

DIRECTIVE 2014/52/EU: GOOD PRACTICES OF IMPLEMENTING LATEST AMENDMENTS TO THE EIA DIRECTIVE



Case Studies
Justice and Environment 2019

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SUMMARY

Context

Projects that may significantly affect the environment are subject to an environmental impact assessment procedure (EIA). The EIA procedure aims to identify and to assess the environmental implications of projects before their permission. By updating four earlier Directives (85/337/EEC, 97/11/EC, 2003/35/EC and 2009/31/EC), Directive 2011/92/EU (the EIA Directive) provides the legal framework for carrying out the EIA of public and private projects in EU. Two different types of projects are subject to the EIA Directive: in case of the activities listed in Annex I to the EIA Directive, the EIA procedure has to be carried out without further deliberation, while the significance of the likely environmental impacts of projects set out in Annex II to this Directive is to be decided in a preliminary assessment (screening) procedure. Where the competent authorities find that the likely impacts of the given project may be significant, the screening must be followed by a full EIA proceeding.

By adopting Directive 2014/52/EU, the European Council and the Parliament made substantial amendments to the EIA procedure. The EIA Directive now also focuses on resource efficiency, climate change and disaster prevention, areas which are to be reflected better in the EIA procedure.

The EIA Directive's requirements on screening now provide a more detailed level of information and analysis, at an earlier stage of realization of a project than before the amendments. During the screening procedure, the information that the developer must provide is specified. By providing additional details, the developer must focus on the key aspects that allow the competent authority to make its determination and the authorities are also required to provide a more detailed explanation of their screening decisions.

In order to improve the quality of an EIA and to simplify the procedure, the competent authority must, if requested by the developer, issue an opinion on the scope and level of detail of the environmental information to be submitted in the form of an EIA report (scoping). The scoping process is optional for developers, but the EIA Report must be based on the scoping opinion, if it was requested. The new rules on scoping contain clearer requirements on the assessment of the projects' impact on biodiversity, climate change, disaster risks and the landscape.

The likely environmental impacts of projects are described and evaluated in the EIA Report. The EIA Directive obliges decision-makers to consider whether the EIA Report is up to date when making their decision on granting a development consent. Under the EIA Directive decision-makers also have the power to require further information from the developer. Under the new rules, experts involved in the preparation of EIA report must be qualified and competent. Sufficient expertise, in the relevant field of the project concerned, is required in order to ensure that the information provided by the developer is complete and meets a high level of quality.

Precautionary actions need to be taken for certain projects that - because of their vulnerability to major accidents or natural disasters - are likely to have significant adverse effects on the environment. For such projects, at least the following factors are to be considered: their exposure and resilience, the risk of accidents and natural disasters occurring and the implications of the likelihood of significant adverse effects on the environment. Where a project entails significant adverse effects on the environment, the developer will be obliged to take the steps necessary to avoid, prevent or reduce negative effects.

If permission is granted for a project, the relevant decision makers must also consider, whether any appropriate measures to monitor the significant adverse environmental effects of the project are necessary or appropriate.

The amendments of the EIA Directive have also simplified the rules for assessing the projects' potential effects on the environment, reduced the administrative burden and call for Member States to sanction any infringements of the underlying rules.

The duration of EIAs are more predictable due to the timeframes introduced by the new rules for the different stages of the procedure. The period for consulting the public concerned on the EIA report must be at least 30 days. Additionally, authorities must provide screening decisions within 90 days of receipt of the necessary information from the developer. The deadline can be extended in exceptional circumstances where the nature, complexity, location or size of the project so requires.

To enhance public access to information, timely information shall also be provided in electronic format. The competent authority is required to substantiate its decision when it grants development consent to a project and must also indicate that it has considered the results of the consultations carried out and the relevant information it has gathered. Member States must establish at least a central portal or points of access that enable the public to access information in an easily and effectively manner.

The amended EIA Directive also requires functional separation of the roles of the developer and the decision-maker in order to avoid conflict of interest between these two roles.

This study focuses on the implementation of three important new provisions, Article 2(3), Article 9a and Article 10a of the EIA Directive. The case studies from four Member States (Bulgaria, Estonia, Hungary and Slovenia) showcase examples of effective transposition of these provisions.

One-stop shop assessments

One of the most important procedural novelty in the amended EIA Directive is the introduction of streamlining of different environmental assessments. For decreasing the administrative burden arising from the different authorisation proceedings before starting a project, the new provisions of Article 2(3) of the EIA Directive provide for the streamlining of certain assessment proceedings with the EIA procedure.

According to the first sub-paragraph of Article 2(3) of the EIA Directive as amended, in case of projects subject to environmental assessments simultaneously under the EIA Directive and Council Directive 92/43/EEC (the Habitats Directive) and/or Directive 2009/147/EC (the Birds Directive), Member States must ensure that coordinated and/or joint procedures are available.

Under the joint procedure, Member States establish a single assessment of the environmental impacts of a given project. This single proceeding replaces multiple assessments and the project must comply with all applicable environmental EU requirements. In the coordinated procedure, there must be a designated authority to coordinate the various assessments of a project's environmental impacts. A single point of contact responsible for all environmental assessments must improve clarity and efficiency and must also ensure that the environmental assessments are carried out in a uniform, predictable way.

According to the Commission guidance document No. C/2016/4701¹, Member States can choose different approaches for the application of each procedures. If a Member State opts for a joint procedure, it can provide for a single assessment of the environmental impacts of a project. If a Member State opts for a coordinated procedure, it can designate an authority for coordinating the individual assessments.

