

Public Participation in Long-term Operation

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Session 2: Public participation in waste management and LTO
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Rio Declaration (1992), Principle 10

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.

Why Should We Care about Public Participation in Nuclear Decision Making?

As explained by **NEA Director-General Magwood** during a 2017 NEA Workshop on Stakeholder Involvement in Nuclear Decision Making:

stakeholder involvement in nuclear decision-making targets well-informed, well-reasoned and clear decisions. These should broadly reflect the input of stakeholder views in a balanced fashion. Attempts to achieve such broad and balanced reflection of views can lead to greater understanding and acceptance of resulting decisions and as such are an important part of building public confidence.

2017

**NEA Workshop
on Stakeholder Involvement
in Nuclear Decision Making**

Summary Report

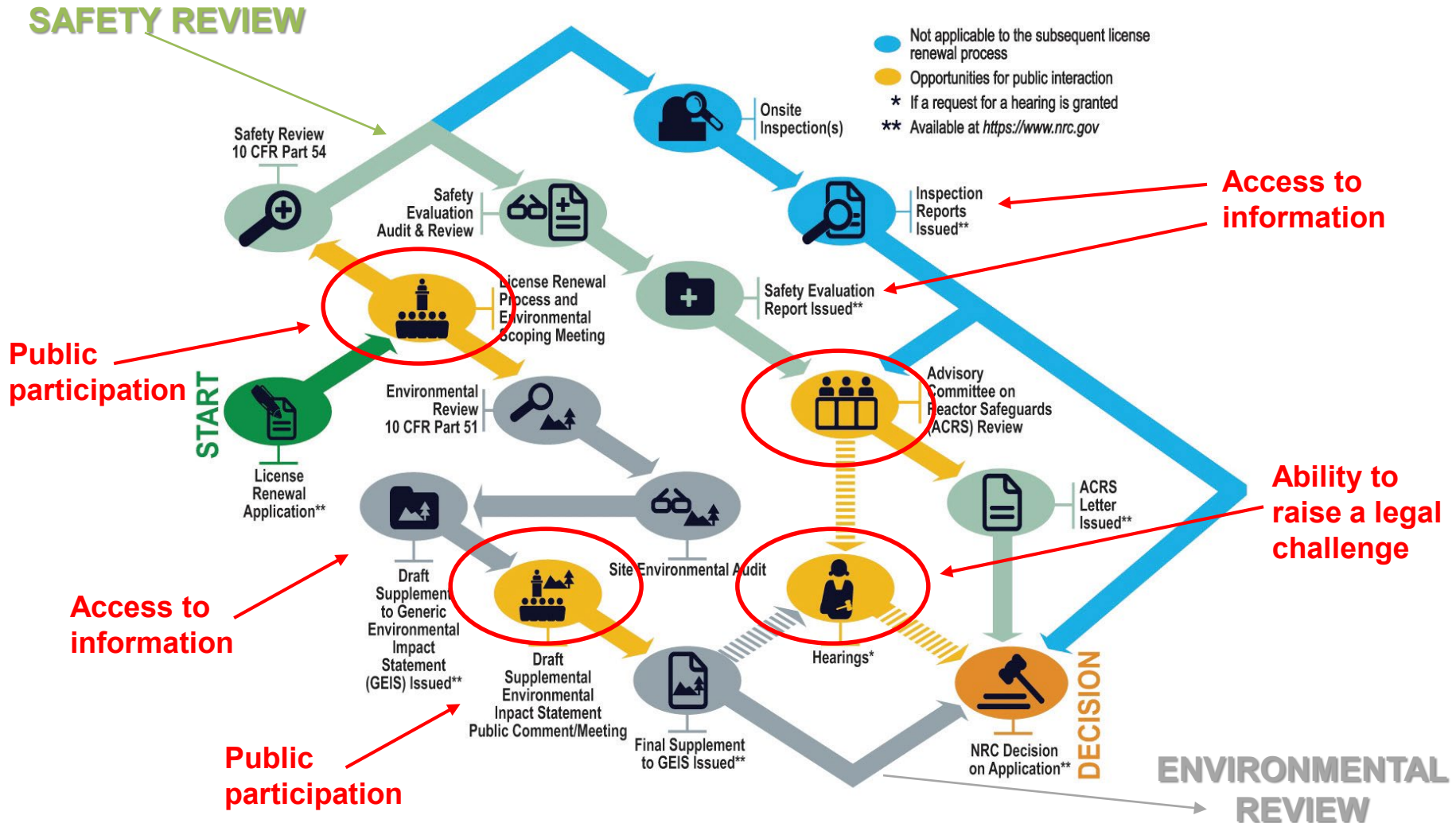


Distinctions to be Made at the Outset

“Public participation” can be a very broad concept and depending on how this is interpreted there are different legal requirements. For example:

- Are we talking about safety-related matters or environmental protection matters?
- What stage of the licensing process is under consideration?
- What type of participation are we referring to?
 - Access to information?
 - Public participation in decision-making?
 - Access to justice / right to raise a challenge?

EX: US Nuclear Regulatory Commission Licence Renewal Process



Access to Information, Public Participation and Ability to Challenge Decisions

Focus on: Environmental Reviews for LTO

UNECE Environmental Conventions Covering Nuclear Activities

- **Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) (1991)**
- **Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) (1998)**
