

AVOSETTA RIGA MEETING, 27–28 May 2016
 Topic: “Permit procedures for industrial installations and infrastructure projects:
 Assessing integration and speeding up”

REPORT ON CROATIA
 Lana Ofak
 Faculty of Law, University of Zagreb

A. Baseline information

I. Industrial Installations¹

Forms and scope of permits – In broad terms what are the forms and scope of permits necessary to construct and operate an industrial installation (e.g. an industrial installation in the sense of Annexes I or II of Directive 2011/92/EU)?

Procedures – What are the main characteristics of the applicable permit procedures?

Environmental Impact Assessment (EIA)

The EIA procedure is regulated by the Environmental Protection Act (hereinafter: EPA, OG no. 80/2013, 153/2013, 78/2015) and the Regulation on environmental impact assessment (OG no. 61/2014). The Regulation on information and participation of the public and public concerned in environmental matters (OG no. 64/2008) applies to issues concerning public participation. The EIA is an autonomous administrative procedure. It is carried out as part of the preparation of the intended project, prior to issuing the location permit for project implementation or prior to issuing other approvals for a project for which the obtaining of a location permit is not mandatory.

Projects for which the EIA is mandatory and projects subject to screening (evaluation of the need for an EIA) are listed in the Regulation on EIA. All projects listed in Annex I of the Regulation on EIA are considered as having significant effects on the environment and require an EIA. For projects listed in Annex II and Annex III, the competent authority has to decide whether an EIA is needed. The screening procedure shall be based on case-by-case analyses and/or criteria prescribed by the Annex V of the Regulation on EIA.²

The EIA and the screening procedure is carried out by the Ministry of Environmental and Nature Protection or the competent administrative body in the county or City of Zagreb, depending on which projects are placed under their competence by the Regulation on EIA. However, only a very small number of projects fall within the competence of the county or City of Zagreb (i.e. projects of local or regional importance for which a screening procedure is conducted).³ Thus, the conclusion is that in practice the EIA and the screening procedure is mostly carried out by the Ministry. Furthermore, the EIA and the screening procedure for all projects for which it is required to obtain environmental permit (see *infra*), fall within the competence of the Ministry.

The scoping procedure is used very rarely in practice (since 2010 it was used only 9 times within the Ministry’s competence). It is carried out only if the developer, prior to developing the environmental impact study, submits a written request for instructions on the content of the environmental impact study in relation to the intended project.

By a random selection of the Ministry’s decisions issued in the screening procedure, we can notice that screening procedures last for 4 months on average, although the EPA prescribes that they

¹ We start here from the hypothesis that the construction and the operation will take place in an area in which, according planning law or nature protection law, there is, *prima facie*, no legal obstacle to do this (e.g. in an industrial area not in the vicinity of a *Natura* 2000 site, etc.)

² These criteria are almost identical as the criteria laid down in Annex III of the Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.

³ For instance, use of uncultivated land or semi-natural areas for intensive agricultural purposes with a surface area of 10 ha or more; car parks as independent projects with a surface area of 2 ha or more; canals, dykes and other structures for protection against floods and coastal erosion.

