Implementation of the Aarhus Convention
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Involvement in Aarhus

- Involved in negotiation of the Convention
- Chaired the negotiations that created the compliance mechanism
- Currently a member of the compliance committee
Shape of talk

- Look at the thinking behind Aarhus Convention - with particular reference to Principle 10 of the Rio Declaration
- Look at contents of Aarhus
- Discuss role of EU with respect to Aarhus
- Look how Aarhus is implemented in the UK
- Quick look at some Aarhus cases, to give a sense of how it might impact the UK
Principle 10
of the Rio Declaration
Rio Declaration

- The Rio Declaration on Environment and Development
- Comprises 27 principles intended to guide future sustainable development around the world
- Not legally binding
- Influences development of environmental law, expressly implemented by a number of instruments
Environmental issues are best handled with the 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.
Political background to principle 10

- Does not enshrine a right to a clean and healthy environment, or any substantive environmental right - cf. principle 1

- Objections to such a right
  - dilute existing human rights
  - of limited use - not concrete
  - fear of endless open-ended litigation

- Conservative response to rights-based approach to environmental law - give procedural rights to individuals
The Aarhus Convention
CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS
Aarhus and Principle 10

- Very clear regional implementation of Principles 1 and 10
- Recitals say so, and for the most part discuss delicate balance between Principles 1 and 10
- Shape is dictated by principle 10
Essentials

Regional Convention within UNECE
Adopted in June 1998 in Aarhus. Michael Meacher represented the UK
EU and UK become Parties in 2005
Access to information
Article 4

- Based on 90/313/EEC
- Parties must require public authorities to make environmental information available by a certain deadline
- Provides for express grounds for refusal - but these interpreted restrictively, taking into account public interest served by disclosure
- Related obligations on Parties to collect, update and disseminate environmental information (Article 5)
Public Participation – Articles 6 to 8

- Article 6 requires Parties to ensure public participation in decisions relating to the environment
- Decisions on permits for specific activities (Article 6 (drawn from EU law on EIA and integrated permitting))
- Public participation with respect to plans, policies and programmes relating to the environment (Article 7)
- More general provisions on public participation for preparation of regulations and generally applicable legally binding normative instruments. (Article 8)
“Public concerned” is informed at an early stage when options are open

public must be allowed to submit comments

due account to be taken of their views in the outcome of the decision
Article 9 – access to justice
Article 9

- Provides judicial and administrative remedies in the event of failures fully to implement freedom of information and public participation provisions.

- More generally, public to have access to administrative or judicial procedures to challenge acts or omissions by private persons and public authorities that contravene provisions of national law relating to the environment.
Procedural requirements in Article 9

- Procedures must
  - provide adequate and effective remedies
  - include injunctive relief as appropriate
  - be fair, equitable, timely
  - not prohibitively expensive
Compliance committee

- Many MEAs contain compliance mechanisms
- Aarhus unusual in having independent panel making findings on compliance
- Not a court
- Individuals and NGOs can make complaints directly to us
- Recognised in national courts (Lord Carnwath in Walton v Scottish Ministers [2013] PTSR 51 - decisions of the CC "deserve respect")
- May influence EU law (Joined Cases C-404/12 P and C-405/12 P, Council of the European Union, and European Commission v Stichting Natuur en Milieu and Pesticide Action Network Europe)
EU

- EU became Party by Decision 2005/370/EC

- EU assumes obligations as if it were a state (see Article 17 of the Convention)

- Member States and EU divide up obligations between themselves - obligations arise either for the EU or for the Member States - not both (see Article 19)

- Shapes implementation in UK, much of which implements EU law
Implementation in UK
National provisions
Environmental information

- Articles 4 and 5 of the Convention fall within EU competence
- Implementation within competence of the European Union
- Obligations under EU law (not international law) implemented in UK by further legislation, including Environmental Information Regulations 2004 (SI 2004/3391)
Public Participation

- Articles 6 and 7 fall within EU competence
- Implemented by a raft of EU legislation including Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment and Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control)
- UK implementing legislation runs to more than 50 [sic] different provisions
- Article 8 (regulations and norms) falls within national competence and largely implemented administratively
Access to justice

- Access to justice Article 9(1) related to environmental information (Articles 4 and 5)
- Article 9(2) related to public participation (Articles 6, 7 and 8)
- Implementation in the UK is by
  - appeal to Information Commissioner (with respect to environmental information)
  - judicial review
- n. b. Civil Procedure Rules – repeated issues about costs
Two cases

Hinkely Point and access to justice with respect to EU institutions
1) Hinkley Point

- United Kingdom ACCC/C/2013/91
- Communication by Sylvia Kotting-Uhl, a member of the German Green Party and member of the Bundestag.
- Alleges non-compliance by the UK with article 6 of the Convention in connection with
  - its alleged failure to provide the German public with opportunities to participate in a transboundary environmental impact assessment procedure concerning the proposed construction of two nuclear reactors at Hinkley Point
Issues

- Still under consideration
- Questions
  - geographical extent of public concerned
  - how to involve public in other states in public participation procedures
  - how states should cooperate in ensuring access with respect to decision making procedures with alleged transboundary effects
2) EU institutions

Access to justice and EU institutions
ACCC/C/2008/32 (Part I) concerning compliance by the European Union

ClientEarth an environmental NGO alleges that NGOs and public don't have any way of challenging decisions of EU institutions
Example – the Greenpeace case

- See for example the Greenpeace case (Stichting Greenpeace Council (Greenpeace International) and Others v. Commission, T-585/93; and Stichting Greenpeace Council and Others v. the Commission, C-321/95)

- Greenpeace International and local associations and residents of Gran Canaria (Spain) sought the **annulment** of a decision adopted by the Commission to provide financial assistance from the European Regional Development Fund for the construction of two power stations on the Canary Islands, **without requiring an environmental impact assessment** (EIA) to be conducted.
No standing in Greenpeace case

- Neither Greenpeace nor residents of Gran Carnaria have the standing - *Plaumann* test

“Persons other than those to whom a decision is addressed may only claim to be individually concerned if that decision affects them by reason of *certain attributes which are peculiar to them* or by reason of *circumstances in which they are differentiated from all other persons* and by virtue of these factors distinguishes them individually just as in the case of the person addressed”
Compliance Committee

- Have already found that a new direction of the jurisprudence of the EU Courts should be established in order to ensure compliance with the Convention

- May shortly be considering
  - the effect of a recent case on related issues (Joined Cases C-404/12 P and C-405/12 P Council of the European Union, and European Commission v Stichting Natuur en Milieu and Pesticide Action Network Europe)
Thanks for listening

Any questions?