- **Protocol on Strategic Environmental Assessment to the Espoo Convention (SEA Protocol) (2003)**

UNECE Environmental Conventions Covering Nuclear Activities

Espoo Convention & SEA Protocol			Aarhus Convention		
Environmental Impact Assessment			Access to Information	Public Participation in Decision Making	Access to Justice
EIA Documentation	Intergovernmental (Transboundary) Consultation	Public Participation			
Strategic Environmental Assessment					
Environmental Report	Transboundary Consultation	Public Participation			
	Domestic Consultation				

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assessments of environmental impacts of certain nuclear activities

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protection of the environment through public participation

Espoo Convention (1991)

Article 2(1): The Parties shall, either individually or jointly, take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities.

OBLIGATIONS

- assess the environmental impact of certain activities at an early stage of planning and
- notify and consult certain states on all major projects under consideration that are likely to have a significant adverse environmental impact across boundaries.

APPLICATION

1. Proposed activity must be listed in the Convention (Appendix I) (includes certain nuclear activities); **AND**
2. Proposed activity must be likely to cause a significant adverse transboundary impact

LTO & Waste at the Espoo Implementation Committee

- It is important to note that the Convention not only applies to the activities listed, but also to any major changes to these activities that may have a significant adverse impact across borders (Article 1(v)).

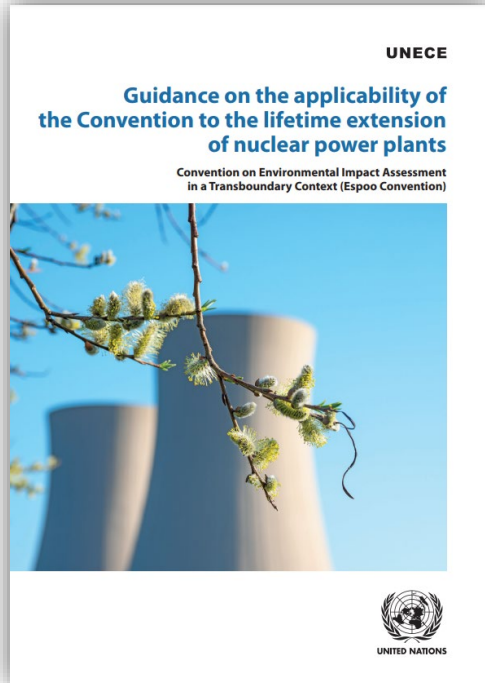
7 Committee Initiatives – 2 re: nuclear activities, 1 re: LTO

- Lifetime Extension (follow-up): CI/4 Rivne, Ukraine (2011-2014)