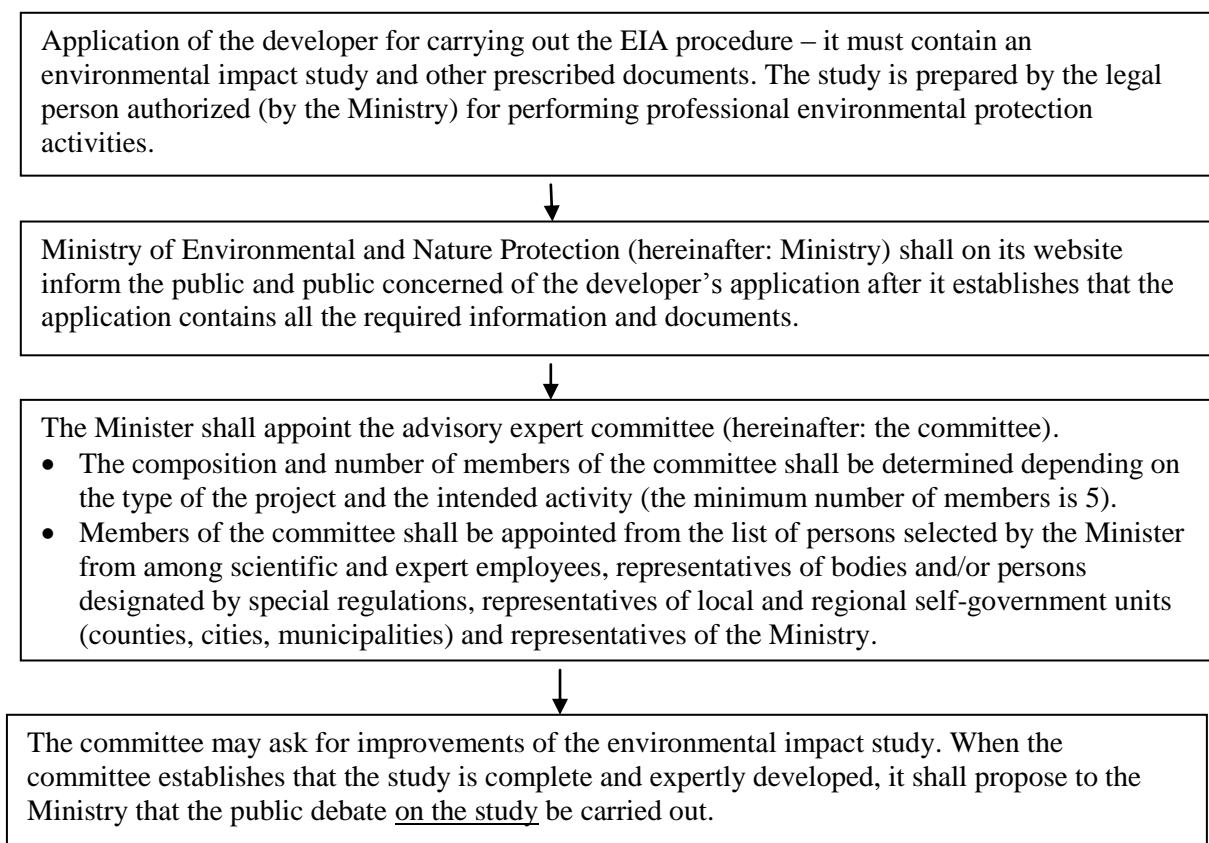
shall be carried out within 2 months from the day of receiving a complete application from the developer. The EIA procedures which are carried by the Ministry last between 4 month and 13 month, which is 8 and a half months on average, although the EPA prescribes that the EIA procedure shall be carried out within 4 months (or exceptionally within 6 months) from the day of receiving a complete application from the developer.

Pursuant to the General Administrative Procedure Act (OG no. 47/2009) and the Administrative Disputes Act (NN no. 20/2010, 143/2012, 152/2014), in the event that the Ministry has not made a decision within the prescribed time, the developer has the right to initiate administrative dispute before the administrative court for failure to bring a decision within the prescribe time limit. However, since the administrative disputes before administrative courts often last longer than one or even two years, this legal remedy cannot in practice be regarded as an effective remedy for developers. For the developer it is better to wait for the Ministry's decision for few more weeks or months (in case the prescribed time limit is exceeded) than to initiate an administrative dispute.

Regarding the question can the EIA be carried out once more at the next stage of the development process, the answer is no. The EIA is carried out once more only in case of a successful action against the decision issued in the EIA or the screening procedure, if the administrative court annuls the decision and orders the Ministry to repeat/conduct the procedure.

