

## **Topical issues - Framing paper**

from the Oskarshamn working groups reports

**2<sup>nd</sup> Draft**

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## **TABLE OF CONTENTS**

<b>METHODOLOGY</b>	<b>3</b>
<b>1. LOCAL DEMOCRACY</b>	<b>4</b>
<b>2. EXPERTISE IN THE LOCAL DECISION-MAKING PROCESS</b>	<b>7</b>
<b>3. THE SITE SELECTION PROCESS</b>	<b>9</b>
<b>4. INFLUENCE OF THE LOCAL ACTORS ON THE NATIONAL NUCLEAR WASTE MANAGEMENT FRAMEWORK</b>	<b>11</b>

## METHODOLOGY

This framing paper was prepared on the basis of the working groups conclusions as they were reported in the last session of the Oskarshamn seminar (21 september 2001). These conclusions were the results of the analysis carried out by the working groups on one English (Sellafield) and two Swedish (Oskarshamn, Tierp) case studies. This analysis also took into account the various experiences of nuclear waste management each participant brought into the discussion.

Many of the statements made by the rapporteurs were posed as issues and questions to be addressed in further Cowam seminars. From the analysis of these reports, the framing paper brings out several topics which will be proposed for discussion to recommendation groups in Verdun seminar and Wellenberg. The following topics were identified :

1. Local democracy
2. Expertise in the local decision-making process
3. The site selection process
4. Influence of the local actors on the national nuclear waste management framework

These topics were built as much as possible on the statements made by the rapporteurs for the working groups. For this reason, some issues still need to be clarified and detailed.

The eight recommendation groups will work on 2 of these topics. They will elaborate final conclusions and recommendations, taking into account the questions listed below in the respective topics and the new elements provided by further case studies presentations (French and German case studies in Verdun 28 february/1-2 March 2002; Swiss and other case studies in Wellenberg 12-14 september 2002).

The methodology provided in Oskarshamn seminar was validated by the working groups. It was acknowledged that the difficulties met by waste management agencies/companies in most european countries concerned by radioactive waste management are an opportunity to make returns of experience and learn lessons for the future. The reasons for these difficulties should be analysed and positive aspects identified. In the countries where it took place, the restructuring of national programmes was seen as beneficial to ensure their accountability and efficiency. In the case studies the observed genuine change of attitudes was viewed as a primary requirement to get public support in the site selection process.

In this learning process, it was also recognized that there is no one best solution. Procedures and options must be decided according to national structures and local contexts. In this respect, the decision-making process set by the national policy could only be different from one European country to another. Comparison between European countries as well as between different local contexts in the same country makes it possible to understand which elements of the process didn't work, and to identify why the solution or its implementation in a particular context was unappropriate. Lessons will be drawn more precisely from the many public participation processes European countries experienced in the recent years. In the first seminar, the Swedish case studies particularly highlighted the positive impact of a wide participation of local communities in the decision-making process while pointing out several key-questions on the national level. On the other hand, the UK experience in Sellafield has shown a balanced picture of the benefit and drawbacks of public inquiry when it is the sole opportunity for stakeholders to express their views and when it concentrates public scrutiny over UK waste management policy implementation.

## 1. LOCAL DEMOCRACY

*How is the local democracy organised to provide input in the nuclear waste management decision-making process? Which actors are involved in the local democracy? Is there a driving force? Are rules relevant for local participation? How is the participation and competence of the local communities structured?*

*While it was acknowledged that the answers to these questions will be different according to European countries, and especially according to the institutional power the local level dispose of in each country, it was agreed that these questions are relevant for all countries concerned with nuclear waste management.*

### Rules for participation at the local level?

It was viewed that a policy should set rules for the decision-making process on the national level. As regards the local level, a discussion was carried out about the relevance of rules, and their extent.

How are national regulation and local contextualization allowed for in rule setting for the local level participation? According to some participants, national regulation could include formal procedures which would be used as guidelines for local participation. Others argue room is needed for adaptation according to the local context. In this view should each community be able to work out its own decision-making process.

What is the benefit expected from setting rules and methods for participation in advance? This avoids fixing the rules again at each meeting or forum, it was stressed. Should this be developed further and should rules define a methodology to implement participation concepts such as transparency, openness, dialogue and to make clear how this implementation will be achieved?