34 Information Gathering Cases – 16 re: nuclear activities, 9 re: LTO

- Radioactive Waste (closed): INFO/8 (Romania), INFO/22 (Spain)
- Lifetime Extension (closed): INFO/7 (Ukraine), INFO/18 (Belgium), INFO/26 (Spain)
- Lifetime Extension (open): INFO/15 (Netherlands), INFO/19 (Czech Republic), INFO/20 (Ukraine), INFO/28 (Bulgaria), INFO/32 (France), INFO/34 (Spain)

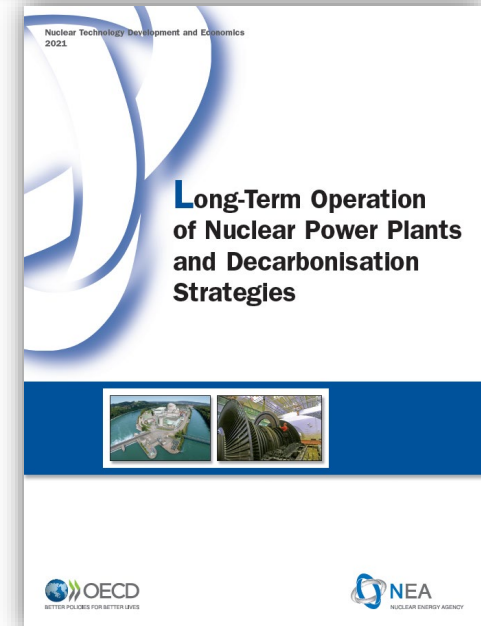
* More Information on EIA and LTO *



- Guidance developed in the framework of the Espoo Convention
- Objective: to clarify whether and in what circumstances lifetime extensions of NPPs require a transboundary EIA in accordance with the Convention.
- Aim: assist Parties in the practical application of the Convention and to support the Implementation Committee in reviewing compliance by Parties with their obligations under the Convention, with a view to assisting them in fully meeting their commitments.

NEA Nuclear Law Bulletin

- [No. 105](#): “Environmental impact assessments and long-term operation of nuclear power reactors: increasing importance of environmental protection in the European Union?”, by Sam Emmerechts and Pierre Bourdon
- [No. 101](#): “Today is yesterday's pupil: Reactor licence renewal in the United States”, by Kimberly Sexton Nick



Aarhus Convention (1998)

Closely linked to the principle of access to environmental information, the principle of public participation in environmental decision-making is found in the legal frameworks of most, if not all NEA member countries, and is part of several international legal instruments, including the Aarhus Convention.

Objective

Contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of:

- Pillar 1: access to information
- Pillar 2: public participation in decision-making
- Pillar 3: access to justice in environmental matters

Aarhus Convention: Pillar 1

Access to Environmental Information

Why: ensures that members of the public are able to know and understand what is happening in the environment around them. It also ensures that the public is able to participate in an informed manner.

Article 4: Requires a system that enables the public to request and receive environmental information from public authorities

Article 5: Requires a system through which public authorities collect environmental info. and actively disseminate it to the public without request

What is “Environmental Information” as it relates to nuclear activities?: Factors (such as substances, energy, noise and **radiation**) ...

Aarhus Convention: Pillar 2

Public Participation in Decision-Making

What: Each party shall provide the public concerned with an opportunity to participate in decision making.

- This entails legal requirements to, *inter alia*:
 - notify the concerned public about the decision making early in the process,
 - provide the concerned public with specific information,
 - provide reasonable time frames for effective participation and the possibility to submit comments either in writing or, as appropriate, in hearings.
- In addition, each party shall ensure that due account is taken in the final decision of the outcome of the public participation. Where appropriate parties are required to apply Article 6 when updating or reconsidering the operating conditions of aforementioned activities.

Aarhus Convention: Pillar 3

Access to Justice

Why: to provide procedures and remedies to members of the public so they can have the rights under Pillars 1 and 2 enforced by law

Access to justice under the Convention means access for the public to procedures where legal review of alleged violations of the Convention and national laws relating to the environment can be requested.

