

# Croatia

Key to ascribed values:

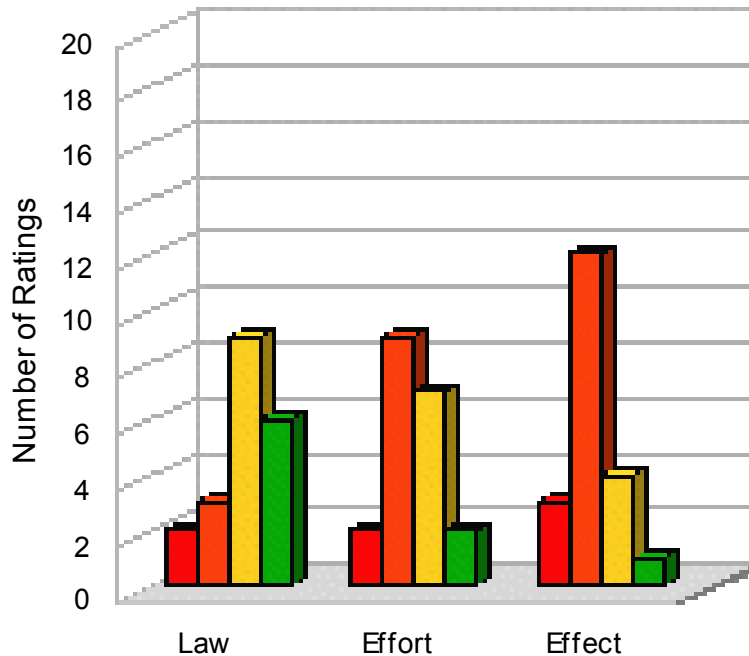


Figure 9: Bar chart showing the number of ratings in each of the categories Law, Effort and Effect for Articles 6, 7 and 8.

## **Introduction**

Croatia ratified the Aarhus Convention (AC) in 2006 and has since establish a number of laws, guidelines and regulations that reflect the principles of the convention. Public participation (PP) in decision making in environmental matters is regulated by several new laws including the Law on Environmental Protection, The Freedom of Information Act, The Regulations on Information and Participation of the Public in Environmental Matters, Strategic Environmental Assessment and Environmental Impact Assessment.

There are three tiers of governing and administration in Croatia. Environmental competences are split between national, regional and local authorities/self governing components. At National Level, the

Ministry of Environmental Protection, Physical planning and Construction (MoEPPPC) is responsible for Environmental Protection<sup>1</sup>.

## Survey Results

### Art 6 Specific Activities

Figure 10: Compliance Table showing how Article 6 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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Article	Obligations by Paragraph	Law	Effort	Effect
<b>Article 6 Conduct public participation early in decisions on activities with a possible significant environmental impact</b>	1. Requires Parties to guarantee public participation in decision-making with a potentially significant environmental impact	INTERMEDIATE	POOR	POOR
	2. Sets requirements for notifying the public concerned about the decision-making	GOOD	INTERMEDIATE	POOR
	3. Sets time-frames for public	GOOD	INTERMEDIATE	INTERMEDIATE

<sup>1</sup> REC “Masterclass” on Public participation available at <http://aarhusclearinghouse.unece.org/resources.cfm?sortby=da&c=&c1000006&c=1000029>.

	participation procedures within a decision-making process			
	4. Requires that public participation take place early in decision-making	GOOD	GOOD	INTERMEDIATE
	5. Encourages exchange of information between permit applicants and the public	VERY BAD	VERY BAD	VERY BAD
	6. Requires public authorities to provide the public concerned with access to all information relevant to the decision-making	INTERMEDIATE	POOR	POOR
	7. Procedures for public participation	GOOD	INTERMEDIATE	POOR
	8. Parties must ensure that decision takes due account of public participation	POOR	POOR	POOR

	9. Public must be informed of final decision	INTERMEDIATE	INTERMEDIATE	INTERMEDIATE
	10. Public participation if activities are reconsidered or changed	INTERMEDIATE	POOR	POOR
	11. Decisions on GMOs	VERY BAD	VERY BAD	VERY BAD

The provisions of the AC have been met through national legislation. However the public feeling remains that government bodies engage in token gestures of PP. Essentially, the “culture” of public participation is in its infancy. The respondents note that governmental bodies, in particular the MoEPPPC have acknowledged the importance of the public participating early in decision making processes.