In Estonia, the appropriate assessment under the Habitats Directive and the EIA are carried out in a single administrative procedure, i.e. the appropriate assessment is an integral part of the EIA. The authorisation of Arussaare limestone deposit (*see page 12*) shows that joint appropriate assessment and EIA procedures may help to prioritize the protection of Natura 2000 sites and their objectives. In this case, the result of the appropriate assessment had a direct and substantial effect on the EIA and the further permit procedures. The project (opening a quarry with a pit area of almost 46 ha) had to be modified in order to protect the Natura 2000 sites in the neighbourhood of the planned pit area. In addition to the limitations on the location and size of the quarry, the EIA would foresee also seasonal restrictions relating to avoid disturbance to protected species.

The so-called one-stop-shop for EIA and 'appropriate assessment' required under the nature protection Directives is mandatory. On the other hand, there are projects that are subject to the EIA Directive and EU legislation other than the Habitats Directive (e.g. the Water Framework Directive (WFD), or the Industrial Emissions Directive (IED)) that require further assessments. In such cases, Member States may apply the coordinated procedure, the joint procedure, or a combination of those, i.e. - in line with the second sub-paragraph of Article 2(3) of the EIA Directive - it is up to the Member States to decide whether to apply the one-stop shop assessment to the EIA Directive and the WFD or the IED.

Bulgaria has used this option provided by Art. 2(3), not only the appropriate assessment under the Habitats and Bird Directives, but the applicability assessment under Article 4(7) of the WFD shall be conducted jointly with the EIA procedure. In the case of the quarry in Poletto (*see page 9*), the arguments of environmental NGOs in relation to the protection of Natura 2000 sites were

¹ <https://op.europa.eu/en/publication-detail/-/publication/7c22edf0-53c7-11e6-89bd-01aa75ed71a1/language-en>

raised during the appropriate assessment of which result was taken into consideration in the EIA and it significantly influenced the decision on the development consent.

In accordance with Article 2(2) of the EIA Directive, Slovenia opted for the integration of EIA into the existing procedures for development consent to projects. The new Slovenian legislation on construction permits integrates all proceedings for environmental assessment (incl. EIA, appropriate assessment and applicability assessment) into one.

The new Slovenian legislation on construction authorisation requires carrying out the EIA (which also covers appropriate assessment and applicability assessment) within the construction permit proceeding. Development consent for reconstruction of the non-hazardous waste landfill in Bukovžlak (*see page 18*) has been granted by one national authority under this new, integrated procedure which ensured the assessment of environmental implications of the reconstruction in a single proceeding.

Avoiding conflict of interest

In its ruling C-474/10, the Court of Justice of the EU stated that a functional separation shall be organised so that an administrative entity internal to it has real autonomy, meaning, in particular, that it is provided with administrative and human resources of its own and is thus in a position to fulfil the tasks entrusted.² Reflecting this requirement, the new Article 9a of the EIA Directive stipulates that the national legislations shall ensure that the competent authorities perform the duties arising from the EIA Directive in an objective manner and avoid conflicts of interest. In case of the competent authority is also the developer, an appropriate separation between conflicting functions shall be implemented.

As a good practice in Slovenia, an independent body - that cannot be in the role of a developer - within the Slovenian Environmental Agency is responsible for conducting EIA procedures. In addition, it has to be noted that in integrated procedures for construction and environmental permission (*see "One-stop shop assessments" above*), the Slovenian Ministry for environment and spatial planning is the decision-maker and the Slovenian Environmental Agency issues opinion about the EIA report. In such integrated proceedings, a special team is set up and it is functioning separately from other parts of the Ministry.

Sanctions on the infringement of the EIA

Based on the new Article 10a of the EIA Directive, Member States are asked to introduce measures to sanction any infringements to the EIA Directive. The nature of sanctions to be imposed is at the discretion of the Member States, however, the penalties must be effective, proportionate, and dissuasive.

In the Hungarian legislation, different measures and sanctions exist for the violation of the national EIA rules, or of the decisions of the national environmental authorities. For activities,

²<http://curia.europa.eu/juris/document/document.jsf?jsessionid=843F6B5418F643EEEE5A9D5598EEEE0E?text=&docid=111582&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=7181311>

that are subject to a preliminary assessment or an EIA, when someone is carrying out the given activity without screening or without a permit, the environmental authority may prohibit, limit or suspend the activity and may impose a pecuniary sanction (environmental fine). If an activity is authorised in accordance with the EIA regime, but the developer does not comply with the conditions specified in the environmental permit, he or she may also face with sanctions. The existence of different types of sanctions that may be imposed depending on the nature of the infringement (authorities are entitled to determine the most appropriate measure on a case-by-case basis) ensure, that the imposed sanctions are effective. Sanctions can be imposed repeatedly, and the competent authority also considers repeated occurrence and frequency of the infringement, which also makes the sanctions dissuasive.

The case of a poultry processing plant in Hungary (*see page 15*) is a good example of the sanctioning regime in the country. The plant was operating without a prior EIA screening procedure, although its production exceeded the relevant threshold value set out by the national provisions. The competent authority limited the activity of the plant to a volume of production which now remains below the threshold set for screening procedure. Although the authority did not impose a fine along with the restriction, this measure can be considered as an effective step in implementing the EIA provisions.

