

## Seveso III – The Public Participation Challenge

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**transparent.**

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# Seveso III - What's really new?



- **Reference to two UN Treaties and four other EU Directives.**
- **The first UN Treaty relates to the UN's Global Harmonised System (GHS).**
- **The other relates to United Nations Economic Commission for Europe's (UNECE) Aarhus Convention :**
  - **Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.**
- **Ratified by the EU in February 2005 – Seveso II was dated 2003 and did not include these measures.**

- **Principle 10 of the UN Rio Declaration of 1992**
  - ***“Environmental issues are best handled with 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”.***

# Seveso III Directive – New Scope

- **While the provisions of the Convention are now transposed into the Seveso III Directive, they are done so in a completely disjointed fashion:**
  - **Reference to other Directives, etc.**
- **The scope of the Convention extends into all environmental matters and an increasing case law is developing at the levels of UNECE, the European Court and National Courts.**
- **Failure to understand these complex dynamics could lead one to be on the wrong side of a legal challenge.**



# How to gain an Understanding?

UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE

- **UNECE has produced an excellent Implementation Guide in plain English:**
- **“Aarhus Convention: An Implementation Guide”.**
- **While not legally binding it references the endorsed ‘case law’ of the Compliance Committee, which is part of the interpretation of the Convention.**

## **The Aarhus Convention** **An Implementation Guide**



UNITED NATIONS

- **Rights to request environmental information from public authorities (Article 4) and obligation for active dissemination by public authorities (Article 5).**
- **A request may only *“be refused if disclosure would adversely affect”* confidentiality of the proceedings of public authorities, national defense or public security, the course of justice, intellectual property rights and confidentiality of personal data or commercial and industrial information.**
- ***“the aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment”***

# UK: Environmental Information Regulations



## Confidentiality of commercial or industrial information (regulation 12(5)(e))

### Environmental Information Regulations

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- **If operators of Seveso installations do not adjust the point where they are writing documentation for both the regulator and the public, is it then fair to be critical, if the regulator is unable to restrict later dissemination of that documentation to a member of the public, who has a legal entitlement?**
- **Remember, it is not the operator who decides on what is confidential based on his business considerations, but legal framework decides as interpreted by the regulator – or subsequent legal challenge.**



- **In its ideal form, public participation involves the activity of members of the public in partnership with public authorities to reach an optimal result in decision-making and policymaking.**
- **There is no set formula for public participation, but at a minimum it requires effective notice, adequate information, proper procedures and appropriately taking account of the outcome of the public participation.**
- **Seveso III introduces public participation with regard to land-use planning, but in a very disjointed manner.**

- **...the obligation to take due account in the decision of the outcome of the public participation cannot be considered as a requirement to accept all comments, reservations or opinions submitted.**
- **However, while it is impossible to accept in substance all the comments submitted, which may often be conflicting, the relevant authority must still seriously consider all the comments received.**



- **There is no veto right:**
- **..... this provision should not be read as requiring that the final say about the fate and design of the project rests with the local community living near the project, or that their acceptance is always needed.**

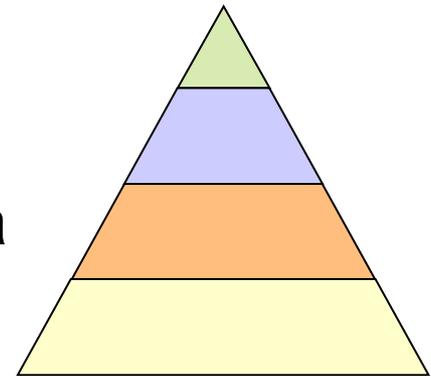


- **However:**
- **... a system where, as a routine, comments of the public were disregarded or not accepted on their merits, without any explanation, would not comply with the Convention.**

- ***“The refusal to make the urban planning decision available to the public cannot be justified by invoking the protection of the confidentiality of commercial or industrial information”***
- **Under the Aarhus Convention, when a decision-making procedure concerning the environment is initiated, the public concerned must be able to participate in it from its beginning, that is to say, when all options are still open and effective public participation can take place.**



- **In simple terms the robustness and extent of the public participation requirement is ‘tiered’ relative to whether the decision making is in respect of (i) a project, (ii) a plan or a programme or (iii) a policy.**
  - **Requirements are most comprehensive with a project approval and least so with a policy.**
- **However, these requirements are transposed in a very disjointed manner into Seveso III.**



- **The rationale behind the access to justice pillar of the Convention is to provide procedures and remedies to members of the public so they can have the rights enshrined in the Convention on access to environmental information and environmental decision-making, as well as national laws relating to the environment, enforced by law.**
- **Access to justice helps to create a level playing field for the public seeking to enforce these rights.**



# Access to Justice – Access to Environmental Information



- **Article 9(1) of the Convention – if request refused:**
- ***“Access to a review procedure before a court of law or another independent and impartial body established by law.***
- ***In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law”.***

- **Environmental Information Regulations:**
- **Complaint to UK Information Commissioner**
- **Decision of Commissioner**
- **Appeal against the Commissioner's decision, by either citizen or public authority, to the First Tier Tribunal (Information Rights)**



.....  
| TRIBUNALS |  
| JUDICIARY |

- **Seveso III engages:**
- ***“Have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive”.***
- ***..“all such procedures shall be fair, equitable, timely and not prohibitively expensive”.***

- **Portal: [e-justice.europa.eu](http://e-justice.europa.eu)**
- **Describes the ‘state of play’ in different Member States.**
- **Common law system in UK and Ireland fails:**
  - **(i) To address substantive issues – Judicial Review procedure is too narrow**
  - **(ii) Costs are ‘prohibitively expensive’.**
- **Current action against UK by both UNECE and European Court.**



Access to justice in environmental matters

# Why?

- **Stuttgart 21 – Germany**
- **Rosa Montana - Romania**
- **“.. citizens call for transparency when it comes to the arguments and conflicts that led to the decision”.**



# Finally

Questions ?