In the discussion about rules, questions already raised about the national policy reoccurred. The step-wise model was once again debated. If such a model was adopted, would a framework be established specifying how local issues will be handled and responded? Would this framework be proposed before or after potential sites are named? Who would design this framework and how would local actors participate in its preparation?

### Respective roles of the different local actors in the local democracy

What is the role and responsibility of the different actors (municipalities, NGOs, citizens) in this local democracy?

Should the local democracy as regards nuclear waste management be driven by the usual democratic rules or should new ways of participation be invented when usual procedures prove to be insufficient? What would be the purpose of ad hoc solutions?

Should local involvement first of all rely on local elected representatives, in accordance with usual rules?

Considering the significant contribution of NGOs in nuclear waste management issues, which role would they be proposed?

Are the local opposition and the NGOs a resource of dialogue with the operator and the regulator, for the local community?

Should limits be set to consultations beforehand to make clear the scope of local involvement and to make sure participation brings an effective contribution to the decision-making process?

### The specific role of the municipality

A debate developed about the role of municipalities in the local democracy. As organisations working on behalf of democratically elected representatives, can they be expected to avoid polarization, to work broadly with all stakeholders, regardless of their opinion on siting issues, and to try to give a wide representation of the various local actors' viewpoints? If so in which ways can the municipality actually steer the local dialogue process, notably with the operator and the regulator, and facilitate public participation. Two models were characterized.

- In the first one, the municipality takes care of expressing the diverse points of view of all citizens; it is the main local actor, and the main partner in the discussions with the operator and the regulator.
- In the other model, the municipality is only one organisation among the local actors and it leaves the local opposition and the NGOs express their views as far as they are ready to do so, and support them in these efforts if required.

There are pro and cons in both approaches, it was stressed.

Beside the involvement of the municipality an additional question was raised about the degree of commitment of elected representatives themselves in the local dialogue : should the local council defend its own opinion in the decision-making process, or should it remain neutral in the local debates about nuclear waste issues?

### Local competence and resources

The participation of local communities in the decision-making process requires that they develop some competence and that they dispose of resources to do so.

The case studies have shown that local communities are able to develop a high level competence to understand and comment technical issues as soon as they consider it is of value for them to enter the discussion. How do they build this competence? What are the resources they dispose of from the local level? From the national level? From the regional level? It was noted for instance that a regional collaboration between the communities involved in the site selection process and the surrounding communities could be helpful to enhance experience sharing, and strengthen local positions towards the operator and the regulator.

What are the available means to disseminate knowledge inside the community and to inform local citizens about the decision-making process?

How is the participation of local actors in the decision-making process facilitated? Should volunteers be remunerated? Compensated? How are the participation means (transport...) supported?

Beside economic resources, how could volunteers receive support to find free time in their agenda (child care, work arrangements...)?

While funding is viewed as of primary importance, the resources given to local actors could also be of another kind than economic.

What is the origin of these resources and how are they proposed to the local actors? Do funding resources come from one source or are they diverse? In the latter case can an autonomously administered fund be created to manage these resources and their spending.

Which institution would be responsible for administering such a fund. Would there be funding rules set at the national level?

Finally it was noted that a lack of resources for the local actors may lead to delays in the decision-making process whereas a proper allocation of means would enable citizens to take an effective part in the decision-making process.

## 2. EXPERTISE IN THE LOCAL DECISION-MAKING PROCESS

Radioactive waste management issues are highly technical. The expertise carried out is often difficult to grasp for the non-specialists that the local actors are. Furthermore the focus on technical expertise in the decision-making process raises concerns that other issues than technical ones are not addressed or that the assessment of technical options by experts implies choices about non-technical issues which are not made explicit or transparent. Should expertise be limited to technical matters or should a specific expertise be developed to address legal, economic, political and social issues ? Experts' accountability and trustworthiness are questioned and discussions are carried out on the ways to link expertise and local participation.

Which information is given to the local actors ? Is information provided by the operator and the regulator in a top-down approach or do the operator and the regulator give material which answers the questions raised locally ?

To what extent will the access to expertise enable local stakeholders to question the methods of the operator and/or the requirements asked by the regulator, and to argue on these issues ?

From the local communities' point of view the contribution of expertise to the quality of the decision-making process need to be questioned. How is expertise actually providing information to the stakeholders involved in the decision-making process ?

How to make sure that expertise feeds the discussions and doesn't turn into propaganda, fueling adversarial positions?

How are experts from non-institutional organisations brought into the debate ?

