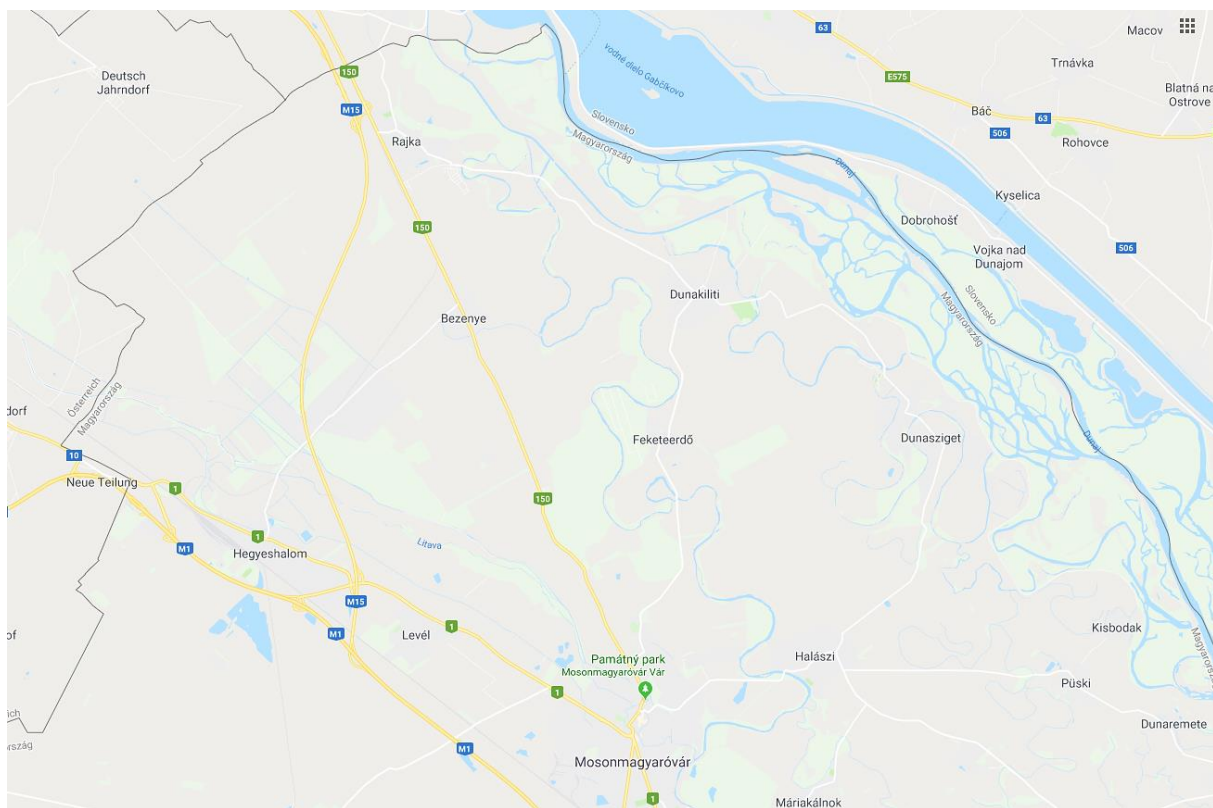


A case study on public participation and legal standing - Focus on Industrial Emissions Directive

Glassworx Ltd, a major Hungarian glass producer, geared its production toward high-throughput, direct fibre processes for highly specified applications, using single-end, direct-draw rovings and fibre products.

Recently, Glassworx bought an old industrial facility close to Mosonmagyaróvár which used to serve for glass manufacturing until 1998 and has been closed ever since. After some minor construction works, the company obtained a permit for installation according to Directive 2010/75/EU (Manufacture of glass including glass fibre with a melting capacity exceeding 20 tonnes per day - 3.3 Annex I of the IED Directive).

Soon after the factory started operations, the Hungarian Environmental Inspectorate found out several violations of the Hungarian IED Act. In the penal proceedings, however, Glasworx was only fined with a EUR 100 equivalent sanction since there was no major leak of chemicals.



1) An environmental NGO challenges the permit at the court. *Nickelsdorf für Umwelt und Naturschutz* (NUN), an Austrian NGO did participate in the administrative proceedings but is satisfied neither with the administrative procedure nor with its outcome. It points out that, *inter alia*:

- all the information provided to NUN was in the Hungarian language,
- NUN could express its comments only within a concise time limit provided by the Hungarian authorities (20 days),

NUN also disputes the court fee of HUF 300.000 (approx. EUR 935) which applies to the EIA and IPPC disputes and doubles the general court fee. To NUN, the fee seems too high. Moreover, NUN

claims that several Articles of the Hungarian Code of Administrative Justice seem to be non-compliant with the Aarhus Convention, in particular, the stipulation which effectively restricts any possibility of injunctive relief and another stipulation which states that the annulment of administrative decisions is only available to those cases where an infringement of an individual public-law right has been established.

2) Another environmental, Hungarian *Mosonmagyaróvár barátai* (Friends of Mosonmagyaróvár, FOM), wanted to participate in the penal (administrative liability) proceedings against Glasworx but was denied participatory rights. According to the official authority, the relevant Hungarian IED Act which sets conditions for participation in the proceedings concerning IED operations is not applicable to the administrative penal proceedings.

FOM argues that the activities of Glasworx put the nearby river Danube into great danger. Hungary as any other Member States should have laid down rules on penalties applicable to infringements of the national provisions adopted pursuant to IED. The penalties thus provided for should be effective, proportionate and dissuasive – which was not the case, FOM emphasises. Furthermore, FOM points out that the penal proceedings in fact complete the process to grant the permit for the installation in which many evident risks had been omitted. FOM believes the Aarhus Convention is applicable in this case.

Questions:

- 1) How would you decide on the arguments of NUN concerning the information and the time limit provided?
- 2) Would you consider the court fee too restrictive? Which aspects would you take into account? What would be the fee in your country in this case?
- 3) What would you do (as a national judge) if you found the court fee contrary to the requirements of the Aarhus Convention or the IED Directive?
- 4) Would you consider the stipulations of the Hungarian Code of Administrative Justice to comply with the Aarhus convention or the IED Directive?
- 5) Would you grant FOM participatory rights in the administrative liability proceedings? Despite the answer, would you allow it to access the court (directly)? Or, based on the Aarhus Convention, do you think a civil action against Glasworx would be plausible?