

Case study on public participation in environmental matters with a focus on the IED

The Operator of a pig farm situated in Country A, close to the boarder river with Country B, plans to extend the activity of the farm by increasing the number of pigs from the current 2500 to 4000.

The farm is a source of various types of pollutions, including: odours, generation of waste and waste waters. The waste waters are discharged into the boarder river.

A decision to update the permit (the Updated Permit) has been issued by the competent authority (the Regulator). Public participation procedure was carried out within this process.

Several appeals against the Updated Permit have been filed to the court.

The Claimants are:

1) NGOs:

- a) association “Nature Lovers” based in Country A, active in the field of environmental protection for the last 10 years; they were not active during the administrative proceedings carried out by the Regulator;
- b) association “Clean Rivers” based in Country B, active in the field of environmental protection for the last 10 years, dealing - according to their by-laws - with the protection of rivers;
- c) foundation “Heart of Nature” based in Country A, active in the field of environmental protection for the last 5 years;
- d) association “Safe Village” based in Country A, formed by the citizens living in the neighbourhood in response to the planned extension of the pig farm; the association was registered after the proceedings to issue the Updated Permit had been initiated; they were active during the proceedings to issue the Updated Permit since they were registered, and before that day - were active as an informal group of natural persons.

2) Natural persons:

- e) owners of houses located in Country A, in the neighbourhood of the farm,
- f) tenant of a house located in Country A, in the neighbourhood of the farm,
- g) teacher in a public school located in Country A, in the neighbourhood of the farm,
- h) owners of houses located in Country B, in the neighbourhood of the farm.

The charges presented in the appeals were as follows:

- a) the public notice was posted on the webpage of the Regulator and on a noticeboard close to the farm - which, according to Claimants was insufficient;
- b) part of the permit application (description of waste generated and of waste management) was excluded from disclosure due to confidentiality of commercial information;
- c) the technical part of the permit application was incorrect: the calculation regarding emission of waste water and their impact on waters was based were based on a doubtful methodology;

- d) a group of neighbours from Country B presented their comments during the administrative proceedings carried out by the Regulator which were ignored as the Regulator decided they cannot be treated as “public concerned” and that the Regulator’s regional competence does not allow him to examine comments coming from foreign citizens; in the appeal that group of neighbours claims it was unlawful;
- e) a group of neighbours from Country A filed just a protest (veto) against the extension of the farm; they filed it during the administrative proceedings to the Regulator who ignored it; in the appeal they claim it was unlawful.

Questions:

- a) Please decide who of the Claimants has standing in the case and why
- b) Please decide which charges are justified and why.
- c) Is it important who raised a given charge in their appeal?
- d) Is it important whether the charge had been raised already before, during the administrative proceedings carried out by the Regulator?