

## LEGAL STRATEGY

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

#### I. Objectives to achieve

Our main objective is to promote the decarbonisation of the national steel industry by improving industrial processes and enhancing a new concept of green steel. The acceptance of the green steel initiative very much depends on where the sector stands now in terms of Best Available Techniques (BAT). The identified installation in Hungary is found to be lagging behind, therefore there is the opportunity for strategic litigation or other actions that will improve the CO<sub>2</sub> and other emissions performance of the steel industry installation.

#### II. Legal goals

In the present case, the expert concluded that the BAT requirements have not been entirely complied with by the steel plant in question (Ózd Steel Plant, "ÓAM"). According to the available information, there is no ongoing administrative procedure to remedy these deficiencies. Therefore, we consider as the primary legal goal to achieve that a substantive procedure is commenced by a competent authority to assess compliance with BAT, possibly by revising the environmental permit and imposing measures to comply with the relevant BAT criteria.

Secondly, the aim is to have a clear overview of the domestic legal instruments that can be used to encourage compliance and decarbonisation efforts by steel installations.

#### III. Access to information

##### III.1. Potential legal obstacles

According to Act LIII of 1995 on Environmental Protection (Kvt.), everyone has the right to have access to environmental information which is considered data of public interest. Any person may request access to data of public interest orally, in writing or by electronic means. Access to information on emissions may not be refused on the grounds that it is personal data, business secret, tax secret, or that it pertains to natural habitat of wild fauna and flora under special protection, the location of depleted natural resources, or to the location of geological conservation of nature preservation areas.

Not only the authorities, but the users of the environment (i.e. operator of a steel plant) is obliged to provide information regarding any environmental impairment and environmental hazards and endangerment for which they are responsible.

The environmental permit for the facility in question has been available to the public through OKIR (National Environmental Information System, <http://web.okir.hu/hu/>). There was no problem in obtaining the permit and the underlying permit documentation was available to the expert. In other cases, where the permit is final, the underlying documentation can be obtained through a public interest disclosure request which must be fulfilled by the authority within 15 days.

### **III.2. Suggested legal responses**

If the data controller acts unlawfully or fails to act in response to a public interest disclosure request, the controller may be subject to legal proceedings. The judicial procedure is conducted within a relatively short timeframe and the burden of proof is on the data controller to show that its actions do not infringe the law. The procedural rules are set out in Act CXII of 2011 on the right to informational self-determination and on the freedom of information. <https://www.naih.hu/about-the-authority/act-cxii-of-2011-privacy-act>

On the other hand, a complaint can be submitted to the NAIH (National Authority for Data Protection and Freedom of Information). Any person has the right to notify the Authority and to request an investigation into an alleged infringement concerning the exercise of the right of access to public information.

The court procedure and the NAIH's investigation are free of charge, however, legal costs may occur in the court procedure which has to be paid by the losing party.

## **IV. Public participation**

### **IV.1. Potential legal obstacles**

Based on our knowledge there is no ongoing administrative procedure currently, so we have not faced any barriers to participation in decision-making. Participation rights of environmental NGOs and directly affected persons are laid down in accordance with the Aarhus Convention. A party's rights, such as the right of access to documents, the right to make a statement and the right to legal remedy are guaranteed by the relevant procedural legislation.

As a potential obstacle we are pointing out a recent amendment of the Kvt., namely public hearing may be held without physical presence of those affected, through electronic communications equipment available for the simultaneous broadcasting of images and sound.

### **IV.2. Suggested legal responses**

An administrative decision rejecting an application for a declaration of party status may be appealed to a court. In the event of a breach of a party's rights, an appeal against the decision on the merits is possible. The conditions are available in the attached national legal study section A) point 2 subpoint B).

## V. Access to justice

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

The expert's assessment covered the plant's steel production activities. The activity is the production of steel with a capacity of 63 tonnes per hour and is therefore subject to *BATc - Iron and Steel Production 2012/135/EU: Activity 2.2: Production of pig iron or steel (primary or secondary fusion), including continuous casting, with a capacity exceeding 2.5 tonnes per hour.*

The environmental expert made partial findings in her opinion and a further detailed analysis of the BAT requirements is recommended.

- Concerning the general BAT requirements for energy management, the expert noted that the calculation method of the MJ/t reference value was not presented in the EIA documentation and could not be verified. Energy optimisation was not explained in the review document on which the environmental permit was based.
- In analysing the review documentation, the expert noted several references to the 1997 report on Best Available Techniques (BAT) in Electric Arc Steelmaking, rather than the current 2013 BREF document.
- According to the expert, one of the main shortcomings is that comparisons of the reference values for electric arc furnace steel production were not made in the 2022 permitting procedure, furthermore, the review document is not consistent with the quantitative indicators of materials used and generated during the 5 years of operation presented in the document.
- Based on the expert opinion, the dust collection is only 87,7 % efficient and therefore does not comply with the relevant BAT conclusion.