Does pluralistic expertise ensure that the decision-making process actually addresses the key concerns of stakeholders in order to achieve practicable decisions ?

Beside pluralistic expertise, aren't new ways of public involvement required to bridge the gap between expertise discussions and citizens' concerns?

The call for pluralistic expertise raises some questions.

First of all, how to achieve this pluralism of expertise? Then, how to make sure its quality is good enough?

Can a large involvement of universities and research organisations bring a first element of solution?

Moreover, to what extent is this contribution of experts recognised by the research organisations they belong to and how is it valued in their career ?

Furthermore, what is the mandate of these "other" experts? Would they be brought into the decision-making process by local authorities or by a joint group (comprising the various actors concerned)?

Can a structure with specific resources make independent expertise reachable to every stakeholder, particularly to individual citizens and smaller organisations? Should a pool of independent experts at the EU level be created?

One outcome of this discussion is to question the label of "independent" experts.

Who independent experts are? To what extent are they independent? From whom? Don't all experts have their own agenda and have some interest in the question they are asked to survey? Isn't it the responsibility of the experts to make clear where they speak from, what their links and interests are? Additionally, could these experts be evaluated?

Furthermore, is it possible to find experts inside the community ? Or is it worth training experts from the local community ?

However are local actors willing to stand as experts in the decision-making process ? What is the contribution of local actors in the expertise process :

- framing the question ?
- making sure that expertise addresses the actual concerns of the community ?
- participate in selecting experts ?

While the competence of local actors increases as they are involved in the decision-making process, how is this capacity sustained and developed ?

How do these local actors bring into the discussion with the operator and the regulator the specific knowledge they have about their land and locality ?

### 3. THE SITE SELECTION PROCESS

How are the sites selected? Three different kinds of approaches were identified during Oskarshamn seminar. Each raises specific questions. These are briefly outlined below.

1. In the first approaches experienced, sites were selected on a pure technical basis. The site selection was considered as part of a technical process where geology was the main criteria. Every site was analysed according to the same technical criteria. Hence, the selection was viewed as equitable by the operator and the result was only disclosed at the very end. However, according to Cowam participants, this technical selection process proved to be a failure : even if the selected site met safety requirements, it was rejected once made public because it had seldom or never been discussed with the local population.
2. A second approach was experienced in other countries (or in the same countries after the first approach failed). It consisted in an early publication of possible sites, pre-selected according to technical criteria. This process also met difficulties in several countries. This approach was regarded in Oskarshamn meeting as positive as far as transparency is concerned. Nonetheless, there was concern that it will not prevent NIMBY attitudes since it puts a large range of communities in a competition for which they didn't go in of their own free will. Moreover how restrictive should be the technical criteria for this pre-selection ? How many sites should a first public list include? How should concerned communities be informed ? Would a validation of a first list of sites by a panel of experts contribute to answer local concerns ?
3. More pragmatically, other countries have at first looked for volunteer sites. It was agreed in Oskarshamn seminar that in this case the suitability of the sites with regard to safety should remain a primacy. The selection should still be driven by technical considerations. However questions were raised about equity between volunteer sites and other communities in the country, and about the balance between safety and acceptance in the decision-making process.

Once the communities volunteer, can they be expected to carry out a fair dialogue with the regulator and the operator or is their point of view likely to be biased ?

What extent is given to other criteria than safety in the decision-making process? From a safety viewpoint how "good enough" is a site which is chosen upon a larger range of criteria than safety alone? Do the actors involved have the opportunity to debate about the importance given to safety and other criteria in the decision?

What is the relation between the selection criteria and the technical option proposed? Does the decision about the technical option take account of the site specificity ? How far is the decision about the technical option developed when the decision about the site is made? Is there enough generic understanding of the technical option to make a site selection? Does the decision on the technical option give room to alternatives?

This discussion also questioned safety criteria themselves. It is agreed that the selection criteria should be scientifically based. However, who should produce them? Can the operator be solely responsible for defining these criteria? How broad should be the analysis grounding these criteria?

From these first discussions, technical criteria and safety requirements appear to be basic and major elements in the decision. Yet they seem insufficient to reach a practicable decision. What would be the other criteria? How do these reflect the willingness and capacity of the local community to host the site, now and in the longer term?

In some European countries the willingness of the community to host a site is associated with compensations. Resources are allocated to the local community to make up for the siting of a waste management facility. The experience in this field is very different from one country to the other. While some do not use compensation at all, others resort to it but at different moments in the decision-making process, sometimes before the final choice is made for the site.