** As with Espoo, the Aarhus Convention also has its own dispute resolution system – the Compliance Committee – available for NGOs and individuals, as well as governments. **

* More Information on Environmental Protection and Nuclear Activities *



**Principles and Practice of
International Nuclear Law**

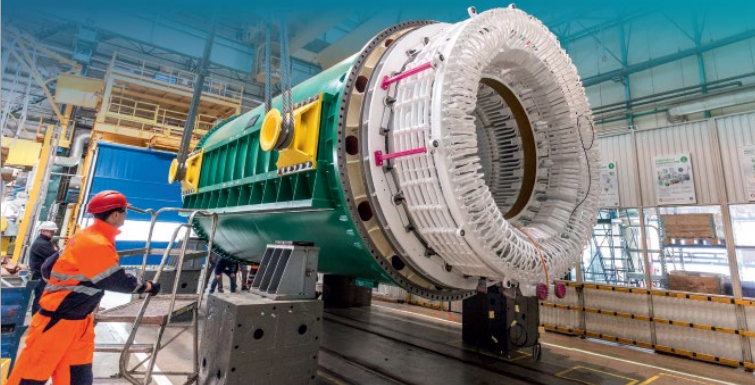
**“Nuclear activities and
environmental protection:
The international legal
framework”**

by Kimberly Sexton Nick and Paul Bowden

What Does this Look Like in Practice?

Legal Affairs
2019

Legal Frameworks for Long-Term Operation of Nuclear Power Reactors



AIM: to provide insight into the various laws, regulations and policies that contribute to different countries' approaches to LTO around the world, without any judgement as to the merits of one approach over another.

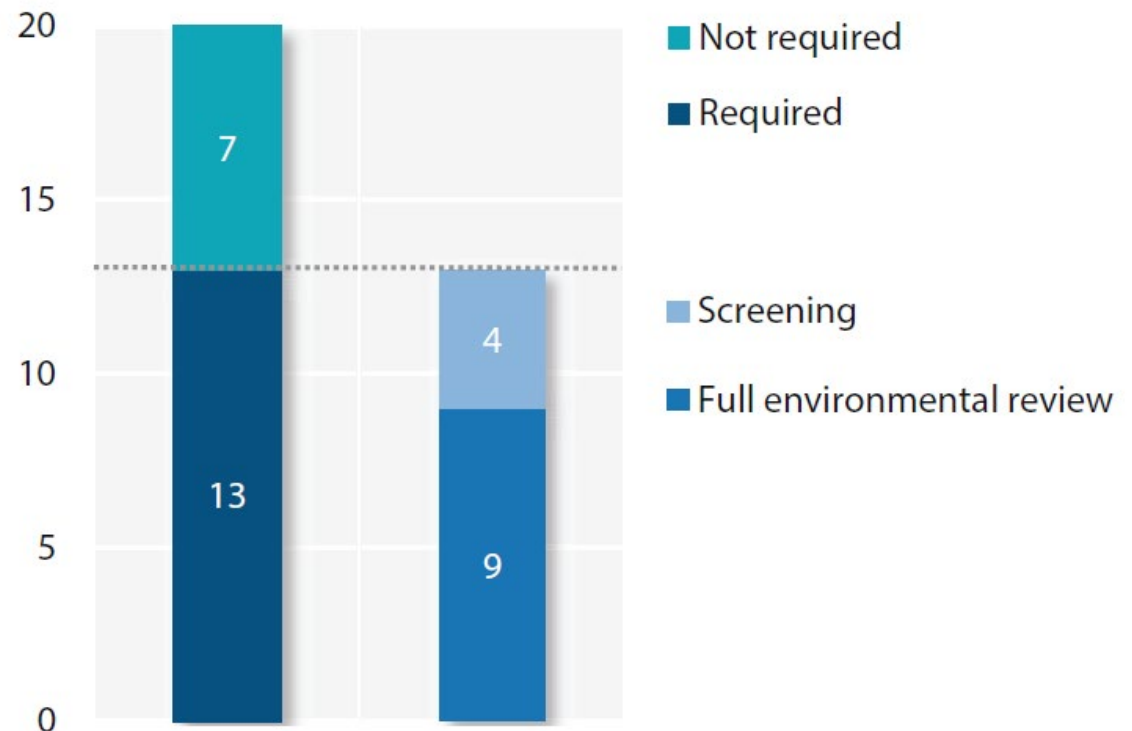
SOME ISSUES ADDRESSED INCLUDE:

