



Most Common Mistakes/Violations of the Aarhus Convention Related to Water Management

**“How to use the Aarhus Convention
for the Protection of Space and Nature”
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Maritime Spatial Planning

- 25 November 2008: Commission Communication: Roadmap for Maritime Spatial Planning (MSP)
- Key instrument for the Integrated Maritime Policy
- Competition between sectoral interests (shipping, offshore energy, ports, fisheries, tourism, environment)
- Climate change
- Tool for improved decision-making, a process of data collection, stakeholder consultation, participatory development of the plan, implementation, evaluation, revision



Maritime Spatial Planning

- 2014/89/EU Directive (MSP)
- Framework for maritime spatial planning: sustainable growth of economies, sustainable development of areas, sustainable use of resources
- Marine waters
- No coastal waters
- No town or country planning
- No delimitation of maritime boundaries
- MS to establish and implement MSP



Maritime Spatial Planning

- Format: not defined
- Content: not defined
- May build on existing plans, etc.
- Ecosystem based approach
- Coexistence of activities and uses
- Reviewed every 10 years
- PP: informing all interested, consulting public concerned, at early stage, access to ready plan
- Transposition: 18 September 2016
- Implementation: 31 March 2021



EU Law

- Water Framework Directive Art. 14

Public information and consultation

1. Member States shall encourage the active involvement of all interested parties in the implementation of this Directive, in particular in the production, review and updating of the river basin management plans. Member States shall ensure that, for each river basin district, they publish and make available for comments to the public, including users:

(a) a timetable and work programme for the production of the plan, including a statement of the consultation measures to be taken, at least three years before the beginning of the period to which the plan refers;

(b) an interim overview of the significant water management issues identified in the river basin, at least two years before the beginning of the period to which the plan refers;

(c) draft copies of the river basin management plan, at least one year before the beginning of the period to which the plan refers.

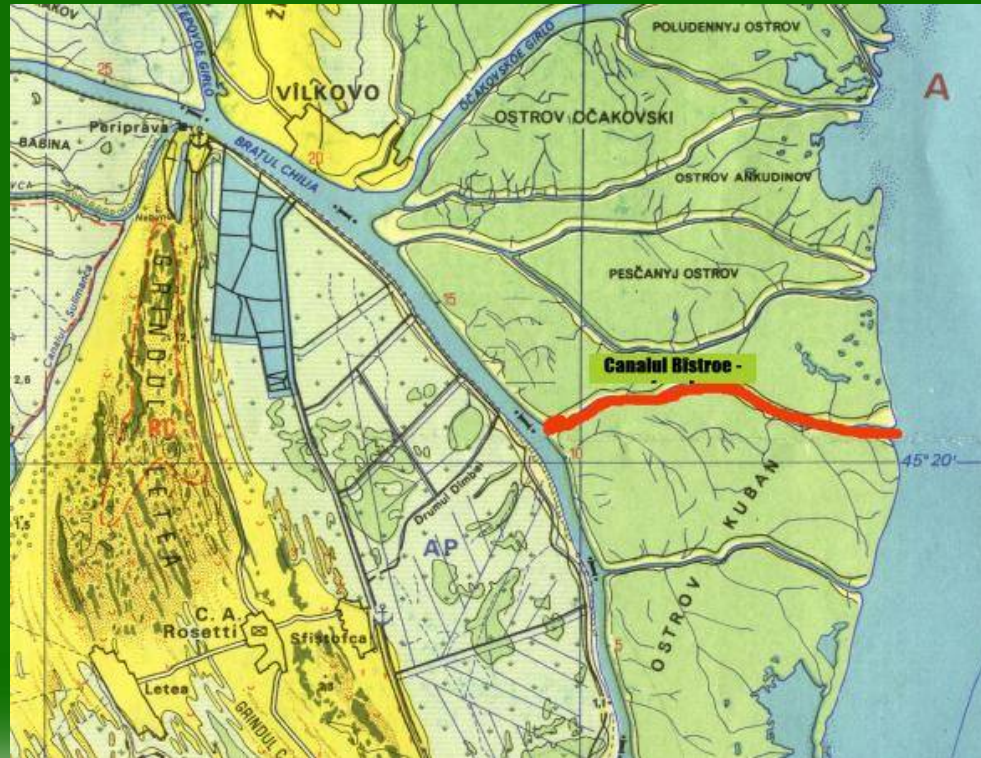
On request, access shall be given to background documents and information used for the development of the draft river basin management plan.

2. Member States shall allow at least six months to comment in writing on those documents in order to allow active involvement and consultation.

3. Paragraphs 1 and 2 shall apply equally to updated river basin management plans.



Bystroe Canal



ACCC Case Law

- ACCC/C/2004/3 Ukraine
- ACCC/S/2004/1 Ukraine
- The government of Ukraine approved the construction of the deep-water navigation canal in the Bystre arm in the Ukrainian part of the Danube river delta
- The project in question potentially affects a nature conservation area of national and international importance and has clearly generated a great interest among both the Ukrainian and international civil society
- Ministry of Environment: materials developed in the course of an EIA were the property of the developer and therefore the Ministry was not in a position to provide access to such information



ACCC Case Law

- ACCC/C/2004/3 Ukraine
- ACCC/S/2004/1 Ukraine
- The timeline failed to allow the public to study the information on the project and prepare and submit its comments. It also did not allow the public officials responsible for making the decision sufficient time to take any comments into account in a meaningful way.
- By refusing to provide the text of the decision along with the reasons and considerations on which it is based and not indicating how the communicant could have access to it, the Party concerned did not comply with its obligations



Neman HPP



ACCC Case Law

- ACCC/C/2009/37 Belarus
- The ongoing construction of the first phase of a hydropower plant project on the Neman River, which has the following features: 17 MW power capacity (approximately 87.6 million MWh/year), 10 metres dam height, a reservoir of 43 km length and 1 km wide, and approximately 48 million m³ of water storage capacity
- The public authorities informed the public that the requests had been forwarded to the developer. Subsequently, the developer had provided general information to the requesters about the project and had informed that public consultations had taken place.



ACCC Case Law

- ACCC/C/2009/37 Belarus
- It is not conflicting with the Convention when national legislation delegates some functions related to maintenance and distribution of environmental information to private entities
- Reliance solely on the developer for providing for public participation is not in line with these provisions of the Convention
- A time frame for public information which may be reasonable for a small, simple project with only local impact may well not be reasonable in case of a major complex project
- Organization of discussions on the proposed project in the newspapers and through TV programmes is not a sufficient way



Fish Legal



CJEU Case Law

- C-279/12 Fish Legal
- 12 August 2009, Fish Legal asked two water companies for information concerning discharges, clean-up operations and emergency overflow
- March 2010, the Information Commissioner held that the water companies concerned were not public authorities and that he therefore could not adjudicate on their respective complaints



CJEU Case Law

- C-279/12 Fish Legal
- In order to determine whether entities such as the water companies concerned can be classified as legal persons which perform 'public administrative functions' it should be examined whether those entities are vested, with special powers beyond those which result from the normal rules of private law
- Commercial companies are capable of being a public authority only in so far as, when they provide public services in the environmental field, they are under the control of public authority
- Such companies are required to disclose only environmental information which they hold in the context of the supply of those public services



Thank You!



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