### V.2. Short description of the potential legal responses

According to the expert's opinion, the environmental (IED) permit is not in line with the applicable BAT requirements and the derogations therefrom are not well-substantiated or justified. Based on these findings, the following legal procedures can be initiated:

- **Environmental review procedure:** this proceeding is carried out in order to ascertain and study the environmental impact of certain activities as well as to determine whether the environmental protection requirements are being met.  
In order to explore the environmental impact caused by the activities of an operator, the environmental protection authority may require the operator to carry out a full-scale or partial review if it detects that the environment has been endangered or

polluted. Where the environmental protection authority detects that the environment is being endangered or damaged, it may fully or partially restrict or suspend the audited activity that is causing such problems in the impact area. A request to the environmental authority to review the permit can be submitted by any person, the authority is entitled to commence the proceeding on its own motion.

- **Request to the supervisory authority:** the supervisory body of the administrative authority (i.e. the environmental protection authority issuing the IED permit) can examine the proceedings of the competent authority, and its decision, of its own motion and shall take the measures necessary to eliminate the nonfeasance, if any; and/or where the decision of the authority is found to be unlawful, the supervisory body shall, not more than once, amend or annul it and, where necessary, order the authority which adopted the decision to carry out a new procedure. A request to the supervisory authority to review the decision issuing the permit can be submitted by any person, the authority is entitled to commence the proceeding on its own motion.
- **Request to the public prosecutor:** If the public prosecutor intervenes or takes an action, the authority may amend (modify) its decision impugned by the prosecutor without restrictions or may withdraw (annul) such decision even if any restriction or prohibition by the legislation on administrative proceedings apply. A request to the public prosecutor to take measures can be submitted by any person, the prosecutor may commence the proceeding on its own motion.
- **Request to the AJBH (Commissioner for Fundamental Rights):** The Commissioner may launch inquiries into the practice of the state bodies an administrative body violates or threatens to violate a fundamental right of a person (e.g. the right to a healthy environment).
- **Action related to the omission of the administrative authority:** In the case of omission of performance of obligations of administrative bodies, an action might be brought to the administrative court. The petition of claim can be submitted by the party or the person whose rights are directly affected by the omission, the public prosecutor's office and the Integrity Authority.
- **Request the competent environmental authority to take the necessary actions:** In the case of an imminent threat to the environment or environmental damage, environmental associations may request the authority to take measures against the user of the environment.
- **Civil lawsuit against the user of the environment (operator):** In the case of an imminent threat to the environment or environmental damage, environmental associations may bring an action against the operator of the plant under civil law.

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

#### V.3.1. Environmental review procedure

##### *Initiation of the procedure*

When the environmental permit of ÓAM expires, an environmental review process must be carried out. The permit of the facility is valid until 31 August 2027, the validity can be extended in an environmental review procedure due to be started 6 months before the permit expires.

In the environmental review procedure, the environmental concerns can be raised by the members of the public exercising their participatory rights explained above.

In order to explore the environmental impact caused by the activities of an operator, the environmental protection authority may require or shall require the operator to carry out a full-scale or partial review.

To carry out an environmental review procedure is obligatory based on the Kvt. in the following cases, (a) if the competent authority detects that the operator has caused any damage to the environment or it detects that the environment has been endangered or polluted; (b) if the operator is engaged in activities that endanger, pollute or damage the environment of areas placed under any degree of protection, (c) if the operator started or is engaged in the pursuit of activities for which an environmental impact assessment or a single environmental authorization is required, without an environmental license or a single environmental authorization, (d) there are changes in the legislative conditions and other circumstances (e.g. changes in the applied technology and materials).

In the case at hand, based on our current knowledge resulting from the expert opinion, none of the mandatory environmental review cases are applicable. The legal basis for a mandatory environmental review in the present case can only be one of the cases listed under point (a) above.

As defined by the Kvt,

- "threat to the environment" means the imminent threat of environmental damage;
- "activity posing imminent threat to the environment" means an act or omission leading to an imminent threat of environmental damage;
- "damage to the environment" means an act or omission as a result of which environmental damage occurs;
- "environmental damage" means any measurable adverse and significant change in the environment or any environmental media which may occur directly or indirectly, or any measurable impairment of a natural resource service which may occur directly or indirectly.

None of the above is the case for ÓAM's operations, according to the available expert opinion.

Accordingly, if a request for an environmental review is submitted, the authority has discretion to decide whether it considers it necessary to proceed.

Based on the available information from the expert opinion, we suggest that a request for review be prepared and submitted to the competent authority, highlighting the main non-compliances with the relevant BAT conclusions summarized in section III.1.

