

Impact assessments and public participation: new horizons proposed by the CJEU?

IUCN - 28 August 2020

M. Clément

Presiding Judge, Administrative Court of Lyon

Member of the Aarhus Convention Compliance Committee



Environmental democracy and EU law

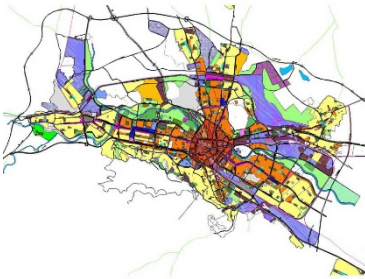
- Environmental democracy (access to information, public participation and access to justice in decision-making related to environment) is essential in EU environmental law
- Several key pieces of EU legislation :
 - Aarhus Convention
 - Directives and Regulations
 - Substantial case-law

Public participation in which decisions ?



Projects consent : individual decisions authorizing project development

Directive 2011/92/EU



Approval of plans and programmes. Frame for project decisions

Directive 2001/42/EC

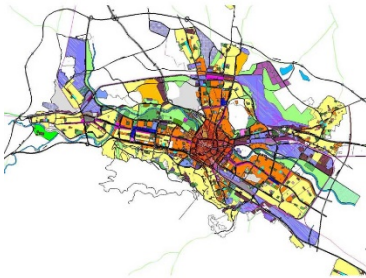


Non-legislative regulatory acts
No directive

Key issues in EU Court of Justice case-law



Boundaries of projects (C-2/07 28 February 2008 Abraham) and adoption in legislative process (C-182/10 16 February 2012 Solvay)



Independence of expertise : C-474/10 15 January 2001 Seaport



Limits between regulatory acts and projects C-290/15 27 October 2016 d'Oultremont

EU case C-24/19 25 June 2020

- Non-legislative regulatory act on technical requirements for windmills in Belgium (Flanders)
- Government Order at stake
- This act is covered by Directive 2001/42/EC (Plans and programmes)
- Need of environmental assessment.

Perspectives

- The Court pushes for broad interpretation of concepts in Environmental Democracy
- Justification : procedural rights, precautionary principle "It is not bad to know more on environmental consequences and to involve public in decision-making."
- Interesting issues on boundaries between public participation principle and executive and legislative powers