Although there is a legal possibility that the Ministry adopts the decision rejecting the project, I have never seen such a decision so far. I only noticed the decisions on dismissing the application, if for instance it is contrary to the spatial plans.

EIA Procedure⁴



⁴ For the following installation: “Waste disposal installations for the incineration or chemical treatment as defined in Annex I to Directive 2008/98/EC under heading D9 of non-hazardous waste with a capacity exceeding 100 tonnes per day” (Annex I, pt. 10 EIA Directive). **This flowchart does not include the procedure when the project is likely to have a significant effect on the Natura 2000 site. When the environmental impact assessment includes appropriate assessment of the impact on the ecological network (Natura 2000 sites) pursuant to Nature Protection Act, appropriate assessment is carried out in the framework of the environmental impact assessment.**

↓

The Ministry may confer particular activities related to public debate, including public inquiry and public presentation, to the competent administrative body in the county or the City of Zagreb. The competent body shall publish the notification on conducting the public debate on the web site and in daily press. Public inquiry shall last at least 30 days (in practice it is always 30 days). In the course of public inquiry, the competent body shall organize a public presentation.

↓

After conducting the public debate, the competent authority shall deliver all the opinions, objections and proposals from the public debate to the developer, to which he must give his response. In the response, the developer must propose final environmental protection measures and an environmental monitoring programme in relation to the project.

↓

The developer's response along with all the opinions, objections and proposals from the public debate shall be submitted to the committee for a review. In this phase it is possible that the committee establishes that:

- the study needs further elaboration and/or
- that the opinions of the public authorities designated by special regulations need to be obtained and/or
- that the opinion of the county, city or municipality needs to be obtained.

In such cases, the deadline for carrying out the required additional activities may not exceed 30 days.

↓

The committee shall review the opinions, objections and proposals as well as the response of the developer, and explain the reasons for their acceptance or non-acceptance in relation to the project's most acceptable alternative. The committee must adopt the opinion on the acceptability of the project. The opinion shall also include proposal of environmental protection measures and environmental monitoring programme with an implementation plan.

↓

The Ministry issues the decision on environmental acceptability of the project after it reviews the committee's opinion on the acceptability of the project and the opinions, objections and proposals of the public and public concerned submitted during the public debate. The committee's opinion is not strictly binding, however the Ministry should explain in detail the reason for not accepting it. Measures and/or environmental monitoring program established by this decision on environmental acceptability of the project are the obligatory elements which must be included in the content of the further project implementation permits that will be issued.

↓

The Ministry's decision is published on its website. The delivery of this decision shall be deemed completed on the eight day following the day of its publishing on the website. The administrative dispute may be initiated against the decision before the competent administrative court within 30 days following the day when the delivery was deemed to be completed.

↓

If the first instance administrative court accepts the claim and returns the case to the Ministry, an appeal to the High Administrative Court is not allowed.
If the first instance administrative court rejects the claim, than there is a right to file an appeal within 15 days to the High Administrative Court.

Integrated environmental protection requirements (IEPR) – environmental permit

The obligation of the operator of the industrial activities to obtain integrated environmental protection requirements (hereinafter: IEPR) was introduced in Croatia by the EPA in 2007 (Environmental Protection Act, OG no. 110/2007) for the purpose of transposing the Directive 2008/1/EC concerning integrated pollution prevention and control. The IEPR were to be obtained prior to starting construction and operation, as well as prior to a substantial change in operation or reconstruction of the installation intended for performing an activity, which may cause emissions which pollute the soil, air, water and sea. Activities which may cause emissions, as well as some other specific details concerning the procedure of issuing the IEPR, were prescribed by the Regulation on the procedure for determining integrated environmental protection requirements.⁵

The IEPR were issued by the Ministry competent for environmental protection for the new and the existing installations. Initial analysis of the situation determined that around 200 installations were obliged to obtain IEPR, of whom 67 received the ability to comply within the transitional period.⁶ In the period from 2009 to 2012 for existing installations, the Ministry issued only seven IEPR, and for the new installations 16 IEPR. The procedures often lasted for several years. By a random selection of the IEPR that are published on the website of the Ministry, we can notice that in certain cases procedure lasted between 31 and 36 months.

