

# Expert group on public participation

First meeting, Geneva, 7-8 July 2009

## Key elements of public participation procedures from a practical perspective

By Kerstin Arbter

### 1 Interpretation of "the public concerned"

Definition in Art. 2 (5.):

*"The public concerned means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest."*

- In practice "having an interest" **needs a broad interpretation** of the public concerned: it is hardly possible to prove that anyone has no interest if he/she claims to have an interest.
- You could start with a **brainstorming** to find those **who could have an interest** and try to cover the complete range of interests. That often goes beyond environmental interests. Many environment related projects, plans, programmes, policies and legislation also touch social and economic interests. Involving environmental, social and economic interests goes in line with sustainable development. The interest groups concerned should be involved in a well-balanced way.
- We usually differ between the **public at large** and the **interest groups concerned** (NGOs, chambers – which we call the organised public). For more abstract topics, where the public at large is not directly affected, we involve the organised public more intensely e.g. at Round Tables, and we involve the public at large less intensely, e.g. by consulting them on draft plans, programmes or policies. We have good experience with different **levels of intensity** of the involvement.
- When defining the public concerned you should think of those who are **necessary for implementing** or applying the plan, program or policy, because they will be needed afterwards for implementing the measures.
- You should also think of those who could **hinder the decision**, e.g. strong lobbying groups or those who could influence the decision makers, and you should also include **critical voices**, as far as they contribute positively. They will voice their opinion anyway. Therefore it is recommendable to discuss with them early, to try to understand their concerns, to take them into account and to find compromises.



- A tricky point is to involve the **hard to reach**. Usually we differ between two groups:
  - those who are willing, but unable to participate (e.g. children, older people, migrants, handicapped people) and
  - those who are able, but unwilling to participate (e.g. because they have made bad experience, they have no time, they see no benefit in participating).

At least, you should try to involve their representing organisations.

## 2 Notifying the public concerned

Provision in Art. 6 (2.)

*"The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, inter alia, of ..."* several details

- The **means of communication** should be **adjusted** to the target groups, also as regards language.
- **At least, 2 different media** should be used, of which one is the internet.
- Using the **internet alone is not sufficient**, because those who do not use or do not want to use the internet are systematically excluded. In Austria, only 2/3 of the population use the internet, but not all of them would like to submit comments via internet.
- There are **many possible means** of informing the public: personal talks (at local level), meetings, workshops, events, exhibitions, road shows, folders, articles, websites, CDs, newspapers, TV-radio-broadcasts etc. They should be used **as manifold as possible**, to increase the chances to actually reach the target groups.
- **Example of Vorarlberg**, the most western of the nine Austrian provinces: They announced the consultation for their draft waste management plan via a press conference, a TV-programme, the most popular regional daily newspapers, the website of the waste management department, the home page of the regional administration of Vorarlberg and the official journal of the administration of Vorarlberg.
- Another good practice example is the internet portal of the **EU Commission** [europa.eu.int/yourvoice](http://europa.eu.int/yourvoice), where all consultation processes are accessible at one central website.
- A special service would be a **newsletter subscription**, where you could subscribe the topics you are interested in and every time when a new consultation process in these topics starts you get an e-mail.
- The interest groups concerned should be **informed actively**, by e-mail or mail about public participation processes. This also means to keep the distribution lists up to date. You should at least inform umbrella organisations of NGOs and ask them to distribute the information amongst their members.



### 3 Reasonable timeframes including early opportunities for participation

#### 3.1 Reasonable timeframes

Provision in Art. 6 (3.)

*"The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making."*

- Reasonable timeframes are important **throughout the** public participation **process**: for informing, consulting and cooperating with the public. However, they are **especially important for the submission of comments** to drafts of plans, programmes and policies.
- The Austrian standards of public participation<sup>1</sup> propose **6-12 weeks** as appropriate timeframes for consultations in most cases **+ 2 weeks** extension in the **main vacation periods**. The EU communication on minimum standards of consultation KOM(2002)704 specify 8 weeks time for consultations, the British "Code of Practice on Consultation" 12 weeks.
- These timeframes might seem long, but in practice you have to take into account that **submitting comments takes time**:  
First, the public does not wait for the consultation. They need to prepare and find time to participate. They have to organise the documents, they have to read them, they have to discuss them, sometimes they have to collect expert opinions and to coordinate their submissions. All of this takes time.
- You can support the time management of the public, if you **announce** in advance that a draft will be published for consultation in some weeks.
- I have experienced that reasonable timeframes **increase the quality of the submissions**.