Conclusions

Member States must apply the amended EIA rules as of May 16th, 2017. The new provisions (either compulsory or optional) improve the national EIA regimes, where transposed and implemented correctly. As the Bulgarian, Estonian and Slovenian cases show, the application of joint proceeding for EIA and other environmental assessments is a useful tool in reducing the administrative burden of licensing projects subject to the EIA Directive. At the same time, integration of appropriate assessment or other environmental assessments into the EIA procedure (joint procedure) or a proper coordination between such proceedings (coordinated procedure) enables the competent authorities to reach well-based conclusions on the feasibility and legality of a project.

As regards conflicts of interest, the Slovenian environmental state administration - where the administrative body deciding in EIA procedures are functionally separated from other administration which could be developers - may serve as a good example.

The legal consequences i.e. measures and/or penalties applicable to the infringement of EIA requirements play a key role in the enforcement. The Hungarian legislation provides a wide set of sanctions effectively reflecting to different cases of infringements.

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CASE STUDIES

BULGARIA: quarry in Poletto

(Peev Plamen, BlueLink Foundation, September 2019)

I. Requirement of the EIA Directive concerned:

- Art. 2(3) providing in the case of projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and from Council Directive 92/43/EEC and/or Directive 2009/147/EC of the European Parliament and the Council, Member States shall, where appropriate, ensure that coordinated and/or joint procedures fulfilling the requirements of that Union legislation are provided for. In the case of projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from the EIA Directive and Union legislation other than the Birds and Habitats Directives, Member States may provide for coordinated and/or joint procedures.
- Art. 9a laying down that the competent authority or authorities shall perform the duties arising from the EIA Directive in an objective manner and do not find themselves in a situation giving rise to a conflict of interest.

II. Title, identification number and subject matter of the case

EIA and AA of the investment proposal for quarrying of ornamental stone materials in the deposit area “Poletto” of village Medven, Kotel municipality.

III. Description of the project (i.e. location, main features and most important environmental impacts thereof)

The deposit area “Poletto” is near the village of Medven, Kotel municipality, the province of Sliven. It is located about 1450 m south of v. Medven, at about 10 km south-east of the town of Kotel and at about 34 km northeast of the city of Sliven. The total area of the deposit is 23.11 ha. The deposits of the ornamental stone are about 3 m. under the surface. The extraction is planned to be open-pit, each year to cover 2000 m² with 1000 m² cultivated.

The deposit area falls into the boundaries of the protected area „Kotlenska planina”, which is also protected under the Habitats and Birds Directives (Natura 2000 site SCI, code BG0000117 (Habitats Directive) and a SPA, code BG0002029 (Birds Directive)).

Some of the most significant expected negative impacts of the investment proposal are on the biodiversity in the protected area: e.g. destruction of more than 1 % of the area of a priority habitat Festuco-Brometalia, deterioration of more than 1 % of the habitat of the species Corncrake (*Crex crex*) for which the protected area is one of the most important habitats in the country; long-term and irreversible loss of significant part of the hunting areas of birds of prey, subject to protection in the Natura 2000 sites.

IV. Description of the administrative procedure (i.e. phases of the procedure, authorities, participants)

This investment proposal (IP) is subject to appropriate assessment (AA) as part of the EIA to assess its compatibility with the subject and the conservation objectives of the Natura 2000 sites pursuant to the Ordinance on the conditions and order of assessment of plans, programmes, projects and investment proposals for their compatibility with the subject and objectives of the protected areas (AA Ordinance). The AA report found only insignificant negative impacts of the implementation of the IP. According to the AA Ordinance, the AA report was submitted to public consultation at the website of the RIEW Bourgas.

During the preparation of the EIA report, consultations with the stakeholders were carried out and their written opinions were submitted. The opinion of the Black Sea region Basin Directorate assessed the potential negative impacts of the investment proposal on the surface and ground waters considering information on the water protection zones designated according to the Art. 119a of the Waters Act.

The EIA report included measures for prevention or mitigation of the negative impacts on the surface and ground waters pursuant to the environmental objectives and measures for achieving good status of the River basin management plan 2016-2021. The EIA report took into account the prohibitions and the limitations under the Waters Act for protection of the surface and ground waters from pollution and deterioration.

The opinion of the Director of the Regional Health Inspectorate was that there was no health risk from the implementation of the investment proposal.

The EIA report and its annexes were publicly accessible. A public hearing took place on December 12th, 2018 and minutes of the meeting with a list of participants were prepared.

Prior to and during the public hearing opinions and objections were expressed by stakeholders and organizations proposing to reject the investment proposal with following motivations: pollution and dusting of the adjacent areas endangering the human health, barriers for the development of agriculture in the agricultural lands, negative impact on tourism, as well as significant impact on the biodiversity.

The opinions filed by the following organizations and individuals were:

- Bulgarian Bird Protection Society (BBPS) (NGO) № 97/11.12.2018;
- Peter Petkov, member of Parliament and member of the Environmental Committee and the deputy chairman of the Committee on the European matters and EU funds control № 94П-CO-96/12.12.2018;
- The Association of the Parks in Bulgaria (APB) (NGO) № 48/10.12.2018;
- Objection of the Municipality of Kotel against the investment proposal №94-02-355/23.04.2018;
- Objection addressed to the Director of RIEW- Bourgas against the realization of the investment proposal, signed by 39 people/12.12.2018.