The Croatian Parliament adopted the new Environmental Protection Act in 2013 in order to comply, *inter alia*, with the Directive 2010/75/EU of the European Parliament on industrial emissions. The name IEPR has been replaced with the name “environmental permit”, and the new Regulation on environmental permit applies instead of the Regulation on the procedure for determining IEPR. Thus, two types of permits exist today: (1) IEPR that were issued to operators who initiated the proceedings prior to adoption of the new Environmental Protection Act in 2013 and (2) environmental permits prescribed by the new Act.

The environmental permits are issued by the Ministry competent for environmental protection (i.e. Ministry of Environmental and Nature Protection). By a selection of the most recent environmental permits which are published on the website of the Ministry, we can notice that procedures do not last for three years anymore, but 17 months on average. On the other hand, the Environmental Protection Act stipulates that the Ministry is obligated to issue the permit within 6 months from the date of the filing of the application that contains all the necessary elements. Thus, this period of 17 months (on average) is still not in accordance with the law. As already mentioned, for the operator it is probably better to wait for the Ministry’s decision/permit for few more weeks or months (in case the prescribed time limit is exceeded) than to initiate an administrative dispute, since the court procedures are not expeditious. According to the well-established case-law, it is considered that there is no violation of the right to a fair trial if an administrative dispute lasts less than three years.

Every five years the Ministry, *ex officio*, reconsiders, and if necessary, amends the environmental permit, in particular where:

- the pollution caused by the installation is of such significance that the existing emission limit values of the permit need to be revised and new such values need to be included in the permit;
- the substantial changes in BAT allow significant reduction of emissions without imposing higher costs,
- the operational safety requires other available techniques to be used;
- it is necessary to comply with the law and with the European and/or international regulations;
- it is necessary to comply with a new or revised environmental quality standard.

⁵ This Regulation was in force from 31 March 2009 to 30 January 2014.

⁶ The EU approved the extension of the adjustment with the IPPC Directive in relation to 67 installations. Three transitional periods have been granted: one for the modernization of existing IPPC installations (total of 67 installations) and second for the limitation of emissions into the air of certain pollutants from large combustion plants (total of 11 plants) until 1 January 2018; and a third for the limitations of emissions of volatile organic compounds for a specified list of installations until 1 January 2016.

Integrated procedures from 2008 – 2013

Pursuant to the EPA from 2007, when a project for which an EIA is carried out refers to an installation for which it is also mandatory to obtain IEPR, a decision on the application for EIA and the application for determining IEPR shall be made within a single procedure. However, integrated procedures in practice proved to be inappropriate, so the new EPA from 2013 separated these procedures, and they are now carried out autonomously. The reason for the separation of integrated procedures was that, for the Ministry, it proved to be inappropriate that the IEPR were issued before the construction together with the EIA decision (i.e. prior to issuing the location permit for project implementation).

Pursuant to the new EPA, environmental permit must be obtained prior to starting the operation of the installation, and the EIA must be carried out as a first step in the multiple permitting decision-making. Thus, environmental permit is issued after the implementation of the EIA procedure. The EIA decision is the framework for issuing the environmental permit.

If the process of EIA is not mandatory, the competent authorities that participate in the procedure of issuing the environmental permit may demand establishing the required environmental quality and acceptability for the component of the environment which falls within their competence. In this case the required environmental quality and environmental acceptability is determined by conducting a proper assessment within the procedure of issuing the environmental permit.

After the Ministry issues the environmental permit, the decision to carry out activities can be issued under a special legislation (e.g. use permit, waste management permit, permit for performing energy activities).