Where further research and expert analyses would clearly prove that the plant is causing an imminent threat to the environment or environmental damage, environmental associations may file a request to the competent environmental authority to take the necessary actions.

*Potential outcomes of the environmental review procedure*

As mentioned above, the competent authority has discretion to decide whether to initiate the proceeding.

We suppose that this could lead to one of three possible outcomes:

- a) the competent authority rejects the request for review by means of a formal letter;
- b) the competent authority rejects the request for review by means of an administrative decision;
- c) the competent authority initiates an administrative procedure and takes the corresponding formal procedural decision.

ad a)

If the competent authority rejects a request to launch a review procedure in an information letter, this reply letter cannot be considered as an administrative decision and therefore any appeal against it is likely to be unsuccessful. The administrative and judicial review procedures are described in section A) point 2 of the attached legal study.

ad b)

If the competent authority rejects the request to open a review procedure by means of an order, its decision can be challenged both administratively and judicially. In our opinion, the decision rejecting the request is subject to appeal under Gov. Decree 314/2005, and the decision of the second instance may also be subject to administrative lawsuit. These procedures are described in Section 2 of Chapter A of the attached legal study.

ad c)

This outcome would partially satisfy our legal goal. If a competent authority initiates a substantive procedure to assess compliance with BAT, this can also be considered a success based on our experience of the current administrative practice. Nevertheless, it would be a complete success if, as a result of the procedure, the authority was to amend the environmental permit to bring it fully into line with BAT requirements. In our opinion, the decision on the merits of the environmental review procedure can be appealed under Gov. Decree 314/2005, and the decision of the second instance can also be reviewed judicially. These procedures are described in Section 2 of Chapter A of the attached legal study.

### *Costs of the procedure*

As the possibility for an administrative appeal in environmental procedures is available since 1 July 2024, the legal practice is still forming and both legislative and practical information on costs and timeliness is still missing. Administrative appeals are subject to paying a fee determined by a specific piece of legislation. In judicial proceedings, NGOs are generally exempt from duties, however, legal costs (including expert fees) may occur in the court procedure which has to be paid by the losing party.

A key feature of judicial review proceedings is that the claimant must provide expert evidence when challenging the decision of the competent authority based on non-compliance with BAT conclusions. In practice, the expert fee is significantly high, and NGOs are usually not able to finance the involvement of forensic experts.

#### *Timeline of the procedure*

In the review procedure, the administrative deadline is one hundred and five days. Also in the second instance review procedure, the administrative deadline is one hundred and five days. There is no exact time-limit provided by the national legislation for the court to deliver its judgment. Court proceedings generally take between 1 and 1.5 years.

Immediate action can be taken during the court procedure. Therefore, immediate legal protection can be requested from the court - to eliminate the directly threatening disadvantages - in relation to the decision of the environmental authority taken in the environmental review procedure. It is possible to request ordering suspensory effect, temporary measures, or ordering providing preliminary evidence.

Where the environmental authority's procedure is violating the relevant laws, the following actions can be also taken:

- **Request to the supervisory authority**
- **Request to the public prosecutor to intervene**
- **Request to the Commissioner for Fundamental Rights (AJBH)**

Considering that these authorities may start their procedures ex officio which means that they decide to launch their procedures on a discretionary basis, in addition there is limited appeal against their possible legal acts, we do not consider these procedures to be really effective alternatives to environmental review.

### **V.3.2. Request to the supervisory authority**

#### *Initiation of the procedure*

Any person may report an infringement by lodging a complaint to the supervisory authority. The supervisory procedure is initiated ex officio on the basis of a discretionary decision of the supervisory authority.

#### *Potential outcomes*

The supervisory authority

- **takes measures** necessary to eliminate the nonfeasance, if any;
- **amends the decision** of the authority under supervision;
- **annuls the decision** of the authority under supervision;
- **annuls the decision** of the authority under supervision and **orders the authority which adopted the decision to carry out a new procedure.**

Annulment and amendment are possible within the time limit set by law and if the authority's decision is found to be unlawful.

#### *Costs*

No costs are charged to the complainant in the administrative proceeding.

#### *Timeline*

There are no special provisions for the supervisory procedure in the general rules of administrative procedures. Complaints and public interest disclosures shall be dealt with by the competent authority within 30 days of receipt.

#### *Possibility for immediate action*

There is no possibility for immediate action in the supervisory procedure. The decision taken in a supervisory procedure can be challenged before the administrative court.

Where an administrative authority (including the supervisory authority) fails to proceed, an **action related to the omission** can be brought to the administrative court. In this case, it has to be proven that the authority did not fulfil its obligation clearly prescribed by law. In these cases, the court usually states that the authority failed to act, if it did not take any action at all. Thus, if the authority responds to a complaint with a simple letter of information, but still does not take any measures, the court will no longer consider that the authority has failed to act. This legal tool is recommended to apply if the administrative authority does not even respond to the complaint/request for taking measures.