V. Key arguments constituting the case as a good example of implementation

V.1. National provisions or measures without the force of law (national guidance etc.) implementing the EIA Directive's requirement referred above

Not directly, but APB, an environmental NGO, cited the EC Guidance to the Directive 92/43/EEC to which even 1 % yearly loss of the respective species or habitat could lead to unfavourable-bad status which is enough proof for significant negative impact. According to BBPS the review of the practice and the Guidance on Art. 6.4 of the Habitats Directive proved that the open-pit quarrying of rocks could not be determined as prevailing public interest nor linked to the human health and national security.

V.2. Arguments of - or steps taken by - the competent authority considered as a good practice

The main improvement in the practice of the competent authority (the RIEW- Bourgas) was taking into account of the objections and arguments of the participants in the consultations, especially the ones of the environmental NGOs. They claimed high level of negative impacts on the species and habitats subject to protection in the Natura 2000 sites - e .g. destruction of more than 1% of the area of a priority habitat Festuco-Brometalia, deterioration of more than 1 % of the habitat of the species Corncrake (*Crex crex*) for which this protected area is one of the most important habitats in the country; long-term and irreversible loss of significant part of the hunting areas of birds of prey, subject to protection in the Natura sites; loss of source of food for three species of vultures inhabiting near the deposit area "Poletto". The arguments were brought in within the AA procedure incorporated in the EIA. It showed that it could be a very efficient tool for impact assessment on Natura 2000 sites once the procedural opportunities for public participation of local communities and national environmental NGOs enable them to improve the quality of the administrative decision. This case proves that there is a room for significant inputs and impact of the AA arguments in the final EIA decision.

VI. Result of the procedure (content of the decision)

The investment proposal was not approved at administrative level by the RIEW. Based on submitted objections, opinions, the available database for the habitats and species subject to protection in the protected areas, scientific data and publications the competent authority - the Regional inspectorate for Environment and waters made the conclusion that the arguments in the EIA and AA reports for lack of significant negative impacts of the realization of the investment proposal on the species and the habitats subject to protection are unfounded and unproven.

VII. Other remarks

It is interesting to note that some of the main facts and arguments that justified the rejection of the investment proposal in the administrative decision of the Director of RIEW are taken from the statements of two leading Bulgarian environmental NGOs. Also, the range of the stakeholders that took the role of challenging the EIA and AA reports is remarkable. On the other hand, the case confirms that the authors of the EIA and AA reports are not objective or at least they are not precise in defining the level of negative impacts. The most that these reports

usually claim is insignificant impact which allows anyway the proposal to be implemented. The participation of various stakeholders- environmental NGOs, local community, municipality and a member of the Parliament - contributed to the quality and visibility of the procedure.

VIII. Conclusions

The case attempts to show that the EIA practice exemplified by it is fulfilling at least partly the objectives of the new amendments of EIA Directive and it is a step in the right direction. Art. 2(3) provides that in the case of projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from the EIA Directive and Union legislation other than the Birds and Habitats Directives, Member States may provide for coordinated and/or joint procedures.

Although the case shows mostly the joint procedures of EIA and AA, considerations about the potential negative impacts of the investment proposal on the surface and ground waters relevant for the water protection zones designated by the Waters Act were brought in by the competent authority for water management - the River Basin Directorate.

Art. 9a lays down that the competent authority or authorities shall perform the duties arising from the EIA Directive in an objective manner and do not find themselves in a situation giving rise to a conflict of interest.

The competent authority for the EIA procedure performed its duties in an objective manner, took into account and based its decision on the substantiated arguments of the environmental NGOs - changing the prevailing practice of ignoring them partly or fully.

ESTONIA: Arussaare dolomite quarry

(Siim Vahtrus, EELC, July 2019)

I. Requirement of the EIA Directive concerned

First subparagraph of Art. 2(3) providing that in the case of projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and from Council Directive 92/43/EEC and/or Directive 2009/147/EC of the European Parliament and the Council, Member States shall, where appropriate, ensure that coordinated and/or joint procedures fulfilling the requirements of that Union legislation are provided for.

II. Title, identification number and subject matter of the case

EIA for mining activities in the Arussaare limestone deposit (opening of the Arussaare quarry)

III. Description of the project (i.e. location, main features and most important environmental impacts thereof)

Arussaare limestone deposit is situated in Central Estonia. The deposit is found in a sparsely populated rural area. Initially, the developer planned to establish a quarry where the area of the pit would cover 45.94 ha.

Some of the surrounding area has a high natural value, i.e. it hosts a nesting site of rare greater spotted eagle (*Clanga clanga*) and is also suitable for lesser spotted eagle (*Clanga pomarina*). The nesting site partially overlaps with a rather small (25.3 ha) Pillu SCI, where several wooded and wetland habitats, including the priority habitat old-growth forests (9010*) are found. Pillu SCI does not overlap with the deposit, but its border is located just 40 m outside the initially planned quarry border.

The impacts of the project mostly include noise from explosive charges used for mining and other equipment as well as lowering of groundwater table (the water table would be lowered in the quarry for at least 2 meters).

IV. Description of the administrative procedure (i.e. phases of the procedure, authorities, and participants)

The application for mining permit was submitted on 12.03.2010, the EIA was initiated on 20.04.2010. However, the EIA process is still not complete as of 17.07.2019, due to lack of initiative shown by the developer (there have been intermittent pauses in the EIA caused by lack of input by the developer). The latest EIA report was submitted in May 2019.

The most active participant in the procedure outside the developer, consultant and Environmental Board has been the local municipality (initially Kõo municipality, which was later reformed into Põhja-Sakala).

