

LEGAL STRATEGY

Overview of opportunities around the use of strategic litigation for industrial decarbonization, specifically in the steel sector in Croatia

I. Objectives to achieve

To ensure proper functioning according to permits issued to a steel plant ABS Sisak in Sisak Croatia and to facilitate upgrading of the facility in line with the latest developments in the industry based on the Best Available Technologies.

II. Legal goals

To achieve that permits are timely renewed in line with the developments of more stringent environmental standards and that there are no failures in the everyday functioning of the plant and if there are that they are properly addressed and operations ceased until they are addressed.

III. Access to information

III.1. Potential legal obstacles

The permits and changes to the permits are published in the register and can easily be accessed. However, the supporting documentation, i.e. the expert report is only available in its summary. Given that all the permits and changes thereof are based on the data from the original expert report it is essential to have access to that report as well.

III.2. Suggested legal responses

Expert report can be requested by way of Access to information request. If denied a complaint can be lodged with the information commissioner. If the commissioner fails to provide the documentation by request, or if the operator fails to produce the documentation based on the commissioner's decision an administrative lawsuit can be filed with the administrative court.

IV. Public participation

IV.1. Potential legal obstacles

Public participation might be omitted due to the fact that the permit is not issued anew (i.e. it is only updated). Provisions of the Environment Protection Act ensure public participation in all procedures which address changes to the way a plant operates.

IV.2. Suggested legal responses

If a procedure for public participation should be omitted two things should be done. First, the Ministry should be reported and an Administrative Compliance Check should be requested. This procedure is to ensure that the Ministry is acting according to law and general procedures. Second, a lawsuit should be filed with the administrative court for a failure to implement the provisions of the law pertaining to Environmental permits.

V. Access to justice

V.1. Summary of the main non-compliances with the relevant BAT conclusions

Non-compliance was not identified in the case of ABS Sisak steel plant.

V.2. Short description of the potential legal responses

In case of any irregularities in the work of the facility a motion to the State Inspectorate to initiate an ad hoc inspection can be filed. Depending on the findings the inspectorate will initiate further proceedings which may include an action by the Ministry. The inspectorate has the obligation to inform the complainant about the findings and the course of action based on findings. If the complainant is unsatisfied with the action taken it can motion the Ministry to initiate proceedings ex officio. If the Ministry denies the motion or fails to answer it a complaint can be addressed to the Minister (head of competent authority). Dismissing of the complaint by the Minister, or failure to act on it, gives a complainant a right to initiate administrative dispute before the administrative court.

V.3. Comparison of efficiency of possible legal actions, legal and other barriers, risks

Actio popularis is not an efficient legal remedy in case there is a permit issued for the activity in question. Only limited, and very generally framed requests can be lodged with the authorities aimed at the remediation of an excessive damage, damage exceeding common disturbances of alike facilities, and for the implementation of a “socially justified measures to prevent the occurrence of damage or to reduce it”.

Administrative procedures, and the control of administrative courts, offer better chances of success. First, a control by the inspectorate should be requested. The procedure to initiate proceedings by the inspectorate is not formal nor is it complicated, In addition there are a lot of NGOs which offer assistance in reporting suspect environmental disturbances to the inspectorate. Based on the findings of the inspectorate further actions can be taken. The proceedings before the administrative authorities are not bound with any significant costs. If the administrative authorities fail to act, following the proper procedure a recourse can be requested with the administrative courts. It is not necessary but it is highly advisable to have professional legal representation in the administrative court. Once the lawsuit is filed the operator shall be called to join the procedure and a request to respond to the lawsuit shall

be sent to both the Ministry and the operator. The Ministry is represented by its staff and cannot outsource legal counsel, while the operator can. Recently there has been a change in lawyer's tariffs in relation to administrative disputes and the remuneration has significantly increased. In case of loss of an administrative dispute costs need to be covered by the losing party. A minimum cost of 2000 Euros can be expected, provided that no expertise was mandated as part of the administrative dispute proceedings. The biggest challenge for NGOs, who are the primary instance of popular control in cases of environmental infringements, has been the inability to secure independent funding for legal action (i.e. no funders want to finance legal costs).

V.4. Conclusion, recommended legal action(s)

BREF updates should be regularly followed. Given that there is an obligation of the authorities to initiate changes to the existing permits if the conditions of the BAT change the authorities should be pressed to do so in a timely manner. In doing so a motion to initiate ex officio proceedings should be used. If this motion is dismissed it can be addressed in the administrative dispute's procedure before the administrative courts. It should be noted that legal remedies can in this way also be used to exert pressure to expedite the decisions which are dependent on the authorities' discretionary rights. Hence, the risk of suffering a legal failure is higher than ordinary but often more than justified. In order to alleviate the consequences of such risks funding of legal costs for NGOs should be designed as one of the features of monitoring compliance of industrial facilities.

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