

Jerzy Jendrośka

The Directive on industrial emissions and the  
Aarhus Convention

Talking about environmental effects of industrial  
installations: the European Directive on Industrial  
Emissions

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# Content

- Aim and scope of the observations
- Overview of IED in the light of 3 pillars of Aarhus
- Conclusions

# Aim of the observations

- Fresh look at the Directive in the context of Aarhus Convention requirements
- No stocktaking of negotiations
- No comparison to IPPC Directive
- Focused on potential problems

# Scope of the observations

- Observations made in personal capacity
- Based on prima facie impressions -no claims to authoritative and complex overview
- Questions - not affirmative statements
- Observations grouped according to the provisions of the Aarhus Convention and not to the provisions of the Directive

# Access to information I

- Clear requirement to make information available via Internet (art.24.2 a), b) and f IED)
- in the light of art. 5.3 d) Aarhus as implemented by art 7 .2 f) of Directive 2003/4/EC - why not also c),d)and e)?
- what it means via internet - through „electronic data bases” or „upon (electronic) request ??

# Access to information II

- Art 19 IED - information about development in BAT
  - „make available” - language to address „passive acces” (ie upon request)
  - to „public concerned”
- limitation of general right under Directive 2003/4/EC which gives acces to „the public”!!!

# Public participation in permitting (art 6 Aarhus) - scope of application

- Annex I revised
  - activities added ( for example 6.9-6.11 Annex I IED)
  - activities more precisely elaborated (for example point 5 Annex I IED)
- Needed thorough analysis of legal consequences for the scope of application

# Public participation in permitting (art 6 Aarhus) - incinerations

- Special legal regime for waste incineration
  - article 55 IED -
    - simplified public participation
    - applies to all
  - relation to art 24, 25 and Annex IV
    - which is meant to apply only to those in Annex
- no provision from Directive 2000/76/EC
  - „without prejudice ...to Directive 96/61/EC”
  - to cover standard IPPC regime (now art.24,25 and Annex IV IED)



# Public participation in permitting (art 6 Aarhus) - reconsideration/updating permits

- Does art.24.1 d) covers only updating or also reconsideration?
- Public participation required only in case of Article 21.5 a) IED
- Art.6.10 Aarhus require pp in rec/up „where appropriate”
- Why situations in art.21.5 b) and c) are not „appropriate”?

# Public participation in permitting (art 6 Aarhus) - derogation

- Art.24.1.c require pp for permits with „derogation” under art. 15.4 IED
- Article 6 Aarhus - no special regime for „derogations” - art.6 should apply
- but in art. 24.1 IED
  - relation to art. 15.4 a) and b) not clear (but not harmful)
  - relation to d) potentially harmful if derogation in updating permit covered only in c)

# Public participation in permitting - public notice under Article 6.2 Aarhus

- In Annex I still no clear indication that the public notice should be done in „adequate, timely and effective manner” as required in Art.6.2 Aarhus
- see ACC/C/17 EC

# Public participation in permitting- public notice under art.6.9 Aarhus

- Art.24.2 IED vs art.6.9 Aarhus
  - „make available” (passive) vs „inform” (active)
  - no „promptly”
  - no „in accordance with appropriate procedures” (as it was in IPPC)

# Public participation in plans and programs (art 7 Aarhus)

- Art 32 IED - Transitional National Plan
  - plan „relating to the environment”
  - therefore subject to Art.7 Aarhus
- No requirement for public participation envisaged in IED

# Access to justice (art.9 Aarhus)

- In IED (art.25) still no injunctive relief as envisaged in Art.9.4 Aarhus
  - despite it seems „appropriate”
  - despite change of the Treaty (under Lisbon Treaty EU has now clear competence in access to justice)

# Conclusions

- There are serious flaws in IED
  - most „old” problems inherited from IPPC
  - some „new” problems added
- Problems can be rectified by proper transposition
- Aarhus Convention is also part of acquis
- IED should be interpreted in the light of Aarhus when transposed by Member States