- the degree of **public access to information** on safety and environmental issues
- the **extent of public participation** in safety and environmental issues
- **legal challenges** to safety and environmental issues

Environmental Reviews & Transboundary Notification

A legal requirement exists in the majority of reporting countries to perform a review of the environmental impacts prior to LTO, although the nature and extent of such reviews vary.

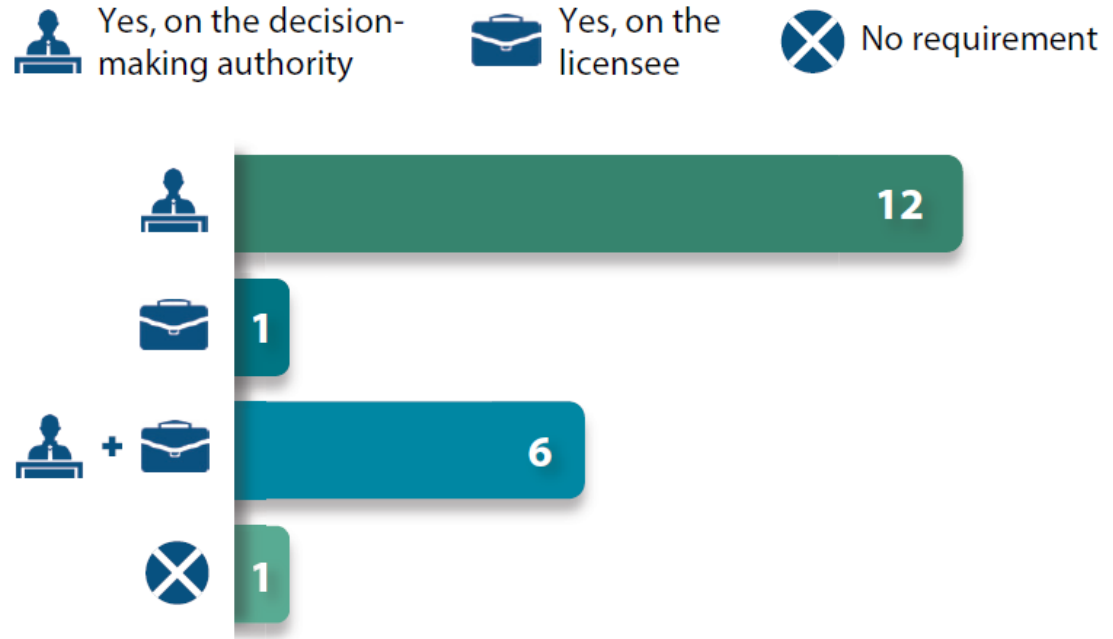
Figure 2.8. Does the LTO-related review include a review of environmental issues



Provision of Information

Most reporting countries' legal frameworks provide rights to the public to access LTO-related information held either by public authorities, or, in some reporting countries, by licensees.

