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# Energy and Climate working group

- Three areas of work in 2018:
  - Projects of Common Interest (PCIs) and TEN-E Regulation
  - Energy Union Governance
  - Balkan Cooperation

# Energy and Climate working group

- TEN-E Regulation

sets out guidelines for streamlining the permitting processes for major energy infrastructure projects that contribute to the integration of the European energy networks

– > Analysis of legislative and non-legislative implementation solutions in AU, HU, HR, PO, CZ

# Energy and Climate working group

- These countries have not taken legislative measures nor evident non-legislative measures in order to implement the recommendations provided in the Commission Guidelines
- Possible clash of Art 7/8 TEN-E Reg. with Art. 6/4 Habitats D. and Art. 4/7 WFD
- Manuals of procedure- reproduction of TEN-E requirements and a summary of existing legislation

# Energy and Climate working group

On 30 November 2016, the Commission proposed a Regulation on the Governance of the Energy Union. Goals:

- 2030 energy and climate targets
- long-term certainty & predictability
- streamlining in line with the principle of better regulation
- Harmonize the existing Climate Monitoring Mechanism R. with Paris

# Energy and Climate working group

MS obligations:

- Integrated National Energy and Climate Plans
- Report on the progress
  
- Depending on the progress we plan to produce a guidance document to secure a more meaningful public participation in the process

# SRD JE NAŠ

Civil initiative  
“Srdj is ours”



# Structure of the presentation

- About the project and the campaign
- Overview of legal actions
- Legal analysis in respect of environmental law
- Barriers for Public Participation and Access to Justice
- Conclusion



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PHOTOGRAPHY



# About the project:

## - Golf and Tourist Resort -

- 310 ha for golf resort
- 20ha for 2 tourist zones (9,04 ha and 11,4 ha!)
- 240 golf villas + 400 apartment units
- With adjoining space overall 350 ha
- Estimated value 1,2 bilion €

















## Brief history:

- 2003 - 3 golf courses proposed on the Srd plateau (estimated project value: 80 mil €)
- 2006 - Government appointed county commissioner illegally enlarged the golf resort by three times (to 310ha; estimated project value: 230 mil €)
- 2010 - public debate about the project (estimated project value: 900 mil €)











## Brief history:

- 2011 - project stopped
- 2012 - project revived, 1,5 golf course (value: 1 – 1,2 bil €)
- 02/2013 – collecting of signatures for the local referendum
- 28/4/2013 – Referendum held (31,5% turnout: 84,5% against, 15,5% for the project)











outdoor  
concept

10%  
smještajni  
kapaciteti



GOLF PARK DUBROVNIK  
POTAKNUT ĆE MALO  
PODUZETNIŠTVO I OBRTE

Prodavaonice auto-lakova već sada imaju koristi.

**KRIMINAL, KORUPCIJU**

**1 SPREJ - 30kn**

GOLFPARK  
DUBROVNIK

outdoor



GOLF PARK DUBROVNIK

JE 90% ZELENILA

I 10% ZGLEDENIH TVRSINA.

REFERENDUM

To je otprilike odnos trave  
i golf loptice na ovom plakatu.

Novi zamah za Grad

[www.razvoj-golf.hr](http://www.razvoj-golf.hr)

LAPAD

TORONTO

































**I JA SAM ZA REFERENDUM !**

**SVOJ POTPIS ZA RASPISIVANJE REFERENDUMA O SRDU  
DAJTE OD 1. 2. DO 15. 02. 2013.**

[www.dubrovnikreferendum.com](http://www.dubrovnikreferendum.com)





## PROSUDITE SAMI!?

268 VILA 207 400 m<sup>2</sup>

+ APARTMANI  
I HOTELI 134 211 m<sup>2</sup>

= IZGRADENE  
POVRŠINE 341 611 m<sup>2</sup>

: 27 (18+9)  
GOLF RUPICA

= 12 652 m<sup>2</sup> IZGRADENE  
POVRŠINE PO  
GOLF RUPICI

GOLF DEVASTACIJA Noviograd na Sini

# APARTMANIZACIJA! PROSUDITE SAMI!?

341 611 m<sup>2</sup> IZGRADENE POVRŠINE  
: 60 m<sup>2</sup> (PROSJEČNA POVRŠINA STANA)

