Forum on Stakeholder Confidence (FSC)

Sample Foreword and Background to a Potential New Document on "Early Involvement"

Document supporting item 15 of FSC-13 meeting
Foreword

The present study gathers information about how member organisations of the OECD Nuclear Energy Agency “Forum on Stakeholder Confidence” see and have addressed the need for early involvement of civil society in decision-making about RWM. This study answers questions like:

- At which points in the process does the law mandate stakeholder involvement?
- Which formal initiatives have been undertaken to meet a formal mandate for “early” or “upstream” involvement?
- Has this involvement been satisfactory or unsatisfactory, and why?
- How, when and where have organisations conducted less formal, open-ended “early” or “upstream” interactions?
- What were the objectives?
- Was this informal involvement satisfactory or unsatisfactory, and why?
- Do stakeholders ask for greater early involvement, and for more effective “upstream” involvement? Can this demand be met?
- When does the moment change from “early” to “late”? In an iterative process, the same questions could be brought up in a process until it is finalized.

The experience gathered in this study suggests¹ that there is little to stop organizations from conducting less formal interactions in an open-ended manner to learn what is on people’s minds and to send a message of being open not only when they “have” to be. .....etc... etc.

The FSC is permissive, not prescriptive in its recommendation to engage “early and often” – and to continue to engage even when the formal process does not yet or no longer demands it.

Background

Early involvement is seen as crucial both for reaching solid agreement on decisions and for avoiding delay.

International guidance

International guidance and best practice publications on facility siting, societal risk management, and environmental decision making often point out that stakeholders should be involved “early”.

¹ This statement may need adjustment if actual study findings differ!
The World Health Organization favours “a voluntary process, including early community involvement in decision making, as the first choice for site selection”.

The Council of the European Union refers to a “principle” of early involvement to improve the effectiveness of development aid.

A Pan-European Transport Ministers conference on waterways found that “the progress of environmental assessment procedures and the probability that a workable solution can be agreed upon in a reasonable time span greatly benefit by the early involvement of beneficiaries and stakeholders”.

A special committee of the US Board on radioactive Waste Management highlighted “convergent evidence that public involvement, starting early and lasting throughout the process, may be an essential factor in bringing [geological disposition] efforts forward”.

Canada’s Seaborn Panel highlighted this submission: “We believe that if stakeholders were intimately involved at the initial stage, it would facilitate substantially a review process such as this one.”

Early involvement, whether or not it implies participation in decision making, is also recommended as a component of institutional transparency.

International legislation

International legislation creates specific obligations for early involvement in environmental decision making.

The Espoo Convention regarding Environmental Impact Assessment (in force as of 1997) imposes an obligation on signing parties to assess the environmental impacts of certain activities “at an early stage of planning”.

The Kiev Strategic Protocol on environmental assessment (SEA) (2010) augments the Espoo Convention by “ensuring that individual parties integrate environmental assessment into their plans and programmes at the earliest stages – so helping to lay the groundwork for sustainable development. The Protocol also provides for extensive public participation in the governmental decision-making process”.

The Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters (2001) establishes the right for “the public affected and environmental NGOs to comment on, for example, proposals for projects...”
affecting the environment, or plans and programmes relating to the environment, these comments to be taken into due account in decision-making, and information to be provided on the final decisions and the reasons for it”. Article 6 § 4 explicitly states: “Each Party shall provide for early public participation, when all options are open and effective public participation can take place.”

- The Implementation Guide⁹ to the Aarhus Convention (under continuous elaboration) indicates that “International processes should benefit from public participation from an early stage when options are still open and effective public influence can be exerted. This includes the negotiation and application of conventions; the preparation, formulation and implementation of decisions; and substantive preparation of events.”

In this way, “early” does not just refer to the calendar or chronology of a specific decision. In these binding treaties, “early” also means that stakeholders should be involved “upstream”, while options are still wide open. The public, it is stated, should be enabled to participate in setting higher-order principles, priorities and goals, before such policy or concepts are enacted in specific projects. The Aarhus Convention and guidance can be interpreted as stating that participation will not be effective unless it is enabled early in decision making.

- Roundtables organised in several European countries under the “Aarhus Convention in Nuclear”¹⁰ initiative by ANCCLI and ENEF examined the extent to which civil society has been enabled to input to policy, plans, programmes, and projects (these is the traditional descending order of planning levels).

- The FSC Stepwise Decision Making report¹¹ identified action goals seen as important for identifying and implementing RWM solutions that are widely regarded as legitimate. Half of these action goals in fact imply early (upstream) involvement:
  - To have an open debate of the national policy regarding energy production and the future of nuclear energy
  - To develop a broad understanding that the status quo is unacceptable and an important problem needs to be solved
  - To define clearly the goals of the waste management programme, including the source, type, and volume of waste to be handled
  - To define a technically and politically acceptable waste management approach.

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About the present study

In the stepwise process of radioactive waste management, the FSC has observed many different practices and chronologies of public involvement. As for many other aspects of RWM, the phase at which public involvement is engaged depends on country and context. Furthermore, the time at

¹⁰ http://www.anccli.fr/Europe-International/Aarhus-Convention-Nuclear
which, and the manner in which, specific organizations undertake to involve the public, will depend on the organization’s formal role and duties in the overall RWM decision process.

Still, the FSC also observes that organizations can take the initiative to communicate with stakeholders, and to get their input, outside formal requirement. Such initiatives may be viewed as improving transparency, and/or as confidence building.

- The US NRC took as part of its strategy to “initiate early communication with stakeholders on issues of substantial interest” 12.
- In the pre-licensing phase regulator CSN (Spain) has interacted with communities.
- [FSC-13 discussion could identify more examples here]

The present study gathers information about how member organisations of the OECD Nuclear Energy Agency “Forum on Stakeholder Confidence” have addressed the need for early involvement of civil society in decision-making about RWM. This study answers questions like:

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The experience gathered in this study suggests 13 that there is little to stop organizations from conducting less formal interactions in an open-ended manner to learn what is on people’s minds and to send a message of being open not only when they “have” to be. The FSC is permissive, not prescriptive in its recommendation to engage “early and often” – and to continue to engage even when the formal process does not yet or no longer demands it.

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