V. Key arguments constituting the case as a good example of implementation

V.1. National provisions or measures without the force of law (national guidance etc.) implementing the EIA Directive's requirement referred above

Under the Estonian law, the Appropriate Assessment under the Habitats Directive Art 6(3) and (4) must be carried out in the form of an EIA. This means that the EIA and Appropriate assessment take place in a single administrative procedure, with the Appropriate Assessment being an integral part of the EIA (under current redaction of the EIA Act, this is regulated by Art 3, Art 20 (and the Regulation of Minister of Environment based on it) as well as Art 29).

Although this approach creates issues with implementing Appropriate Assessments where the EIA would not be needed for other reasons, it does help to prioritise the protection needs of Natura 2000 sites in those cases where the EIA is carried out. The current case is a good example of this practical benefit.

V.2. Arguments of - or steps taken by - the competent authority considered as a good practice

The case provides a good example of why joint Appropriate Assessment and EIA procedures may help to prioritize the protection of Natura 2000 sites and their objectives. As brought out above, the developer initially wanted to open a quarry with a pit area of almost 46 ha. However, due to proximity of Natura 2000 habitats and Birds Directive Annex I species, the EIA has concluded that the mining operations may only take place in the part of the deposit furthest away from the habitats, in an area of 6.04 ha. Therefore, the Appropriate Assessment has had a direct and substantial effect on the EIA and associated mining permit procedures. It can be argued that it is a significantly better result than would have been likely achieved if the Appropriate Assessment would have been a separate assessment from the EIA (and the two assessments would have likely been contradictory in their substance).

In addition to the limitations on the location and size of the quarry, the EIA would foresee some seasonal restrictions, to avoid disturbance to nesting eagles.

VI. Result of the procedure (content of the decision)

N/A - the procedure has not been fully concluded.

VII. Other remarks

As brought out before, the current legal framework with joint procedures for EIA and Appropriate Assessments does seem to provide good results when properly applied. However, as a downside, the rigid requirement for joint procedures means that for many small-scale projects, no EIA and therefore also no AA is carried out.

As a point of improvement, it would be recommended to carry the Appropriate Assessment out as early as possible in the EIA procedures. In this respect too, the current case is a good example. Altogether, the EIA considered 8 alternatives with different volumes and technical solutions for mining, 6 of which were finally ruled out due to impacts on Natura 2000 habitats. Resources spent on developing and assessing different impacts to these 6 alternatives could have been spared if the appropriate assessment had been carried out at initial stages and these alternatives been left out of consideration from the outset.

VIII. Conclusions

As a conclusion, the requirement of the art 2(3) of the revised EIA Directive, which provides for joint or coordinated procedures for EIA and Appropriate Assessments under the Habitats Directive can be considered a useful provision. Joint procedures, if they are properly carried out, may help to give Appropriate Assessments their proper weight in permit proceedings and reduce confusing situations, where different assessments may reach different conclusions regarding the feasibility and legality of a project or its alternatives. Due to its more binding nature, however, it would be recommended to complete the Appropriate Assessments out either before (in case of coordinated procedures) or early in the process (in case of joint procedures) to avoid wasting resources in the wider EIA assessment.

HUNGARY: Poultry processing plant in North West Hungary

(EMLA, August 2019)

I. Requirement of the EIA Directive concerned:

Art. 10a of the EIA Directive provides that Member States shall lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive. The penalties shall be effective, proportionate and dissuasive.

II. Title, identification number and subject matter of the case

Title: Poultry processing plant in Szabolcs-Szatmár-Bereg

No. of the decision of the Nyíregyháza County Court: 4.K.26.887/2013

Subject of the case: Environmental measure imposed for the infringement of the legislation transposing the EIA Directive

III. Description of the project (i.e. location, main features and most important environmental impacts thereof)

The plant operates in north-eastern Hungary, in county Szabolcs-Szatmár-Bereg with a capacity of 25 tons product/day. The activity of the plant consists of organizing and managing the primary processing of the live poultry (i.e. cutting, parting) and the manufacturing of the prepared and further processed products. Poultry production may affect the elements of the environment in numerous ways, including through poor management of manure and litter, waste streams from processing plants (blood, bones, feathers, etc.), birds' carcasses, dust, insects, odour, etc. Furthermore, intensive poultry production is held responsible for emission of greenhouse gases and acidification.³

IV. Description of the administrative procedure (i.e. phases of the procedure, authorities, participants)

During an on-site inspection held by the competent environmental authority it was found that the production capacity of 25 tons/day was exceeded on 196 working days and that the user of the environment did not have an environmental permit for its activity. In its decision, the environmental authority ordered to limit the operation of the plant to 25 tons/day. By reference to the national classification of economic activities and to Regulation (EC) 853/2004, the operator argued in its appeal that its activity should not be classified as 'slaughterhouse'. The second instance authority maintained the decision of the first instance authority. The final

³ Natasa Vukelic: THE ENVIRONMENTAL IMPACT OF POULTRY PRODUCTION, Biotechnology in Animal Husbandry, p 1673-1679, Publisher: Institute for Animal Husbandry, Belgrade 2015

administrative decision was challenged by the operator at the Administrative and Labour Court of Nyíregyháza. The court rejected the argumentation of the operator.

V. Key arguments constituting the case as a good example of implementation

V.1. National provisions or measures without the force of law (national guidance etc.) implementing the EIA Directive's requirement referred above

There was no national guidance on the application of EIA published.

