



Implementation of the Aarhus

Convention

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## Involvement in Aarhus

- Involved in negotiation of the Convention
- Chaired the negotiations that created the compliance mechanism
- Currently a member of the compliance committee



# Shape of talk



- Look at the thinking behind Aarhus Convention - with particular reference to Principle 10 of the Rio Declaration
- Look at contents of Aarhus
- Discuss role of EU with respect to Aarhus
- Look how Aarhus is implemented in the UK
- Quick look at some Aarhus cases, to give a sense of how it might impact the UK



# Principle 10

of the Rio Declaration

# Rio Declaration



- The Rio Declaration on Environment and Development
- Comprises 27 principles intended to guide future sustainable development around the world
- Not legally binding
- Influences development of environmental law, expressly implemented by a number of instruments

# Principle 10

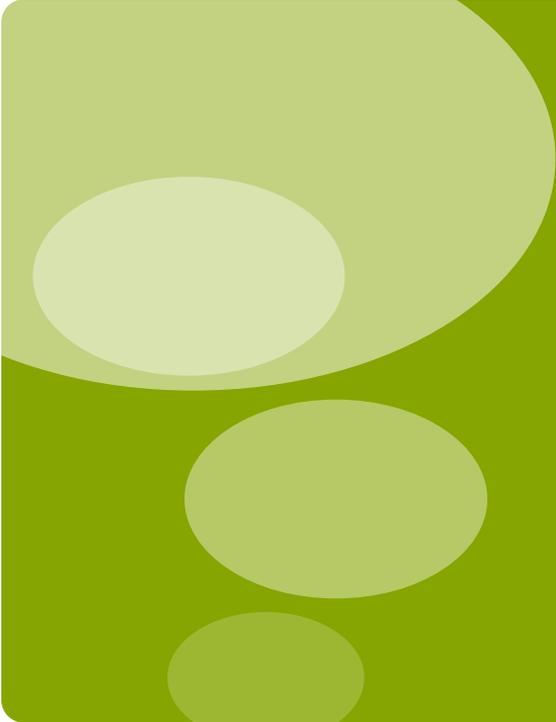


Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have **appropriate access to information concerning the environment** that is held by public authorities, including information on hazardous materials and activities in their communities, and the **opportunity to participate in decision-making processes**. States shall facilitate and encourage public awareness and participation by making information widely available. **Effective access to judicial and administrative proceedings**, including redress and remedy, shall be provided.

# Political background to principle 10



- Does not enshrine a right to a clean and healthy environment, or any substantive environmental right - cf. principle 1
- Objections to such a right
  - dilute existing human rights
  - of limited use - not concrete
  - fear of endless open-ended litigation
- Conservative response to rights-based approach to environmental law - give procedural rights to individuals



# The Aarhus Convention

CONVENTION ON ACCESS TO INFORMATION, PUBLIC  
PARTICIPATION IN DECISION-MAKING AND ACCESS TO  
JUSTICE IN ENVIRONMENTAL MATTERS

# Aarhus and Principle 10



- Very clear regional implementation of Principles 1 and 10
- Recitals say so, and for the most part discuss delicate balance between Principles 1 and 10
- Shape is dictated by principle 10



## Essentials

Regional Convention within UNECE

Adopted in June 1998 in Aarhus. Michael Meacher represented the UK

EU and UK become Parties in 2005

# Access to information

## Article 4



- Based on 90/313/EEC
- Parties must require public authorities to make environmental information available by a certain deadline
- Provides for express grounds for refusal - but these interpreted restrictively, taking into account public interest served by disclosure
- Related obligations on Parties to collect, update and disseminate environmental information (Article 5)

# Public Participation – Articles 6 to 8



- Article 6 requires Parties to ensure public participation in decisions relating to the environment
- Decisions on permits for specific activities activities Article 6 (drawn from EU law on EIA and integrated permitting)
- Public participation with respect to plans, policies and programmes relating to the environment (Article 7)
- More general provisions on public participation for preparation of regulations and generally applicable legally binding normative instruments. (Article 8)



“Public concerned” is informed at an early stage when options are open

public must be allowed to submit comments

due account to be taken of their views in the outcome of the decision



Article 9 – access to justice

## Article 9



- Provides judicial and administrative remedies in the event of failures fully to implement freedom of information and public participation provisions
- More generally, public to have access to administrative or judicial procedures to challenge acts or omissions by private persons and public authorities that contravene provisions of national law relating to the environment

# Procedural requirements in Article 9



- Procedures must
  - provide adequate and effective remedies
  - include injunctive relief as appropriate
  - be fair, equitable, timely
  - not prohibitively expensive

