident shall be provided, free of charge and as a matter of course, to the public concerned;
- the public shall be informed, by public notices or other appropriate means, such as electronic media where available, of the procedure for granting a permit, early in the course of the process;
- the main reports prepared by the industrial operators transmitted to the competent authority have to be made available to the public concerned;
- the public concerned shall be entitled to express comments and opinions to the competent authority before a decision is taken.

The Mining Waste Directive can be relied upon in case a competent authority is making a decision upon a permit application, or prepared an external emergency plan or is sent a report by the mining operator.

### Conclusion

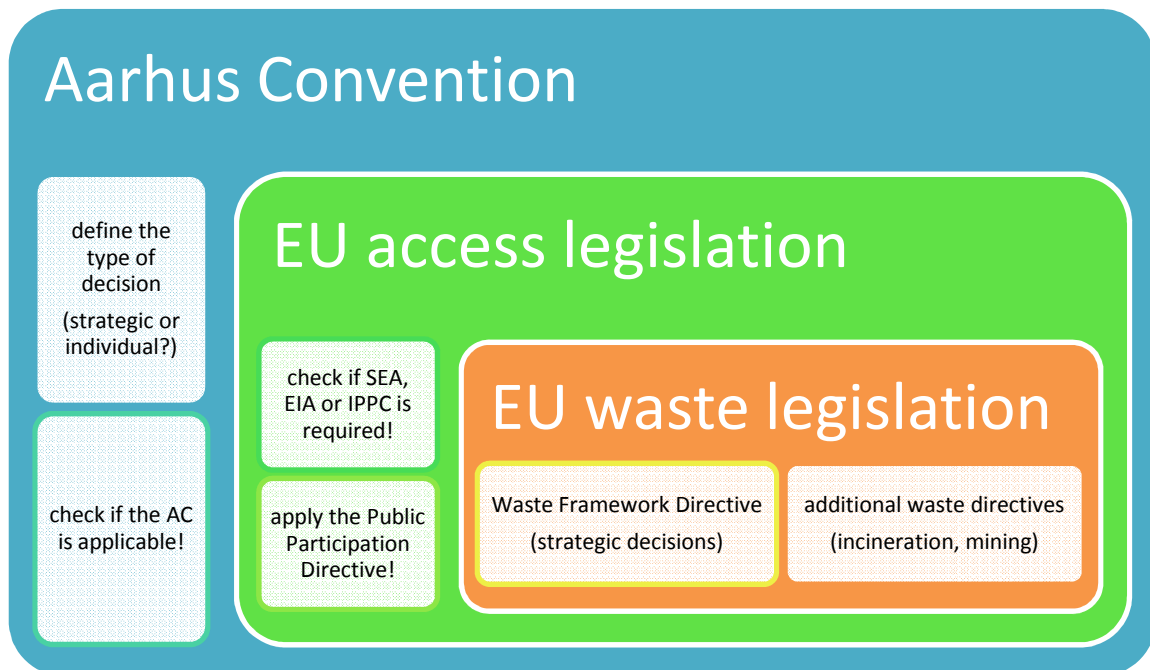
Public participation in environmental decision-making is essential because public input makes decisions better and generates more buy-in in the society as well as contributes to the transparency and accountability of the government.

Public participation in waste management related environmental decision-making is even more crucial for the waste management decisions

- are made for a long term and are not easy to be modified within a short period of time;
- involve larger amount of money either as direct investment into facilities or as shared burden on manufacturers and/or consumers;
- have diverse implications on the current economic model of production – distribution – consumption.

The most promising legal strategy for the public to participate in waste management related decision-making is the following:

# Aarhus Convention



It is crucial to understand for the public that whenever a strategic or individual decision is to be made in the realm of waste management, there are multiple legal instruments that support public participation. The Aarhus Convention, the respective EU norms on EIA, IPPC and public participation, the sectoral EU norms on waste management as well as the national legislation on waste management and public participation can be relied on simultaneously, parallel to each other. This combination of multiple references to existing legal instruments on the one hand helps strengthen the legal basis of our public participation and on the other they raise the capacity of the public, both the individuals and civil society organizations.

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