V.2. Arguments of - or steps taken by - the competent authority considered as a good practice

Governmental Decree 314/2005. (XII. 25.) on environmental impact assessment and the consolidated environmental use permits ('the Khvr.') lays down the relevant provisions for the authorisation procedures falling under the scope of the EIA Directive (as well as the IED Directive⁴). Pt. 7(f) of Annex II to the EIA Directive requires Member States to determine whether the project of installations for the slaughter of animals shall be made subject to an EIA. According to pts. 20 and 21 of Annex 3 to the Khvr., plants for the processing of meat from the production of finished products of 10,000 tonnes per year and slaughterhouses from the capacity of 25 tonnes of meat per day shall undergo a screening procedure.

The national legislation already provided sanctions and pecuniary penalties for its infringement and the relevant provisions have not been changed when transposing Art. 10a of the EIA Directive (as amended by Directive 2014/52/EU). Art. 26 of the Khvr. provides the penalties and measures applicable to performing an activity without an environmental permit, for the infringement of the conditions set out by the environmental permit and for damaging/threatening the environment.

If an activity which is subject to a preliminary assessment or an EIA is performed without initiating screening procedure or without an environmental permit, the following measures can be applied:

- restriction,
- suspension or
- prohibition.

In case of a measures is imposed, the authority is entitled to impose an environmental fine of which amount can be between 50.000 HUF (ca. 150 EUR)/day and 100.000 HUF (ca. 300 EUR)/day.

If an activity is authorised in accordance with the EIA regime, however, its performance does not comply with the conditions stipulated by the environmental permit, the following sanctions can be imposed:

- a fine of 200.000 HUF (ca. 619 EUR) up to 500.000 HUF (ca. 1547 EUR),
- order the user of the environment to comply with the relevant legal requirements,
- order the user of the environment to prepare an action plan or

⁴ Directive on Industrial Emissions 2010/75/EU

- order to carry out an environmental audit if any of the conditions provided by the Khvr. are met. An environmental audit may be prescribed if:
- based on the change in the emissions, a new threshold value shall be applied,
- new technics shall be applied for the environmentally safe operation,
- the facility is causing significant pressure to the environment and therefore, the revision of the applied threshold is deemed necessary,
- the best available technics does not ensure that the relevant thresholds are met.

If the user of the environment does not fulfil the requirements in the decision of the authority, its activity can be restricted, suspended, banned or the permit can be withdrawn.

In this case, restriction of the activity performed without an environmental permit effectively ensured the compliance with the relevant legislation.

VI. Result of the procedure (content of the decision)

The operator of the plant referred to the provisions of Regulation 853/2004/EC laying down specific hygiene rules for food of animal origin, which legislation defines 'slaughterhouse' as an establishment used for slaughtering and dressing animals, the meat of which is intended for human consumption (Annex 1 pt. 1.16 to Regulation 853/2004/EC). Furthermore, the explanatory document of the EC on the *Interpretation of definitions of certain project categories of annex I and II of the EIA Directive*⁵ was also referred by the operator which document considers 'slaughter' activity as being ended with the production of clean whole saleable carcasses for poultry. According to the claim, it follows from these documents that the activity of a slaughterhouse ends with dressing the animal; however, as the claimant explained, the technical process of the given plant covers also the packaging, labelling and cooling of the cut carcasses. Therefore, the plant could not have been classified by the environmental authority as 'slaughterhouse' in terms of Annex 3 to the Khvr. (and Annex II to the EIA Directive).

By reference to the principle of '*in maiore minus inest*' and by stating that any installation where animals are cut and eviscerated falls under the category of 'slaughterhouse' (pt. 20 Annex 3 to the Khvr.), the administrative authority maintained its opinion in the court proceeding. The Administrative Court of Nyíregyháza agreed with the arguments of the authority and stated in its resolution that the proceeding of the environmental authority was lawful, i.e. the plant - as a slaughterhouse - should have undergone a screening procedure and the order of the authority restricting the activity was in line with the provisions of the Khvr.

VII. Other remarks

According to the national law, if an activity is carried out without a screening procedure and/or an EIA, the amount of the fine depends on the dangers of the activity in relation to the environment. It has to be noted that the possible amounts of the daily fine of 50.000 HUF (ca. 155 EUR) - 100.000 HUF (ca. 310 EUR) for the period of the operation without authorisation and a minimum of 200.000 HUF (ca. 619 EUR) and maximum fine of up to 500.000 HUF (ca.

⁵ https://ec.europa.eu/environment/archives/eia/pdf/interpretation_eia.pdf

1547 EUR) for the non-compliance with the conditions of the environmental permit are not high compared to the possible threats to the environment.

VIII. Conclusions

The national legislation provides different measures for the infringement of the provisions transposing the EIA Directive. If an activity which is subject to a preliminary assessment or an EIA, the possible sanctions for performing the given activity without screening or without permit are prohibition, limitation or suspension of the activity and a pecuniary sanction (the environmental fine). Sanctions are also provided if an activity is authorised in accordance with the EIA regime, but does not comply with the conditions stipulated by the environmental permit. The different types of administrative sanctions can be considered as effective and dissuasive, in line with Article 10a of the EIA Directive.

SLOVENIA: Reconstruction of a waste landfill in Bukovžlak

(Senka Šifkovič Vrbica, PIC, August 2019)

I. Requirement of the EIA Directive concerned, e.g.

- First and second subparagraphs of Art. 2(3) providing that in the case of projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and from Council Directive 92/43/EEC and/or Directive 2009/147/EC of the European Parliament and the Council, Member States shall, where appropriate, ensure that coordinated and/or joint procedures fulfilling the requirements of that Union legislation are provided for, and that in the case of projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from the EIA Directive and Union legislation other than the Birds and Habitats Directives, Member States may provide for coordinated and/or joint procedures.
- Art. 9a laying down that the competent authority or authorities shall perform the duties arising from the EIA Directive in an objective manner and do not find themselves in a situation giving rise to a conflict of interest.
- Art. 10a stipulating that Member States shall lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive. The penalties shall be effective, proportionate and dissuasive.