Permit to operate installation below the threshold values

When the installation operates below the threshold values set out by the Regulation on environmental permit (OG no. 8/2014), the operator can apply to the Ministry for a decision that installation does not have to hold an environmental permit. In this case, if all the requirements are fulfilled, the Ministry shall issue a decision on the operation of the installation below the threshold values. The obligatory content of the application is prescribed by the EPA. The application must be accompanied by the prescribed data for monitoring operation below the threshold values.

The decision sets out the conditions for operating the installation without granting the environmental permit. The decision lays down the obligation for the operator to obtain an environmental permit prior to commencing the operation of the installation with values that exceed the threshold values. The decision shall be issued for a period of four years. After obtaining this decision the operator shall obtain all other permits and approvals under special legislation for carrying out the activities. The public shall be informed about the decision granting operation under the threshold values by publicizing the decision on the website of the Ministry.

Procedure of issuing environmental permit

Application of the operator must contain an expert basis and other prescribed documents. The expert basis is prepared by the legal person authorized for performing professional environmental protection activities (hereinafter: authorized person).

The Ministry shall on its website inform the public and public concerned of the operator's application after it establishes that the application contains all the required information and documents.

The Ministry shall request for an opinion on the permit conditions relating to specific components of the environment from the public authorities competent under special regulations (e.g. Croatian Waters – legal entity for water management, Directorate for Nature Protection (within the same Ministry of Environmental and Nature Protection), Sector for Sustainable Waste Management (within the same Ministry), Sector for the protection of air, land and sea (within the same Ministry), Directorate for Water Management of the Ministry of Agriculture, the Ministry of Health). The deadline for delivery of the opinions is 30 days. The deadline can be prolonged until the drafting of the permit.

↓

Ministry refers the expert basis to a public debate. Public debate is carried out on the expert basis. The Ministry may confer particular activities related to public debate, including public inquiry and public presentation, to the competent administrative body in the county or in the City of Zagreb. Public inquiry shall last at least 30 days (in practice it is always 30 days). In the course of public inquiry, the competent body shall organize a public presentation. Information about the public debate is also published in daily press, notice boards of the city and/or county and on their web sites, in addition to the Ministry's website.

↓

Techniques for achieving environmental protection are established in the form of a book that shall constitute an integral part of the environmental permit. Proposal of the book with permit conditions, together with an explanation of the proposed conditions, is prepared by the authorized person. The Ministry in this phase asks for the proposal of the book from the authorized person. Furthermore, the Ministry submits to the authorized person the opinions obtained from the competent authorities. The opinions must be taken into account when drafting the book.

↓

The Ministry asks for confirmation of the proposal of the book from the competent authorities from which it had previously sought the opinion on the expert basis. The deadline is 15 days. If the competent authority does not submit a confirmation/opinion within the deadline, it shall be deemed that it has no objections.

When the competent authority issues an opinion that it disagrees with the established conditions of the permit, in whole or in part, such an opinion must be explained. Otherwise, the Ministry is not obliged to consider the opinion. If the part of the plant which has received a negative opinion is necessary for the operation of the plant, the negative opinion must be taken into account.

↓

The draft of the environmental permit is published on the website of the Ministry in duration of 15 days. Information about the draft of the permit is also published on the websites and/or notice boards of the county and the city. After the expiration of 15 days, there is an additional deadline of 8 days for submitting comments/objections from the public and public concerned.

↓

The environmental permit is published on the Ministry's website. The delivery of the permit shall be deemed completed on the eight day following the day of its publishing on the website. The administrative dispute may be initiated against the environmental permit before the competent administrative court within 30 days following the day when the delivery was deemed to be completed.

↓

If the first instance administrative court accepts the claim and returns the case to the Ministry, an appeal to the High Administrative Court is not allowed.

If the first instance administrative court rejects the claim, than there is a right to file an appeal within 15 days to the High Administrative Court.