Considerations on this matter are quite diverse. Is compensation a way to buy the site acceptance? Isn't compensation likely to be considered as a compensation for a risk, and, hence, as a recognition that the safety of the site is not met? On the other hand, isn't compensation a legitimate remuneration for the service offered by the local community to the national one? What is the rationale of compensation? What does it stand for? What does its relevance consist of in the different countries which use it? According to its relevance what is the appropriate time it should start with regard to the selection process? Who should receive these compensations (land owners, local authorities, regional authorities, others)?

What should be the use of compensation? Moreover could compensation be provided in other forms than money? For instance aren't regional development plans also able to address local expectations?

Does compensation value the capacity of the local community to host the site? How is valued the competence of the local community to review the site proposal and concepts and its operation?

In the longer term how is sustained the capacity of the local community to host the site and follow up its operation? How does the national community make sure the local community keep being concerned with the site and that it has the ability to interact with the institutions in charge of the facility?

What will be the "stretching" capacities of the local community in the longer term?

Should compensation allow a local sustainable development?

#### 4. INFLUENCE OF THE LOCAL ACTORS ON THE NATIONAL NUCLEAR WASTE MANAGEMENT FRAMEWORK

*The existence of a national framework for nuclear waste management was viewed as an essential basis for decision-making processes at the local level. A national framework should comprise a national waste management policy together with procedures for decision-making along the implementation at the national and local level and the required institutional structures.*

*But how are the local actors, which are primarily affected by the decisions, allowed for in the process? To what extent does the local actors' participation in the decision-making process contribute to the consistency and practicability of the overall waste management policy? What are the ways and means of this participation? Several links between the national and local levels were pointed out during the seminar. Along the discussions, a first attempt was made to characterise the modalities according to which the local actors can influence the national decision-making process.*

##### Need for a flexible approach

How far should the national framework define the decision-making options? Most participants, local actors, operators and public authorities, called for a step-wise approach for the waste management decision-making process. In this view the national framework would focus on structuring the decision-making process and the principles of its implementation, rather than aiming at developing one pre-defined technical solution.

In a first attempt to characterise this approach, two complementary definitions were proposed:

- "a flexible approach which can respond to review and consultation with identified milestones to allow review of progress and process and redefinition of the way forward";
- "a clear, up-front road-map to show the way and check progress against".

What rules and methods are needed to implement this kind of approach? Which room is given for changing the rules and the concepts if required, as the process gains experience?

On the one hand it was stressed that the decision-making process should keep questioning the waste management options and the sites proposed for selection and avoid narrowing the options too early. This was proposed to prevent questions from reoccurring too late in the process and blocking the decision. On the other hand, it was recognised that decisions are to be made and that keeping a wide range of options open implies costs for the national community and for the operator as well.

In order to make clearer the decision-making process a blank paper was suggested as a starting point. The examples of UK consultation paper or Germany work on site selection procedures were cited. The scope of issues addressed in such a paper was put into discussion. Should this paper remain focused on technical options or should it include a wider scope of issues? How would scientific information and social demand respectively be allowed for in this process?

Who should set the national framework? What room should be given to local communities, among them the municipalities, in the preparation of the national framework? While there was an interest in having a strong and robust statement from the Government, a law voted by Parliament was also considered as a valuable framework to build a national policy. The example of the 1991 French law, framing a 15 years phase of research on nuclear waste management, was cited.

A question raised here relates to the scope and objective of the decision-making process at the national level. What is the decision to be made about? What kind of waste does it concern? Shall the discussion during the process be open to wider views on nuclear power and address energy policy? What is it that people involved in the process are proposed to decide on? Thus, a preliminary requirement is to clarify the decision-making process scope at the national level.

### Early involvement of local actors

As regards waste management issues local actors used to be mostly consulted at the very end of the decision-making process to approve of a siting decision. There were little if any participation opportunities for local actors before the final site selection. In Sellafield the outcome of the public inquiry was that the proposed site was finally rejected after a long adversarial process.

Though the early involvement of local actors was stated as a valuable element in the decision-making process, there were questions on the ways to achieve it. Moreover, how does a community get concerned with or interested in waste management issues? A difficulty was identified here : how to get citizens involved in the framing of the issue when they do not yet feel concerned, for instance, when the decision is only set in general outlines ?