I.1. Transposition of the Directive 2014/52/EU (Directive): transposition of the Directive in Slovenia was done through adopting the changes of two executive regulations of Environmental protection act:

- Decree on environmental encroachments that require environmental impact assessments (Official Gazette of RS 26/2017), enforcement on 27.5.2017;

- Decree on the method of drafting and on the content of the report on the effects of planned activities affecting the environment (Official Gazette of RS 40/2017) enforcement on 22.7.2017).

I.2. Transposition of Articles 2(3), 9a and 10a of the Directive: there were no changes regarding Art. 2(3), 9a and 10a, because they seemed already very well regulated:

- Art 2(3): “one stop shop” already existed (appropriate assessment and assessment under Article 4(7) of Water Framework Directive were integrated into EIA procedure), but it was improved by new Building Act⁶ (enforcement on 1.6.2018) which integrated EIA procedure inside construction permit procedure when the subject of permit is construction with impact on environment (construction permit contains environmental consent). The assessments in accordance to Habitats directive and Water Framework directive are included into EIA procedure.
- Art 9a: there is independent team for EIA inside the Slovenian Environmental Agency which itself (as a body) is separated from other bodies that can be investors. Agency was also a decision body for EIA screening phase and for EIA consent. This was valid for the time of transposition of the directive. After transposition of the directive the new Building Act was adopted. The Ministry for environment and spatial planning became the competent body for new, integrated procedures (environmental consent and construction permit, previously it was competent only for building permits for infrastructure constructions). The role of the Agency to carry out the EIA screening phase (decision about EIA yes/no) and issues opinion about environmental report (on emissions to soil, water, air, noise, light pollution, electromagnetic radiation and waste management) in the construction permit procedure (instead of previous separate environmental consent) was retained. Special team for issuing construction permits on the level of the Ministry for environment and spatial planning is organised separately from other parts of the ministry.
- Art 10a: in the time of Directive transposition there already existed a wide range of rules on penalties that could cover all possible “weak points” important for environmental impact assessment. If all fully used, there would be no need for further regulation on penalties.

Therefore, considering the mentioned three articles, there were no changes in environmental protection regulation (Environmental Protection Act) and in practice. But there was a major improvement introduced with new Building act and new integral construction permit procedure in direction to integrate all environmental assessments into one procedure (construction permit).

I.3. Case selection: following the previous explanation it seemed for the best to present the case that would show good functioning of Art. 2(3) of the Directive in accordance to new

⁶ Official Gazette of Republic Slovenia, 61/17, 72/17.

Building Act. There were only two cases finished yet, but one of them is interesting enough for presentation in this study. The case was selected in discussion with:

- the competent department for (integral) construction permits at the Ministry for environment and spatial planning (Mrs. Varja Majcen Ljubič Varja.Majcen@gov.si and Mr. Sandi Rutar Sandi.Rutar@gov.si);
- the expert for environmental reports for EIA (Mrs. Margita Žaberl, GIGA-R, okoljsko rešitve⁷, margita.zaberl@giga-r.si).

I.4. The sources:

All materials for decision were published for public consultation on the website of the Ministry for Environment and spatial planning:

http://www.mop.gov.si/si/delovna_podrocja/graditev/postopki_izdaje_gradbenega_dovoljenja_za_objekte_z_vplivi_na_okolje/

The decision was published on the web side of e-uprava⁸:

<https://e-uprava.gov.si/e-uprava/oglasnadeska/podrobnosti-objave.html?id=681060.>

II. Title, identification number and subject matter of the case

Construction permit for reconstruction of closed dumping of non-hazardous waste landfill Bukovžlak;

Construction permit seeker - Cinkarna Celje d.d., Kidričeva ulica 26, 3000 Celje, <http://www.cinkarna.si/en/>.

Case number 35105-81/2018/41 from 3.7.2019.

Competent authority for decision: Ministry for environment and spatial planning.

III. Description of the project (i.e. location, main features and most important environmental impacts thereof)

Reconstruction of the closed landfill for non-hazardous waste includes reinforcement of the barrier, measures to reduce underground inflows on the west side of the landfill (deep drainage), measures to drain the groundwater of the area along the large Bukovžlak dam (new western pipeline, reconstruction of the pumping station), measures to reduce infiltration (cover and drainage system), emergency measures (construction of a directing embankment) and construction of a sealing curtain with an associated drainage system on the northwest side of the landfill.

Cinkarna Celje is facility established in 1873 first for metallurgy, after 1968 for chemical processing became and today its core business is oriented towards the production and marketing of titanium dioxide pigment. The company is very successful and profitable, but its operation caused lot of pollution in Celje area in the past. One of the most problematic is the

⁷ GIGA-R, environmental solutions

⁸ E- administration

facility's waste landfill Bukovžlak. The planned reconstruction should improve the environmental situation.

IV. Description of the administrative procedure (i.e. phases of the procedure, authorities, and participants)

The competent authority for decision was the Ministry for environment and spatial planning, Department for construction. The procedure was carried out based on the Building Act and the General Administrative Procedure Act⁹.

