

ENVIRONMENTAL MEDIATION

Environmental mediation – what might that be?

Environmental mediation is a voluntary, clearly structured procedure in which all those affected by a project with environmental implications search together for a permanent solution.

They are assisted in this by **professional, impartial mediators**. Powers of decision remain with politicians and administrators. As an instrument for conflict solution and participation, environmental mediation is particularly suited to infrastructure projects, to proposals for erecting / expanding production facilities and to land- use planning.

The word “mediation“ is derived from Latin; the root meaning is “**go-between**“. Mediation is in successful use to resolve conflicts in families, in schools and in firms, too.

Environmental mediation comprises mediation procedures in connexion with projects in which, apart from economic and social interests, considerations of environmental protection, of nature conservation, of the quality of life and of land development are central. In particular this applies to projects subject to environmental regulation or that may have an environmental impact (emissions, consumption of resources, exploitation of unspoilt nature, etc.).

The innovative feature of environmental mediation is that all stakeholders are included in the process of preparing a decision as partners on an equal footing, and that impartial mediators steer the process. Environmental mediation does not take the place of administrative approval procedures; instead, these are augmented, as additional aspects are taken into account. Mediation processes normally take place before an administrative or political decision is taken, so there is enough negotiating leeway for a consensual decision. As a result, stakeholders are more likely to accept the project and there are fewer formal objections, which makes life easier for administrators and lawcourts.

SEQUENCE OF EVENTS

An environmental mediation process usually involves four phases:

Initiation phase

If the stakeholders are willing to take part in an environmental mediation process, and the issue of funding has been taken care of, the search for suitable mediators begins. Mediators are impartial go- betweens who structure and organize the mediation process.

Preparation phase

The stakeholders take a collective decision about the mediators. Next the mediators interview each stakeholder, so as to identify his or her perspective on the conflict and to make sure no one is overlooked by mistake. The mediators then define who will take part in the mediation process, in consultation with the stakeholders.

The next step is to agree the points at issue, to define the goal of the process and to agree a “road map” for the collective procedure. The sequence of events, the subject matter, procedural rules and information policy vis- à- vis the general public are all set out in a written procedural agreement.

Realization phase

From positions to interests: at the start of the negotiations the participants present their positions. The underlying interests and needs are then brought to light with the aid of the mediators. This enables the participants to develop empathy for others’ needs and interests in the course of the process.

Assembling data and facts: the participants collectively identify what additional factual information is needed. This is either obtained from specialists who all the participants accept, or gathered by the participants themselves, and presented in a form intelligible to everyone involved.

Searching for solutions and reaching a decision: the participants (working either in plenum or in small groups) develop suggested solutions which they assess on the basis of collectively agreed criteria. The results are decided on as and when everyone agrees.

Contract and implementation phase

In the mediation contract the results are set out in the form of a binding agreement, and mechanisms are agreed with which to monitor the implementation of the measures decided on and to maintain the flow of information beyond the end of the mediation process.

REQUIREMENTS FOR SUCCESS

For environmental mediation to be carried out successfully, there are several essential requirements:

Including all stakeholders, who are automatically entitled to negotiate

Right at the start of an environmental mediation process all stakeholders are invited to participate in the process. This gives stakeholders a say even if they do not have party status in an official approval procedure. If the number of stakeholders is large, the various interest groups are represented by individuals with a vote. All participants have the same negotiating status. Decisions must be unanimous, and must not penalize individuals or third parties. The mediators take care that all information is made available to all participants in the same way and in intelligible form.

Process steered by impartial mediators

Mediators are professionally trained go-betweeners who coordinate and steer the mediation process. They assist the participants in the search for solutions, but do not themselves take decisions. As impartial third parties they do not belong to the circle of stakeholders, have no party status or personal interest in an approval procedure, and have the same obligations vis-à-vis all stakeholders.

Participation is voluntary

Taking part in a mediation process is voluntary for all concerned. Anyone who wishes to withdraw from the process can do so at any time.

Working out possible solutions without interference

Producing suggestions, and taking a final decision, are the exclusive responsibility of the participants; the mediators assist them in this, but without intervening as regards content. As the need arises the participants collectively commission external experts to throw light on special issues. A collective decision is taken on the scope of negotiation. The outcome of the process is largely open.