It is noted that once the national policy is set, the decision-making process often switches to the question of site selection. The actual involvement of local communities is often linked with the siting process, when almost all the options of the national policy are already fixed, impeding therefore a constructive involvement of local communities. From that moment, what are the opportunities for concerned local actors to carry on a debate on the national policy? To what extent are they able to participate in its definition?

The involvement of local actors at the national level should also comprise the follow up of the policy implementation. To what extent should the municipalities and the NGOs take responsibilities in the national control of the national policy implementation of at the local level. Directly concerned communities would gain confidence in the process if involved in the national follow-up of the policy implementation. They would for instance make sure that the implementation is discussed and actually developed taking into account local concerns.

### Modalities of influence

A general question here relates to the possibilities local actors dispose of to influence the decision-making process. A good understanding of the capacity and channels of influence available to stakeholders need to be reached.

What are the different stages of the process where local involvement can provide influence? Are municipalities able to make pressure on the government and waste organisations to make the local involvement possible and effective? How is freedom of expression guaranteed? Are all questions considered legitimate? To what extent do these guarantees make the local participation more effective? Do the discussions on controversial issues block the process or, on the contrary, does it make it possible to drive the decision-making process further? Moreover, is the discussion carried out for the sole purpose of a top-down communication or are the matters discussed actually taken into account in the final decision? To what extent is the technical solution improved by having technical issues explained and argued?

What is the difference between this local review and a scientific one? It was stated that the involvement of local citizens in the framing of the policy brings a more comprehensive understanding of the social and technical issues at stake in nuclear waste management.

As regards the participation of the stakeholders, a consequence of a step-wise approach would be that local consultations on the national policy implementation are included at each stage of

the decision-making process. How is this participation organised? How are requirements about "transparency", "openness" and "dialogue" are structured and implemented? How autonomous are the local actors? Are they informed about the decisions or do they have their say?

### National guarantees for the local debate

How to make sure that the local communities will not be left alone with the waste management issue and that national institutions, notably the central government and the Parliament as representatives of the national community, will keep getting involved in the decision-making process at the local level ? How far are the national actors accountable ? Do the Government and the Parliament leave the local communities dialogue directly with the operator or do they take part in the discussions?

### Role and missions of the different actors involved at the national and local level

Furthermore, it was suggested that the national framework should include a clear definition of the role and responsibilities of the various actors involved in each relevant context (national and local), as well as a clear definition of the relationships between them.

In this context, what does the role of public authorities consist of? Public authorities shouldn't be involved in the management, it was proposed. Could their responsibility be to make sure the waste operators achieve their task in a safe way and that their economic structures are safe? What would this role of guardian of the process consist of? How would this impact on the overall responsibility of the public authorities in the decision-making process? Who does what in the national policy implementation ? Should the designer of the policy and the implementers be the same ?

Having noted that in some countries the operator engineers the decision-making process, several participants advocated for a more balanced and structured distribution of power in the process.

The delineation of the roles of the energy producers, the public authorities and the waste management operators was much discussed. What are the links and relationship between the industry (producing the waste) and the waste management agency?

Should energy producers or their waste operator be solely responsible for the waste (in accordance with the polluter-pays principle) ? While the technical competence of the operators is generally recognised, it was noted that the public seems to consider that the operators are not fully trustworthy for some of the issues raised in the waste management decision-making process. How then can the responsibility for the decision-making process be shared with other actors?

This questions the involvement of public authorities on the one hand, and the opportunity of continued stakeholder involvement processes within pluralist commissions on the other hand. The creation of independent pluralist commissions was proposed but their role and composition have to be clarified. What would their contribution in the decision-making process consist of? How does one define the plurality of such structures? Should such a commission involve the operator, the regulator? Who will be chairing it?

### Structures for policy implementation

Finally, a discussion was carried out about the type of structures used to implement the national policy. It was proposed to base this implementation as much as possible on established existing structures and to make decisions within the normal regular framework in

order to avoid any dispensation from the usual democratic decision-making processes and any difficulties with the creation of new structures. In the meantime, it was acknowledged that ad hoc and/or specific solutions may be required, given the complexity of waste management issues. The particularity of waste management issues rests most of all on the unusual time-scope involved. The example of Environmental Impact Assessment (EIA) was cited which is used as a general EU policy tool for environmental issues. However participants found EIA inappropriate for nuclear waste issues because of its limited time-scope.