### **V.3.3. Request to the public prosecutor**

#### *Initiation of the procedure*

Any person may report an infringement by lodging a notification to the public prosecutor.

#### *Potential outcomes*

Based on the circumstances of the case and the type of infringement, the prosecutor

- examines the applications, public interest notifications, notifications of infringements of law addressed to him against decisions, measures or omissions by public authorities;
- initiates criminal, disciplinary, infringement or administrative proceedings in respect of any infringement or failure to comply with the law of which he becomes aware. ,
- rejects the notification by means of a reasoned decision, if he finds the application unfounded. The applicant (complainant) may, within 8 days from the date of notification of the opinion, appeal to the superior prosecutor's office for review. The application may be disregarded if the application is submitted more than one year



after the decision complained of has become final or has become final or after the enforcement order has been issued.

#### *Costs*

No costs are charged to the applicant in the proceeding of the prosecutor or in the administrative proceeding.

#### *Timeline*

Complaints and public interest disclosures shall be dealt with by the public prosecutor within 30 days.

#### *Possibility for immediate action*

There is no possibility for immediate action.

### **V.3.4. Request to the Commissioner for Fundamental Rights**

#### *Initiation of the procedure*

Any person may apply to the Commissioner for Fundamental Rights if he or she considers that an act or omission by an administrative body violates or threatens to violate a fundamental right of a person, provided that he or she has exhausted all available administrative remedies, including administrative litigation, or has no remedy at all.

#### *Potential outcomes*

Based on the results of the examination of the notification, the Commissioner for Fundamental Rights may

- make a recommendation to the supervisory body of the authority under investigation to remedy the infringement, while informing the authority;
- initiate the procedure of the competent authorities.

#### *Costs*

The petition and the Commissioner's proceeding are free of charge.

#### *Timeline*

The administrative time-limit does not apply to the Commissioner's procedure.

#### *Possibility for immediate action*

There is no possibility for immediate action.

### **V.3.5. Lawsuit against the operator**

#### *Initiation of the procedure*

A civil lawsuit against the user of the environment (operator) can be initiated by environmental associations if the plant is causing an imminent threat to the environment or

environmental damage. bring a lawsuit against the operator under the rules of the Kvt. and the civil law to the court.

#### *Potential outcomes*

The plaintiff can request the court in the petition of claim

- to order the party posing the hazard/causing damage to refrain from the unlawful operation;
- to compel the same to take the necessary measures for preventing the damage.

#### *Costs*

The NGO as **the plaintiff must provide expert evidence** of the existence of a threat or damage in order for the court to impose restrictions or amendments on the operator. In practice, the expert fee is significantly high, and NGOs are usually not able to finance the involvement of forensic experts.

#### *Timeline*

Although this type of lawsuit has been available in environmental law for a long time, it is not yet well established in practice. Therefore, the effectiveness of this legal tool cannot be substantiated.

#### *Possibility for immediate action*

According to the general rules of civil procedures, immediate action can be requested. The court may order provisional measures:

- for the purpose of blocking any alteration of the existing state, if subsequent restitution would not be possible;
- to prevent failure of the applicant's subsequent exercise of rights;
- to eliminate any harm the applicant may directly be exposed to.

Although this type of lawsuit has been available in environmental law for a long time, it is not yet well established in practice. Therefore, the effectiveness of this legal tool cannot be substantiated.

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

The first point to note is that there is no really effective legal remedy against a permit that is valid for years, unless the facility's activity is clearly endangering or damaging the environment (proved by expert opinions, measurements etc.). The decision on commencing a procedure is under the discretion of the authorities, and the likelihood of having the authorities to take an action ex officio is low in practice.

Based on the comparison above and by reference to the findings of the expert, the suggested legal steps are the following:

- filing a complaint/request to the environmental authority to conduct an environmental review of the IED permit (environmental permit); and/or
- obtaining legal standing and participating in the environmental review of the IED permit due in the beginning of 2027.

If further examination of the non-compliance with the BAT or other environmental requirements concludes that there is an imminent threat or damage to the environment caused by the plant, the following legal steps are recommended

- filing a request to the competent authority (mainly the environmental authority) to take the necessary actions;
- as a pilot case, bringing a lawsuit against the operator under Article 99(1) Kvt. to the court. The NGO as the plaintiff must provide expert evidence of the existence of a threat or damage in order for the court to impose restrictions or amendments on the operator.

Contact information:

authors: Ágnes Gajdics  
organization: *Justice & Environment*  
e-mail: [info@justiceandenvironment.org](mailto:info@justiceandenvironment.org)  
URL: [www.justiceandenvironment.org](http://www.justiceandenvironment.org)