= 5 694 STANA  
: 27 (18+9) GOLF RUPICA

= 211 STANOVA PO GOLF RUPICI

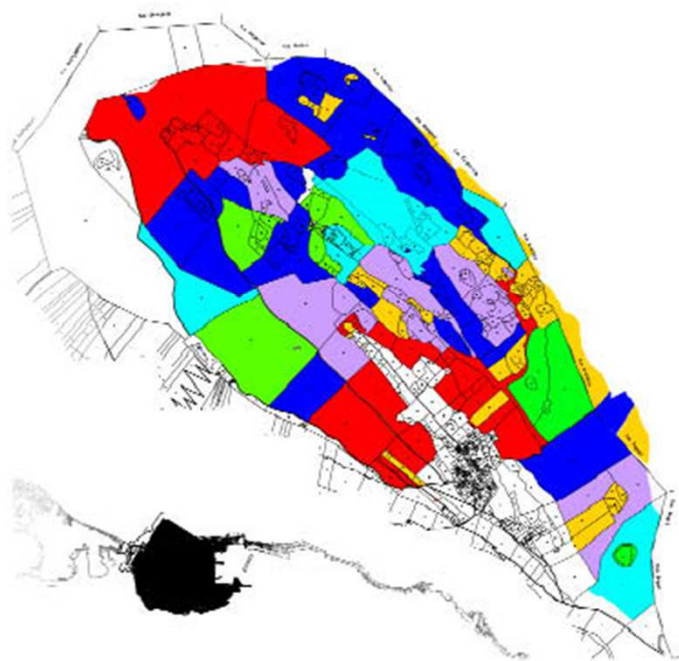
## GOLF DEVASTACIJA

Novi napad na Grad

Obod

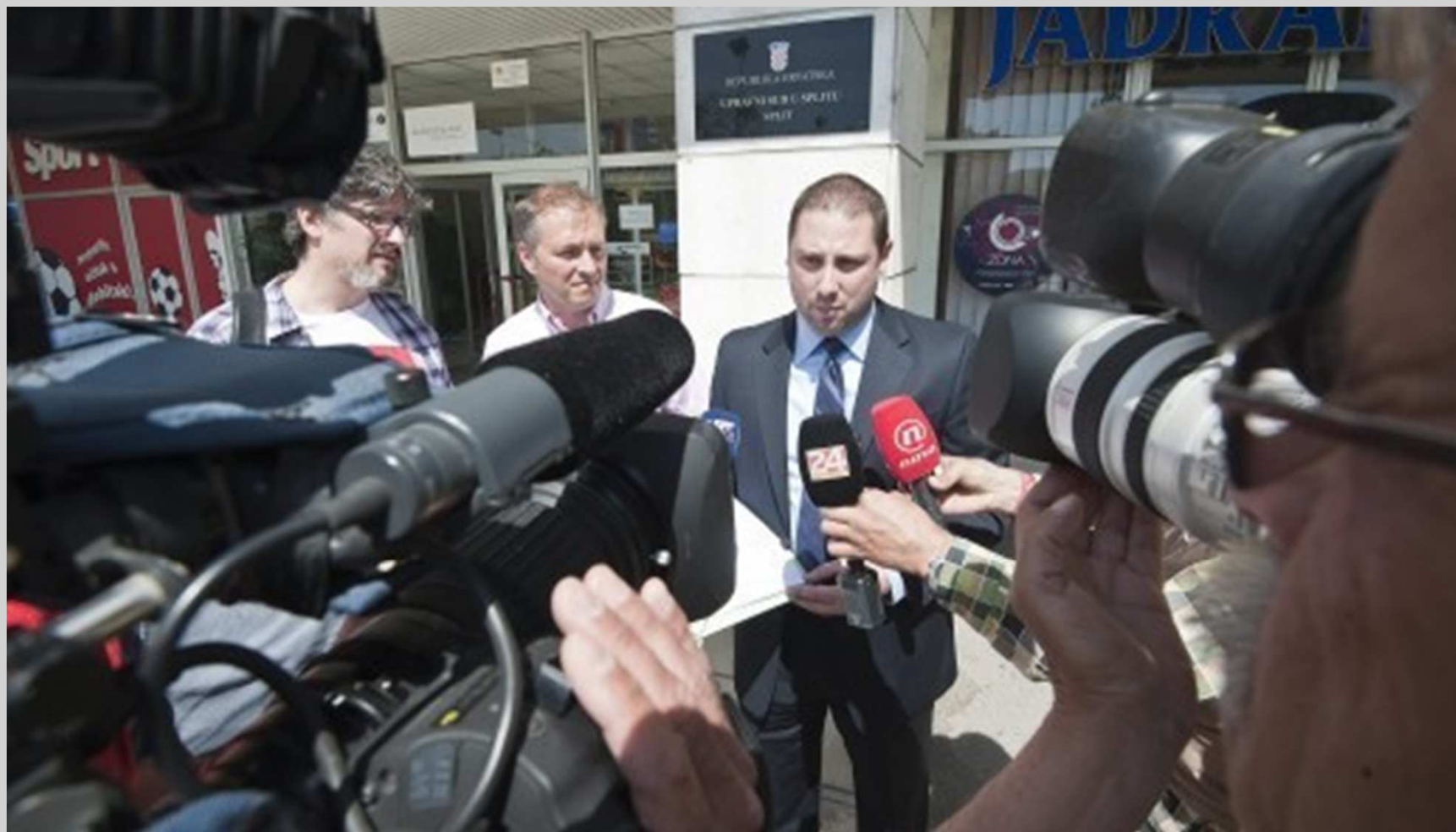
60

## ZNATE LI ČIJI JE SRD ?



Karta je izrađena prema podacima na dan 15. 03. 2013.  
/ <http://e-izvadak.pravosudje.hr/statistika-glavne-knjige.htm>