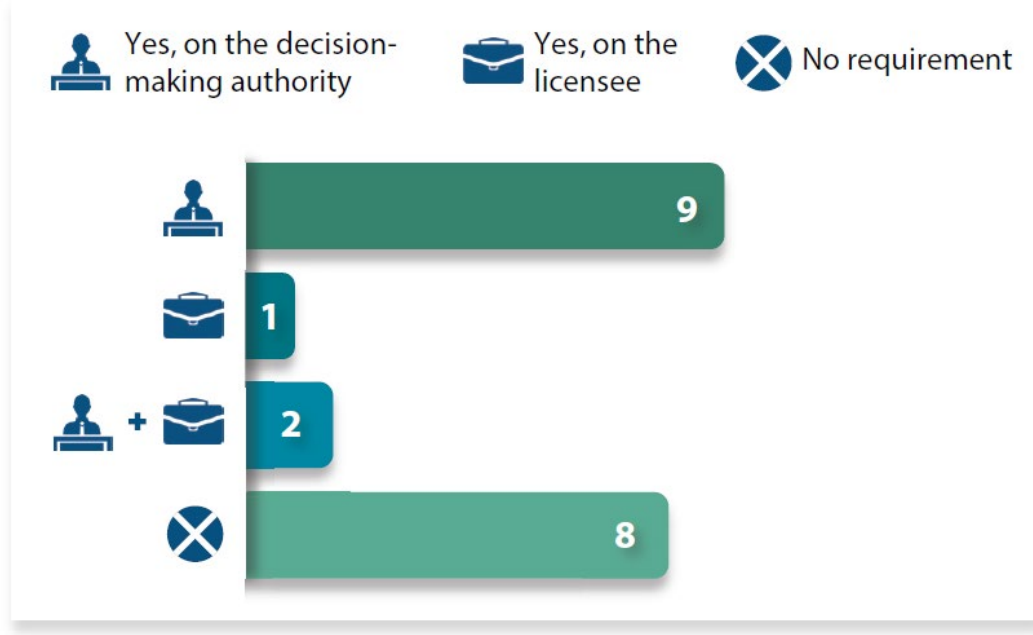
Figure 2.9. **Is there a legal duty to provide information* to the public during the LTO-approval process?**



* Either through dissemination or on request.

Public Participation

Figure 2.10. **Is there a legal duty to solicit public participation during the LTO-approval process?**



The legal frameworks for LTO-related public participation vary among reporting countries. While not all reporting countries provide for public participation, for those that do, such requirements typically rest with the nuclear regulatory body or another decision-making authority.

Public Participation

The **public participation requirements** may entail:

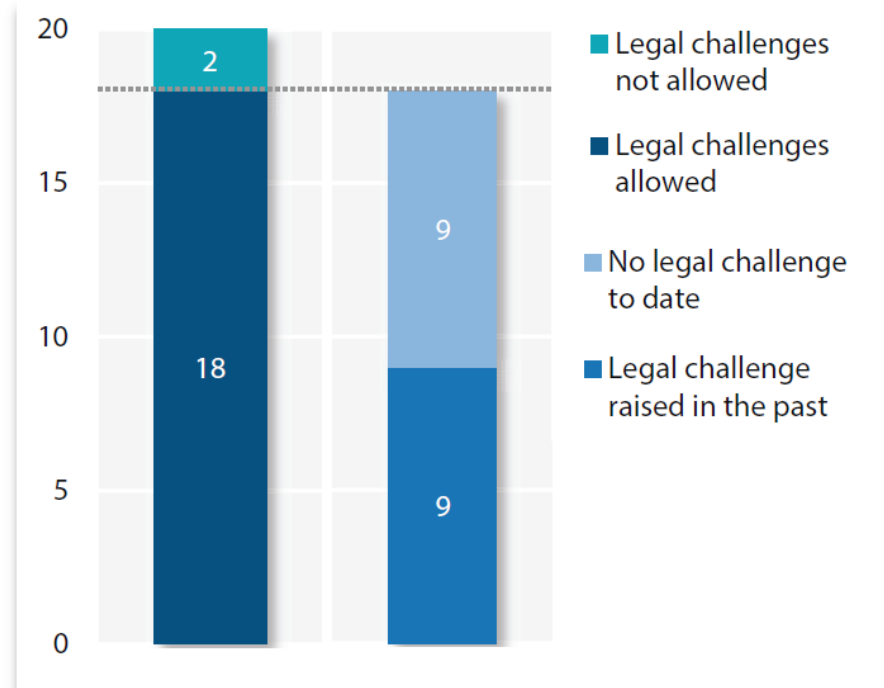
- public hearings,
- written comments, and/or
- the dissemination of draft decisions for public consultation.

In addition, there may be a requirement for the decision-making authority to take into account comments received when reaching its final decision.