The procedure:

- the procedure for constructing permit was initiated by Cinkarna Celje d.d. on 3 of September 2018 with application (article 51. and 35. of Building Act); the compulsory attachment was the environmental report for environmental impact assessments;
- when the ministry reviewed the documentation and found out it is complete, it sent the documentation to all authorities competent for certain areas (opinion givers¹⁰) to issue their opinion on documentation and environmental report in 30 days;
- after receiving the documentation on 17 of May 2019 the ministry published all documents on its website¹¹ (Article 55) for public consultation. Document published were as follows: application for construction permit with all attachments and environmental report, all opinions of opinion givers and public call which contains: call for comments in 30 days, call for possible persons who has standing (in accordance with Article 54. and 36) to apply as party in the procedure and planned decision on construction permit;
- there were no comments and nobody applied as a party in the procedure;
- the ministry carried out the environmental impact assessment procedure (the appropriate assessment was not necessary) and issued the construction permit in the administrative decision 35105-81/2018/41 on 3. July 2019;
- the decision was published on e-administration portal¹² on 19. July 2019;
- against the decision, a suit in the Administrative court is allowed within 30 days (for Cinkarna Celje d.d. from the day of receiving the permit, for others¹³ from the day of publishing on e-administration portal).

⁹ Official Gazette of Republic Slovenia, 80/99, 70/00, 52/02, 73/04, 119/05, 105/06 - ZUS-1, 126/07, 65/08, 8/10, 82/13

¹⁰ The opinion givers were the Slovenian Environmental Agency for opinion on emissions to soil, water, air, noise, light pollution, electromagnetic radiation and waste management - assessment of environmental report; Slovenian Water Agency for assessing impact on water; Institute for natural heritage for impact on natural heritage; Institute for nature conservation for assessments of impact on nature, protected areas; all relevant public companies for infrastructure management

¹¹ http://www.mop.gov.si/si/delovna_podrocja/graditev/postopki_izdaje_gradbenega_dovoljenja_za_objekte_z_vplivi_na_okolje/

¹² <https://e-uprava.gov.si/e-uprava/oglasnadeska/podrobnosti-objave.html?id=681060>

¹³ According to Article 58. of Building Act this legal remedy is allowed also for the NGO with status in public interest on the environmental protection or nature conservation although this NGO did not participate in the procedure.

V. Key arguments constituting the case as a good example of implementation

As it was explained under I.2 and I.3 the case is example of new integrated procedure, where all procedures are integrated into one. According to previous regulation the obligation of permit seeker was to get all separate consents (environmental consent, water consent, cultural heritage consent) - now all of these (only in case the construction permit is necessary) are “transformed” into opinions of competent authorities, gathered by the ministry in the construction permit procedure. If the appropriate assessment is negative, then the procedure to determine of prevailing interests is carried out in accordance with Nature conservation act¹⁴ (Article 101c.). The government adopts the decision of whether there is prevailing public interest over interests of nature conservation.

V.1. National provisions or measures without the force of law (national guidance etc.) implementing the EIA Directive’s requirement referred above

On the national level the informal instructions and guidance on EIA are poor. We have only:

- Catalogue of expert knowledge for preparing the environment report in SEA and EIA procedure¹⁵ (2013), which is only a list of valid (in 2013) relevant environmental regulation collected for different parts of environment,
- Guidance for assessing the impact on particulate air pollution (in EIA)¹⁶
- Guidance for assessing the impact on climate change (in EIA)¹⁷.

V.2. Arguments of - or steps taken by - the competent authority considered as a good practice

The Ministry for environment and spatial planning carried out whole procedure and assessments on the ground of environmental report and opinions. The construction permit seeker is relieved of many separate administrative procedures at different authorities.

VI. Result of the procedure (content of the decision)

The construction permit was approved. The permit integrated the content for construction permit and the content for environmental consent. This means that some environmental conditions are set in the permit - how the construction has to be carried out.

¹⁴ Official Gazette of Republic Slovenia 56/99, 31/00 - popr., 119/02, 41/04, 61/06 - ZDru-1, 8/10 - ZSKZ-B, 46/14, 21/18 - ZNOrg, 31/18

¹⁵http://www.arso.gov.si/varstvo%20okolja/presoja%20vplivov%20na%20okolje/Katalog%20strokovnih%20znanj/KATALOG_KON%20c4%8cNA%20OBLIKA_14jun2013.pdf

¹⁶http://www.arso.gov.si/varstvo%20okolja/presoja%20vplivov%20na%20okolje/okoljevarstveno%20soglasje/Priporo%20c4%8dila%20izdelovalcem_APRIL_2019.pdf

¹⁷https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwi5ypSvmDjAhVEEVAKHUpqBRwQFjAAegQIARAC&url=https%3A%2F%2Fwww.arso.gov.si%2Fvarstvo%2520okolja%2Fpresoja%2520vplivov%2520na%2520okolje%2Fokoljevarstveno%2520soglasje%2FNavodilo%2520za%2520PVO_podnebne%2520spremembe_%2520V8_na%2520spletni%2520ARSO_februar_2019.docx&usq=AOvVaw3MV6Ts5C2b_yxeFm-GtHjT

VII. Other remarks

No.

VIII. Conclusions

Although this case is not a case presenting all or at least more assessment procedures processing through “one stop shop”, it does present the system of new integrated procedure - how the procedure would look like if more or all assessment would be necessary. One permit (construction permit) now integrates all assessments and the permit seeker is relieved to seek separate consents.