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FOR ALL

# Green Week satellite event 2013

Aarhus Convention 15th Birthday  
15 years of opening up governments and the EU



# The Aarhus Convention

- Signature 1998
- Entry into force 2001
- 3 pillars: information, participation, justice
- Making an impact for 15 years (before force even)



# Impacts

- Legal
- Political/Cultural/Mental
- Economic/Environmental



# Legal Impacts

- Through cases (not inevitably via court cases) and rights
- A2I: indeed there are impacts but nearly impossible to track precisely
- Milieu 2007: moving away from culture of secrecy
- PP: chance for input but not necessarily a real impact on decisions
- Milieu 2007: greater openness, transparency and accountability
- A2J: ultimate tool/ultimate point in time, most obvious impacts
- Milieu 2007: changing institutions and procedures as little as possible



# Political/Cultural/Mental Impacts

- Model for other sectors, for other levels of decision-making, for other regions
- Culture of openness
- Slovak Brown Bear Case: interpret to the most extent possible...
- Non-regression (ACCC Case 2004 No. 4 Hungary, Simple State Government Plan)



# Economic/Environmental Impacts

- Real economic impacts of wide access vs. restricted access
- Maastricht 2012: environmental harm is negative externality, judgment can be public good, injunctive relief as positive externality, standing of NGOs positive economically, BAU is negative, need for a new directive but rewritten
- Disparity and uneven playing field, but more importantly, legal uncertainty matters
- Better environment through cases of access
- C-115/09 Trianel: coal fueled power plant, T-396/09 Milieudefensie: EC approval of postponement by the Netherlands to meet annual limit value for NO<sub>2</sub>



# Justice & Environment Reports

- 2006: insufficient clarity re application of AC in domestic law, breadth of legal standing (procedural and substantive rights) of NGOs, criteria of legal standing
- 2007: need for an A2J Directive but not restricting NGO rights
- 2010: very different interpretation and application by Parties, A2J Directive needed
- 2012: A2J Directive benefit for all (almost all)



# EU and UNECE Reports

- 2002: Öko-Institut: public interest actions and NGO lawsuits, positive role and considerable benefit, new directive suggested
- 2003: reasoning by EC to the Draft Directive: clearing stereotypes, stressing benefits, relying on CSOs
- 2007: Milieu: impacts of the AC (as per above)
- 2012: Darpö: need for a directive, wide access, lenient conditions, CSO heaven
- 2012: EC: Communication „Improving the delivery of benefits...” de facto talks about an A2J Directive
- 2013: UNECE: not about the impacts but on the UN infrastructure





# Request for Internal Review

- J&E 2010: very restrictive conditions
- CJEU 2012: EU institutions are bound by AC, AC prevails over EU Regulation, not in line with the Aarhus Convention (measures of individual scope)
- CJEU 2014?: EPAW against EC (legally binding effects)



# Conclusion

- Obvious impacts and hidden impacts (attribution vs. contribution)
- Long term, systemic, cross-sectoral and global impacts
- Local and regional problems of implementation
- Clear immediate next step, more blurred future