Legal Challenges

Nearly all reporting countries allow legal challenges to the LTO process (often concerning the authorisation, approval or other type of decision made in the context of the LTO-review process).

Figure 2.11. **Are legal challenges related to the LTO process allowed and have legal challenges* been raised in the past?**



* Only for those that allow legal challenges.

Legal Challenges

Figure 2.12. Who are the potential subject parties (i.e. defendants) to a challenge?

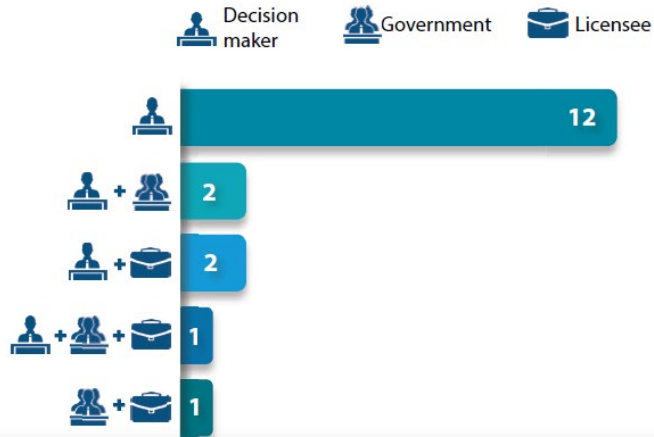


Figure 2.13. What are the potential subjects of a challenge?

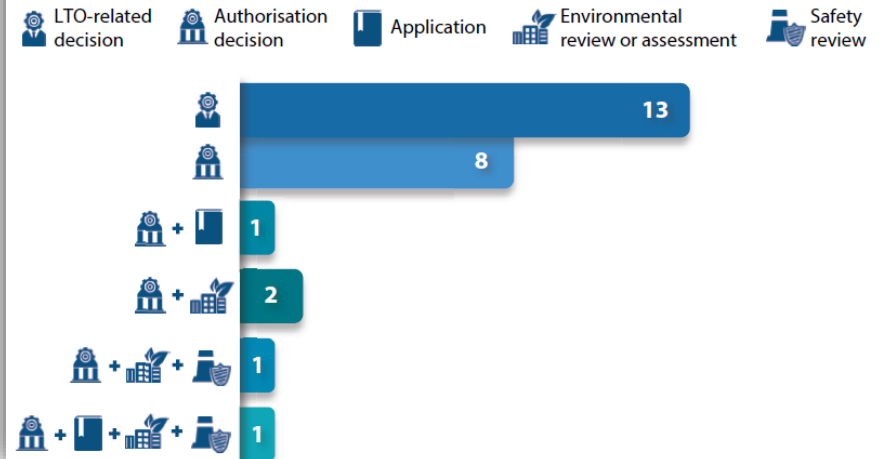
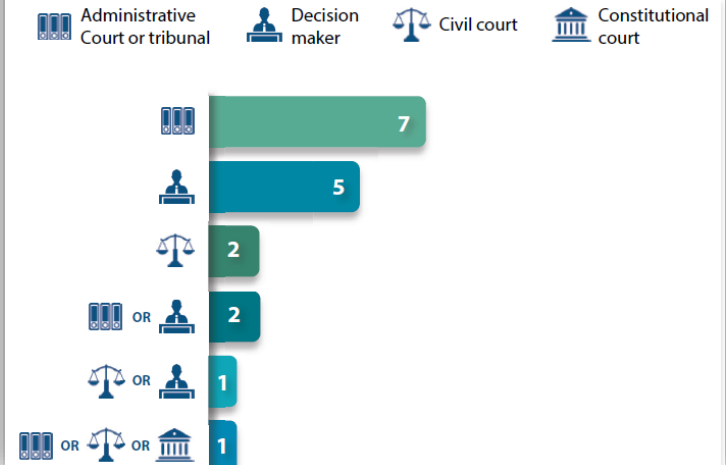


Figure 2.14. What kind of procedure is the challenge?



Figure 2.15. Where should the challenge first be raised?



Thank you for your attention!



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