The public is rarely informed of planned activity in the actual planning stage. The relevant authorities (in particular the MoEPPPC) have received some praise as a result of their efforts to publish permit applications early in the process. In contrast, it was outlined that these efforts do little to go beyond legal requirements. Overall, it appears that the practice of notification is at a level that is less than satisfactory. The place of publication (physical location of notifications) in the majority of regions does not appear to be consistent and a variety of places and internet websites must be monitored in order for the public to remain informed. In addition, sometimes notifications are published when it is too late to react.

NGOs can register as a representative of the “public concerned”. NGOs must submit a form/statement outlining their desire/interest to ensure participation and the organisations official registration. This can be done in connection with a specific project (EIA), for all future projects in the locality and region (including plans, policies and programmes).

The minimum timeframe for consulting the relevant project material and to submit comments is outlined in the Environmental Protection Act is 30 days. In reality this is sometimes not enough to allow EIA and other relevant material to be fully analysed and for the relevant experts to be consulted. This timeframe is usually not respected.

The advent of the Environment Protection Act has resulted in a huge step forward for early PP in the decision making process in legislative terms. Previous legislation had not outlined that public should be informed in early phases of the procedure. However, more time is needed to see how this will be implemented. It is often the case that PP in the EIA procedure occurs at the very end of the procedure and after all the important decisions have already been taken (location, size of the project, alternatives).

The law does not encourage exchange of information between the permit applicant and the public concerned prior to the lodging of a permit or application. Little effort has been made to improve the situation. Generally speaking, exchange of information (Art 6(5)) prior to the lodging of a permit does not occur.

The law adheres to Art 6(6) (access to information) of the convention and has received an intermediate rating. In effect, it is relatively difficult to attain all information relevant to the decision making process. The Law on Environmental Protection determines that public authorities must notify the public concerned of all relevant information, including information on the right to public participation and information about the bodies to which they can submit opinions, suggestions and/or questions. Access to information for the general public is very difficult. NGOs need to make huge efforts to obtain relevant information and to receive it in a timely manner. For instance, a complete Environmental Impact Study or Statement isn't available in digital form, nor can it be bought. (the non-technical summary is available on the internet). The only way to read an entire EIA is in hard copy format in the competent authority's office. Sometimes an EIS can have more than 200 pages and one is not allowed to copy it! In practical terms, it takes much time and effort to access this material even for NGOs who dedicate their time to such activities.

The provisions for the procedures for PP in national law have been rated good. Suggestions are made that perhaps the range of options listed in law could be extended. In reality, PP often lacks meaningfulness and the process is simply ticking boxes. Final decisions are legitimated by the fulfillment of procedural requirements and not by meaningful PP.

The law has been rated "poor" in terms of taking due account of PP. In effect, the NGOs and the general public have little faith in the PP process and suggest that it is simply the authorities going through the motions. Varazdin County is suggested to be an exception, which according to the experience of the NGOs, is far more advanced in terms of informing the public about the plans and programs and in the

manner in which public input is assimilated in the final decision; in other monitored counties the situation is below satisfactory levels.

The competent authority is obliged to inform the public or the interested public on its decision and reasons on the basis of which the decision was made, including information on the procedure regarding the participation of the public and interested public. The MoEPPPC has made efforts in relation to this and publish a large list of approved EIAs on their website. All government decisions are published in an official journal and can be viewed via internet or in public library. However, sources outline that only 33% of the the population have access to the internet<sup>2</sup>. The new Regulation on EIA has abolished the practice of sending individual notifications of decisions. This is a negative development.

Where activities are altered or changed, the public consultation process is the same as the initial process. If the change is significant and meets certain criteria outlined in the regulations<sup>3</sup>, a new EIA (with PP) is required. The NGOs could not identify a case since 2006 where a new EIA was carried out.

There are no provisions in national legislation which specifically regulate participation in decision-making on the deliberate release of GMOs. However, the respondents noted that one could state this is an environmental issue and thus request to be involved as in any other environmental issue.

A clear problem with PP is insufficient information and education among the public. The general public is unaware of how the whole process works, their entitlements and how to engage in the process effectively. The perception of PP also leaves a lot to be desired. There appears to be a general view that to participate in the decision making process is of no benefit and that the decisions cannot be influenced.