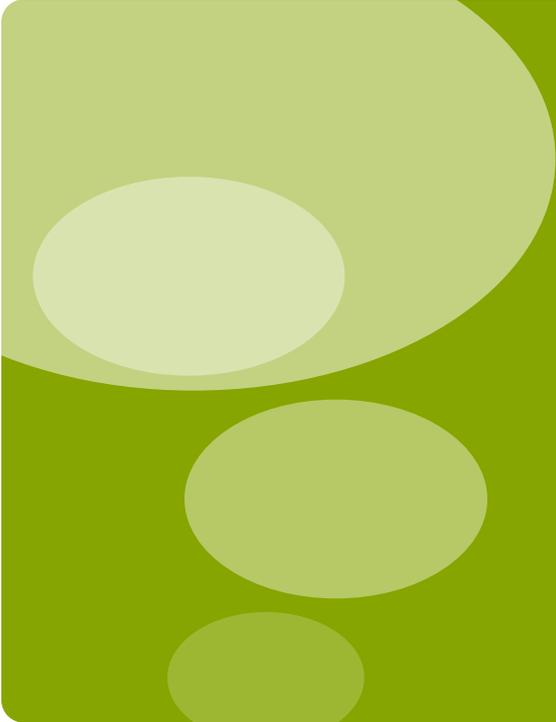


## Compliance Committee

# Compliance committee



- Many MEAs contain compliance mechanisms
- Aarhus unusual in having independent panel making findings on compliance
- Not a court
- Individuals and NGOs can make complaints directly to us
- Recognised in national courts (Lord Carnwath in *Walton v Scottish Ministers* [2013] PTSR 51 - decisions of the CC "deserve respect")
- May influence EU law (Joined Cases C-404/12 P and C-405/12 P ,*Council of the European Union, and European Commission v Stichting Natuur en Milieu and Pesticide Action Network Europe*)



# Aarhus and EU

REIO

# EU



- EU became Party by Decision 2005/370/EC
- EU assumes obligations as if it were a state (see Article 17 of the Convention)
- Member States and EU divide up obligations between themselves - obligations arise either for the EU or for the Member States - not both (see Article 19)
- Shapes implementation in UK, much of which implements EU law

The background is a solid green color with several overlapping circles of varying shades of green on the left side. The circles are semi-transparent and overlap each other, creating a layered effect. The largest circle is at the top left, with two smaller ones below it, and another one to the right of the top one.

# Implementation in UK

National provisions

# Environmental information



- Articles 4 and 5 of the Convention fall within EU competence
- Implementation within competence of the European Union
- Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information and repealing Council Directive 90/313/EEC
- Obligations under EU law (not international law) implemented in UK by further legislation, including Environmental Information Regulations 2004 (SI 2004/3391)

# Public Participation



- Articles 6 and 7 fall within EU competence
- Implemented by a raft of EU legislation including Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment and Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control)
- UK implementing legislation runs to more than 50 [sic] different provisions
- Article 8 (regulations and norms) falls within national competence and largely implemented administratively

# Access to justice



- **Access to justice Article 9(1) related to environmental information (Articles 4 and 5)**
- **Article 9(2) related to public participation (Articles 6, 7 and 8)**
- **Implementation in the UK is by**
  - **appeal to Information Commissioner (with respect to environmental information)**
  - **judicial review**
  - **n. b. Civil Procedure Rules – repeated issues about costs**



# Two cases

Hinkely Point and access to justice with respect to  
EU institutions



# 1) Hinkley Point



- United Kingdom ACCC/C/2013/91
- Communication by Sylvia Kotting-Uhl, a member of the German Green Party and member of the Bundestag.
- Alleges non-compliance by the UK with article 6 of the Convention in connection with
  - its alleged failure to provide the German public with opportunities to participate in a transboundary environmental impact assessment procedure concerning the proposed construction of two nuclear reactors at Hinkley Point

# Issues

- Still under consideration
- Questions
  - geographical extent of public concerned
  - how to involve public in other states in public participation procedures
  - how states should cooperate in ensuring access with respect to decision making procedures with alleged transboundary effects





## 2) EU institutions

Access to justice and EU institutions

## C32

- **ACCC/C/2008/32 (Part I) concerning compliance by the European Union**
- **ClientEarth an environmental NGO alleges that NGOs and public don't have any way of challenging decisions of EU institutions**



# Example – the Greenpeace case



- See for example the Greenpeace case (Stichting Greenpeace Council (Greenpeace International) and Others v. Commission, T-585/93; and Stichting Greenpeace Council and Others v. the Commission, C-321/95)
- Greenpeace International and local associations and residents of Gran Canaria (Spain) sought the **annulment** of a decision adopted by the Commission to provide financial assistance from the European Regional Development Fund for the construction of two power stations on the Canary Islands, **without requiring an environmental impact assessment (EIA)** to be conducted.

# No standing in Greenpeace case

- Neither Greenpeace nor residents of Gran Canaria have the standing - *Plaumann* test



“Persons other than those to whom a decision is addressed may only claim to be individually concerned if that decision affects them by reason of **certain attributes which are peculiar to them** or by reason of **circumstances in which they are differentiated from all other persons** and by virtue of these factors distinguishes them individually just as in the case of the person addressed”

# Compliance Committe

- Have already found that a new direction of the jurisprudence of the EU Courts should be established in order to ensure compliance with the Convention
- May shortly be considering
  - what, if anything, the EU should do with respect to the **Aarhus Regulation** (Regulation (EC) No. 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters to Community institutions and bodies, OJ L 264 of 25.09.2006, p.13.) to ensure access to justice vis-a-vis EU institutions
  - the effect of a recent case on related issues (Joined Cases C-404/12 P and C-405/12 P Council of the European Union, and European Commission v Stichting Natuur en Milieu and Pesticide Action Network Europe)





Thanks for  
listening

Any questions?

