

26th Working Group of the Parties to the Aarhus Convention; thematic session on public participation in decision-making

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Public Participation within the Energy Transition

To face current challenges related to climate change and energy shortages and to foster the production of renewable energy, the European Commission has recently published a draft for a REPowerEU initiative.¹ The proposal, inter alia, introduced specific administrative rules of procedure for renewable energy plants.

According to the proposed amendment, EU Member States will be required to identify so-called “go-to areas” carrying out a strategic environmental assessment. Renewable energy projects in these areas shall be treated with priority and do not require environmental or nature impact assessments, unless the responsible authority identifies its need in the screening process. If the responsible authority does not make a decision within a year, the project shall be considered as approved.

Furthermore, all projects outside renewables go-to areas shall be carried out in a single procedure that combines all relevant assessments for a given project.

While we welcome that Aarhus requirements are specifically referred to in the recital of the European Commission’s draft, it is not entirely clear how these requirements will be met in practice. The legal facilitation and acceleration of permitting procedures in go-to areas leads to the necessity of increased public participation early on at the stage of planning and zoning. However, especially when it comes to strategic assessments, public participation in various EU Member States still has its shortcomings.

Concerns regarding public participation in permitting procedures for energy transition projects have also emerged on the national level. For example, the Spanish government recently passed a law to speed up the procedures to authorize solar and wind projects reducing the EIA as well as public participation to the minimum. Similar discussions have come up in Germany and Austria.

Although renewable energy projects are crucial to face the climate crisis, it must be clear that even such projects cannot be developed under the sacrifice of biodiversity and without respecting the territory. After all, biodiversity and nature protection and restoration are as important climate tools as renewable energies.

¹ Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources, Directive 2010/31/EU on the energy performance of buildings and Directive 2012/27/EU on energy efficiency, COM(2022) 222 final.

When fostering energy transition and introducing the REPowerEU initiative, we therefore call upon the EU and its Members States to ensure that:

1. There is a realistic opportunity for public participation in planning and permitting procedures in line with the requirements of articles 6 and 7 of the Convention, e.g. by providing guidance and training to responsible authorities;
2. There is an emphasis on public participation, especially for the identification of go-to areas for renewable energy production;
3. There is a clarification on public participation, particularly regarding projects outside renewables go-to areas;
4. Members of the public have effective legal remedies to challenge acts or omissions which contravene provisions of environmental law, such as nature protection.