There is no difference between the notification of the public, and the notification of the public concerned as a result of the the new Regulation on EIA which abolished the practice of sending individual notifications of decisions.

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<sup>2</sup> [www.internetworldstats.com/eu/hr.htm](http://www.internetworldstats.com/eu/hr.htm) [accessed August 20th 2009]. This figure was calculated for 2006.

<sup>3</sup> Regulations on Information and Participation of the Public in Environmental Matters

## Art 7 Plans, Programmes and Policies

Figure 11: Compliance Table showing how Article 7 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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Article	Obligations by Paragraph	Law	Effort	Effect
<b>Article 7 Establish a transparent and fair framework for public participation in plans, programmes and policies relating to the environment</b>	First sentence Requires parties to provide public participation during preparation of plans and programmes relating to the environment	INTERMEDIATE	POOR	POOR
	Second sentence Incorporates article 6, paragraphs 3, 4 and 8, see below.			
	[Article 6, paragraph 3] Sets time-frames for public participation procedures	INTERMEDIATE	GOOD	GOOD

	[Article 6, paragraph 4] Requires public participation to take place early in process	INTERMEDIATE	POOR	POOR
	[Article 6, paragraph 8] Parties must ensure that the plan or programme takes due account of public participation	POOR	POOR	POOR
	Third sentence Requires the relevant public authority to identify the participating public	INTERMEDIATE	INTERMEDIATE	INTERMEDIATE
	Fourth sentence Public participation in preparation of policies relating to the environment	INTERMEDIATE	POOR	VERY BAD

The manner of PP in plans and programmes (those that require and do not require SEAs) is outlined under section III of the Regulations on Information and Participation of the Public and Public Concerned in Environmental Matters. According to Environment Protection Act, consideration must be given to the opinions, comments and suggestions of public and the interested public submitted during proceedings prior to the arrival at a final decision (solutions) on plans

or programs. The Regulations on Information and Participation of the Public and Public Concerned in Environmental Matters outline that the public must be informed of the process of evaluating the need for an SEA and of the SEA process itself.

Bodies of public authority are obliged to ensure timely and effective public participation in the drafting and editing and/or amendments of plans and programs that relate to environmental protection. Bodies are obliged to provide answers to public comments and the explanation provided as to why the certain proposal are not accepted, but they are not obliged to take public opinion into account. Public consultation must always take at least 30 days (according to the Law on Information and Public (and interested public) Participation Process in Environmental Protection Issues), which should be sufficient time for public to get involved, if they are informed about it adequately. The NGOs outlined that time-frames are generally not the issue in such procedures and 30 days should be adequate time. However, problems arise if public is not informed in time.

In effect, despite being determined by the Act, the comments of the public have been rejected in many cases without any valid reasons or explanations. This suggests that participation is not good in practice and it is simply a process of informing the public. Interested stakeholders never participate in the draft preparation, and only have the opportunity to comment on the draft SEA. This non-transparent attitude leads to a decline in the levels of public trust in public authorities. In addition, the knowledge of the SEA process among the public and relevant officers is poor.

Policies are not incorporated into Croatian legislation (only plans and programmes are incorporated). Bodies of public authority are obliged to ensure timely and effective public participation in the drafting and editing and/or amendments of plans and programs that relate to environmental protection (as outlined in the Environment Protection Act). There is no requirement for the public to be involved in policy making (for example strategies). Some efforts have been made and public participation has taken place in the preparation of national policy documents (strategy). However, the extent to when comments are taken into account is questionable. Generally speaking, policies, plans and programs are usually brought about without any public participation.

**Art 8 Preparation of Executive Regulations and generally applicable legally Binding Normative Instruments**

Figure 12: Compliance Table showing how Article 8 of the Aarhus Convention has been rated under the headings of Law, Effort and Effect.