Clearly structured procedure

Environmental mediation requires proper procedural organization. In every such process the mediators and all participants collectively customize the procedure to match the special features of the conflict in question, and agree suitable rules.

Fairness and constructive atmosphere

The mediators see to it that the conditions under and the way in which work goes on are conducive to mutual esteem, confidentiality and fairness. As part of this, pleasant surroundings (accommodation, refreshments) and opportunities to relax together (e.g. regular breaks, having lunch together) are important.

Results are binding (mediation contract)

The participants collectively work out a solution compatible with existing law. The results of negotiation are set out in writing, and are incorporated in the project application for the official approval procedure or the process of reaching a political decision.

BENEFITS AND LIMITS

Benefits of environmental mediation

In Austria environmental mediation has proved its worth for resolving long- drawn- out conflicts. Experience reveals that it is best to take those affected on board at an early stage (before project approval is applied for / before the conflict escalates). In this case approval procedures go quicker, because most of the objections and appeals do not take place. Those involved are saved the trouble and expense of long- drawn- out legal proceedings and planning revisions; the results of mediation are incorporated in the project to be approved. So as a general rule a mediation process should take place in advance of any official approval procedure. In certain special cases it may make sense to conduct a mediation process subsequently, e.g. if a conflict becomes virulent during an environmental audit. Mediation processes can interrupt an official approval procedure and contribute to defusing a confrontation and returning to matter- of- fact discussion; this opens the way to improved solutions in the interest of all concerned.

Limits of environmental mediation

In any given case it makes sense to ask whether environmental mediation is a suitable instrument with which to handle the particular conflict or can be used to prepare a planning assignment. Even with environmental mediation, strategic political decisions cannot be delegated – nor can politically loaded conflicts. Environmental mediation is not a way of achieving general acceptance for a decision that has already been taken! A mediation process has little chance of success in cases where fundamental issues involving social values arise, e.g. in connexion with nuclear power or genetic engineering. If the stakeholders are not seriously interested in reaching a consensus and achieving results, or if there is not enough leeway for negotiations, environmental mediation will not get off the ground.

TIME AND MONEY

Mediation processes take time: that may mean that the preparations for applying for project approval take longer than expected. But the official approval procedure often takes less long as a result, because it is easier to implement decisions taken collectively. Overall it is possible for environmental mediation to shorten the time span from the birth of the project to approval being granted. Experience in Austria reveals that, depending on the scale of the project in question, the mediation process takes between several months and two years.

Mediation processes cost money: conflicts cost everyone involved time, nerves and money. To resolve a conflict by means of environmental mediation, the stakeholders also have to invest time and money. Experience reveals, though, that successful conflict resolution involves lower costs than conventional conflict-ridden approval procedures do. Since projects vary so much in scale (number of stakeholders, sum to be invested), it is hard to define a generally valid order of magnitude for the cost of environmental mediation. As a rough guide, it can be said that mediation processes for relatively small industrial projects involve costs in the range 1 to 10 % of the total project sum; in the case of major infrastructure projects the range is more like 0.1 to 1 %.

But environmental mediation processes also provide opportunities to save money:

Long-drawn-out disagreements about a project that prevent a decision cause costs for:

- Legal advice / representation
- Experts' reports and counter-reports
- Loss of profits because the approval procedure (and thus the realization of the project) takes so long
- Employees' time (salaries)
- Repairing damage to the organization's image
- Planning revision

These costs can be avoided if a mediation process is carried out. That is why a comparison of costs should be carried out before a decision is taken for or against such a process.

Possible ways of funding environmental mediation processes

So far, in Austria, the costs of environmental mediation have either been borne by the organization seeking project approval, or shared between this organization and the public sector (local councils, the provincial government or federal institutions). Sharing the costs in this way contributes to the objectivity of the process, and leads to the stakeholders identifying more closely with it. The best arrangement is either for all the stakeholders to share the costs, or for third parties to bear them. In real life this is often impossible, because wealth is distributed so unevenly. That makes it especially important that all stakeholders collectively appoint the mediators and commission any external experts who may be needed. If the funding is shared, it is advisable to agree a formula for the contributors' respective shares. A



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survey carried out by ÖGUT (1998) revealed that Austrians place a good deal of trust in the instrument of environmental mediation; of those surveyed, two-thirds were in favour of the public sector providing funds for environmental mediation.

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