# Legal action overview

- 2006 - request to Constitutional court to decide on the legality of project enlargement (from 100 to 310 ha)
  - > enlargement ruled to be illegal in 2014
- 04/2013 - lawsuit filed against EIA permit
  - > 09/2016 – EIA permit overturned
- 11/2015 – lawsuit against location permit
  - > 02/2017 – location permit overturned

# Present situation

- 09/2017 investor files a complaint with the Washington investment tribunal (ISDS mechanism) – claims 500 mil € in damages
- 10/2017 - Croatia re-issues the permits (EIA and location permit) ignoring court judgements
- FoE Croatia and SJN launch a public advocacy campaign: “Racketeering, not golf”
- Investor SLAPPs FoE C – claims damages, gag order and criminal prosecution

**Reket,**  
**a ne golf.**



# Environmental Law Arguments

## - SALAMI SLICING

When a threshold is prescribed as means of deciding whether a project is subject to assessment or not *salami slicing* occurs when a bigger project is divided to smaller parts so that parts of the project or the whole project escapes the assessment obligation (or smillarily, when a project is incrementaly increased)

# Environmental Law Arguments

## - CUMULATIVE EFFECT

When a project is assessed its effect in relation to existing or planned projects, i.e. their joint effects on the environment, have to be taken into account.

# Environmental Law Arguments

- How do these arguments relate to Srd case?
- Project = golf resort (310 ha) + 2 tourist zones (11,4 ha + 9,04 ha = 20,44 ha)
- Croatia used a 15 ha per tourist zone threshold (set in national legislation) to avoid assessing impact of tourist zones and only assessed the resort part of the project

# Environmental Law Arguments

- How does the EIA Directive work and was the action of Croatian authorities legal?
- For this case the Directive was 2011/92/EU
  - > Originally 85/337/EEC
    - > Changed three times:  
97/11/EC, 2003/35/EC, 2009/31/EC,
  - > Now: 2014/52/EU



# EIA Directive

- **Art. 1.** Prescribes Directive to apply to those public and private projects likely to have significant effects on the environment.
- **Art. 2.1.** Obligation to permit and assess projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location

# EIA Directive

- **Art. 3.** The assessment shall take into account (identify, describe and assess) the direct and indirect effects of a project on the following factors and the interaction between them:
  - (a) human beings, fauna and flora;
  - (b) soil, water, air, climate and the landscape;
  - c) material assets and the cultural heritage;

# EIA Directive

- **Art. 4.** Differentiates 2 types of projects:

1) Those always subject to assessment (listed in **Annex I** of the Directive)

2) Those subject to SCREENING (whether they should be subject to an assessment or not) (listed in **Annex II** of the Directive)

# EIA Directive

## - Screening -

- How is screening done?

> Using one of the two methods or their combination:

1. case-by-case examination

2. thresholds/criteria from the national legislation

Both methods have to take into account Annex III requirements (selection criteria)

# EIA Directive

## - Screening -

- Croatia opted for a combined approach. The threshold for tourist zones was set at 15 ha.

So, was it legal for Croatian authorities to avoid assessment of two tourist zones (annex II projects), each smaller than 15 ha, a threshold set by Croatian national legislation?

# EIA Directive

## - Screening -

- C-72/95, Kraaijeveld (Dutch dykes) case, 26 March 1996:

“The wording of the directive indicates that it has a wide scope and a broad purpose. That observation alone should suffice to interpret point 10(e) of Annex II to the directive as encompassing all works for retaining water and preventing floods ° and therefore dyke works ° even if not all the linguistic versions are so precise.”

# EIA Directive

## - Screening -

- C-392/96, Commission v. Ireland, 21 September 1999:

"A Member State which established criteria or thresholds taking account only of the size of projects, without also taking their nature and location into consideration, would exceed the limits of its discretion under Articles 2(1) and 4(2) of the Directive."

# EIA Directive

"That would be the case where a Member State merely set a criterion of project size and did not also ensure that the objective of the legislation would not be circumvented by the splitting of projects. Not taking account of the cumulative effect of projects means in practice that all projects of a certain type may escape the obligation to carry out an assessment when, taken together, they are likely to have significant effects on the environment within the meaning of Article 2(1) of the Directive."



# EIA Directive

## - Screening -

- C-392/96, Commission v. Ireland, 21 September 1999:

"Even a small-scale project can have significant effects on the environment if it is in a location where the environmental factors set out in Article 3 of the Directive, such as fauna and flora, soil, water, climate or cultural heritage, are sensitive to the slightest alteration."

# EIA Directive

## - Screening -

- The obligation to avoid splitting of projects is later repeated in other cases, e.g.:

C-2/07, Abrahams et al., paragraph 27;

C- 142/07, Ecologistas en Acción-CODA, paragraph 44;

C-205/08, von Kärnten, paragraph 53

# PP and A2J Barriers

- Legislative (poor or incomplete transposition; convoluted rules)
- Judicial (not recognizing direct effect, where applicable; ignoring EU case law)
- Administrative (direct effect might also be applicable; poor capacities; state capture)
- Political (pressures of various types)
- SI APP

# Conclusions

- In Srđ campaign we have experienced all types of barriers mentioned
- Respect and adherence to formal procedures and exercising all existing rights and venues has proven to be crucial

Thank you!

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