#### 3.2 Early opportunities for public participation

Provision in Art. 6 (4.)

*"Each Party shall provide for early public participation, when all options are open and effective public participation can take place."*

- Public participation needs **room for manoeuvre**. Public participation is senseless if decisions have already been taken – officially or unofficially.
- At the latest, the public should be involved when a **draft** of the plan, programme or policy has been **elaborated**. But in practice this is often **too late** for effective participation, because:

<sup>1</sup> Standards of Public Participation (2008; adopted by the Austrian Council of Ministers on 2 July 2008); [www.partizipation.at/standards\\_oeb.html](http://www.partizipation.at/standards_oeb.html)



- many smaller decisions have already been taken by that time,
  - we often face time pressure at this time and only minor changes are possible and
  - often the drafters of the plan, programme or policy are convinced that they have already found the best solution and sometimes their minds are not open and flexible anymore to take new ideas on board.
- I have made good experience with **involving the public when the drafting of the plan, programme or policy starts**. It might not be possible to involve everybody in the drafting process, but at least you could invite the interest groups concerned to working groups to elaborate a common draft, which is publicly displayed to the public at large afterwards. This early involvement of interest groups makes it easier to take the inputs into account, to benefit from the ideas and creativity, to develop mutual understanding of the problem and of the solutions and it increases the chance to find consensus on the final solution.
  - Some argue that if there is no draft available yet, they could not involve the public, because they need something to discuss about. However, there are methods to involve the public earlier, e.g. the **world-café-method** to collect ideas or exchange opinions about the status-quo or the **round table method** to draft a plan, programme or policy cooperatively.

## 4 Access to information in the context of public participation procedures

- Access to information is a **basic condition** for public participation.
- The information provided should be **balanced**. You should present different aspects of the topic and avoid any manipulation. The range of expert opinions should be covered as fully as possible.
- The information should be **tailored** to the target groups. The means of communication should be **adjusted**.
- You should provide **barrier-free access to information**. Barriers could be manifold: the information is too complicated or too technical, it is not understandable for migrants, it is not good to read or to hear, it is hard to find, it takes too much time to get the information that is interesting, the information is not provided long enough or the information is not trustworthy.

## 5 Taking due account of comments received

Provision in Art. 6 (8.)

*"Each Party shall ensure that in the decision due account is taken of the outcome of the public participation."*

- Taking due account of the comments received is one of the **most important** success factors for public participation.



- The Austrian standards of public participation provide the following **definition** of taking into account:  
*'Take into account' means that you **review** the different arguments brought forward in the consultation from the technical point of view, if necessary **discuss** them with the participants, **evaluate** them in a traceable way, and then let them become part of the considerations on the drafting of your policy, your plan, your programme, or your legal instrument.*
- Two useful methods to treat the comments traceably are:
  - To draw up a **table** where the submitted arguments and the way they have changed the draft are documented. If some arguments were not taken on board, reasons should be given why they have been rejected.  
This is a good method when you receive a lot of comments, because similar arguments can be clustered in the table.
  - To **integrate** the comments directly in the draft text using track changes to make them visible.  
This is a good method, when the wording of texts is important, e.g. dealing with legislative proposals.
- The Austrian standards of public participation also recommend to write a **report on the consultation process**, in which all the comments received should be documented, as well as which arguments have been accepted in the final decision and which not and why not. The report should be **published** as quickly as possible after the final decision has been taken. The report proves that the comments are **taken for serious**. It supports the transparency and the credibility of the public participation process and it makes the decision more traceable.
- **Another method** would be to meet with those who submitted comments, to discuss the comments and to explain which arguments will be taken on board and which will not be included and why not.
- In many cases the **politicians** will take the final decision on the plan, programme or policy. Public participation does not interfere with their democratic legitimacy. However, it is their **responsibility** to give transparent reasons for their decisions, especially when they do not include all results of the public participation process in their decisions. I have experienced that people do not always expect that politicians take every single comment received on board, but they do want to know at least, why they have decided in the one or other way.
- If the public do not receive any feedback to their inputs, they can be easily frustrated. On the other hand, if you take the comments received traceably into account, you are **on the road to success** of effective and efficient public participation!

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The Austrian standards of public participation are available on:  
[www.partizipation.at/standards\\_oeb.html](http://www.partizipation.at/standards_oeb.html)