Key to ascribed values:

VERY BAD	POOR	INTERMEDIATE	GOOD	VERY GOOD
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Article	Obligations by Paragraph	Law	Effort	Effect
<b>Article 8 public participation in the preparation of laws and rules by public authorities</b>	First sentence Requires Parties to promote public participation in the preparation of laws and rules by public authorities	GOOD	INTERMEDIATE	POOR
	Second sentence Sets elements of public participation procedures	GOOD	INTERMEDIATE	POOR
	Parties must ensure that public participation is taken account of	POOR	POOR	POOR

Under the Environment Protection Act, public authorities are obliged to ensure timely and effective PP in the process of drafting laws and implementing regulations and other generally-applicable legally binding rules in their jurisdiction, which could have a significant impact

on the environment, including the procedures of making changes and amendments. The advent of the Environmental Protection Act has been a huge move forward for public participation in the context of the provisions of Article 8 of the AC. The relevant Ministry must notify the public of the draft law, regulation, binding document or amendment via their (the Ministry's own) website. The title of the document and the first paragraph of the document must be in place on the front page of the website. However, concerns have been raised about the period of time for publication of information. The Environmental Protection Act states in Art 140(3) that there shall be a minimum of 30 days for the publication of information relating to draft regulations. In contrast, the Regulations on Information and Participation of the Public and Public Concerned in Environmental matters outline that the period of publication of information (for the purpose of public participation in the procedure of preparation of laws and implementing regulations and other generally applicable legally binding rules) "shall last no longer than 30 days".

The Ministry of the Environment has met these requirements in relation to public participation during the preparation of executive regulations and/or generally applicable legally binding regulations. All draft laws and regulations which are prepared by the Ministry of Environment are available on their website. It can, however be the case where this availability is too late and does not allow enough time to react and comment. In order to remain informed about draft legislation, one needs to constantly monitor the Ministry's official webpage. Furthermore, inter-ministerial (interdepartmental) communication and cooperation is below acceptable standards and PP in the drafting of legislation and legally binding regulations of other Ministries is extremely difficult as there are inconsistencies in the practices of such Ministries.

Laws may be passed through the emergency legislative procedure which does not incorporate public participation. It has been expressed that this procedure is sometimes used unnecessarily.

In terms of effects, the obligation to give the opportunity for comments is not understood as an obligation to take public input seriously into consideration. Amendments and suggestions from the public on laws are often not adopted. Moreover, the public regularly does not get any response to its comments.

### **Concluding Remarks and Some Recommendations**

Problems arise with PP when the public are not informed in a timely and adequate manner. Despite the relatively good legal provisions for

early notification of the public in relation to specific activities, it is not occurring in practice. Implementation of paragraphs 6, 7, 8 and 10 of Article 6 are poor, which does not amount to meaningful participation. The Implementation of Article 7 is poor in a number of areas, namely; early participation, and taking due account of PP. PP does occur in the preparation of regulations and normative instruments. However, public opinion is not always taken on board and laws are often unnecessarily passed through the emergency legislative procedure which does not incorporate PP.

- Procedures for PP in EIA need to incorporate practical application. For example, all the necessary material should be available to the general public during office hours and also outside of office hours to allow the public every opportunity to participate.
- PP in decisions on GMOs is not provided for and legislation should be altered in order to establish firm PP procedures in decisions on GMOs.
- The practice of individually notifying the public concerned of decisions has ceased as a result of the new Regulations on EIA. The Regulations should be amended in order to re-establish this practice

### **Best Practice**

During the preparation of the Regulations on EIA, SEA and Participation of the Public and Interested Public in Environmental Matters in 2008, the MoEPPPC invited representatives of Environmental NGOs, known for the engagement in that field, to a meeting to discuss the regulations drafts. This resulted in the adoption of two objections submitted by NGO representatives being adopted. The NGOs had submitted a large number of objections, yet still felt positive about the two being adopted. The Ministry hasn't respected the obligation to publish draft regulations on the internet for 30 days. Despite the negative aspects to the case, an NGO suggested this case and put it forward as an example desirable practice. Needless to say, participants found it difficult to identify any other best practice examples.

### **Worst practice**

The General Urban Plan for City of Zagreb and its numerous amendments. A large number of comments were made through public participation in the preparation of this plan. All of these comments were rejected without any valid reasons given. In effect, the public was involved in a way that they were informed about the plan but they

could not participate in a manner which would impact on the final decision.

Another example is a Golf Course Development at Brkac in Istria. Public comments were integrated into recommendations made by the EIS committee. The investor/applicant did not follow the instructions/recommendations of the EIA Committee. The EIA Study was however, approved in the end. So, in this case, the public was just informed about the project, without any real participation in it.

A third example of unsatisfactory PP can be seen in the case of a hydro-powerplant on the River Lika (Kosinj). The only notification of the public hearing was placed on a small piece of paper in the County Building. Needless to say, citizens did not attend the hearing.