Location permit and building permit

The new Spatial (Physical) Planning Act (OG no. 153/2013) and the new Building Act (OG no. 153/2013) entered into force on 1 January 2014.⁷ These two Acts replaced the previous Act on Spatial Planning and Building (OG no. 76/2007, 38/2009, 55/2011, 90/2011, 50/2012 and 55/2012).

Until the entry into force of the new Acts two separate procedures had to be carried out: (1) the issuance of the location permit which is an administrative act for the implementation of the spatial plan and (2) the issuance of the building permit. The legislator considered this as an unnecessary administrative obstacle which increases the costs of investment. Therefore, pursuant to the new Spatial Planning Act location permit is issued only in a minority of cases. A location permit⁸ is issued for:

- exploitation fields, construction of mining facilities and installations which are used for performing mining activities, hydrocarbon storage and permanent disposal of gases in geological structures,
- determining new military locations and military construction works,
- projects which pursuant to special building regulations are not considered to be construction,
- stage and/or phase construction of a construction work,
- construction on land or building for which the investor has not regulated legal property relations or for which it is necessary to implement the expropriation procedure.

With regard to the building permit, an exception from the requirement of obtaining a building permit is prescribed only in relation to certain simple buildings/structures (the relevant regulation is the Ordinance on simple buildings and other structures and works (OG no. 79/2014, 41/2015, 75/2015)). Thus, for most of the projects the building permit is obligatory.

The procedures of issuing the location and the building permit, although they are separate procedures, are similar. A simplified description will be presented covering both procedures.⁹

Prior to submitting an application, the investor must ask different public authorities to determine necessary special requirements depending on the type of the project and its location (for example conservation requirements from the Ministry of Culture, water act from Croatian Waters, road conditions from the county department for roads, electric power approval from national power company etc.).

In case of submitting an application for the building permit, the investor must ask from different public authorities their confirmation that the main design was developed in accordance with special regulations or special requirements (including the EIA decision on the environmental acceptability of the project).

The deadline for issuing the requirements/confirmations is 15 days. The investor must keep the proof that he asked for these requirements/confirmations, in case the authorities do not issue them on time.



⁷ English translation of the new Spatial (Physical) Planning Act is available here: http://www.mgipu.hr/doc/Propisi/Physical_Planning_Act.pdf, and the translation of the new Building Act here: http://www.mgipu.hr/doc/Propisi/Building_Act.pdf.

⁸ The location permit defines the location requirements, depending on the type of project and type of works, e.g. construction of a new construction work, reconstruction of an existing construction work, etc.; location of the project; intended purpose of the construction work with the number of separate sections of the property which are independent units for use (apartment, business premises, garage, etc.) and/or functional units (hotel room, suite, etc.); size of the construction work; the method and requirements for connecting the building plot, i.e., the construction work, to open areas and other infrastructure; measures (method) for preventing unfavourable impacts on the environment and nature determined in accordance with the spatial plan (see Article 140 of the Spatial Planning Act). Here are some basic information on the location permit in English language: <http://www.mgipu.hr/default.aspx?id=34301>.

⁹ For more precise information please consult the relevant Acts (see footnote 8).

The investor submits the application. The competent authority checks the completeness of the application. It also checks does application comply with spatial plan (in case of issuing location permit) or with location permit (in case of issuing building permit); if it does not comply, it asks the investor for compliance.

The competent authority checks did different public authorities determine necessary special requirements (for location permit) or confirm the main design (for building permit); if they did not, it asks them to determine/confirm. If they do not answer within 15 days, it shall be deemed that they do not require any special requirements/ that they confirm the main design.

There is no public participation. The parties in the procedure of issuing permits are only:
 (1) the investor, the owner of the property for which a permit is to be issued and the holder of other real rights on that property, as well as the direct neighbour i.e. owner and holder of other real rights on the property directly bordering the property for which a permit is to be issued
 (2) in case of a construction work of interest of the Republic of Croatia or in case of a permit which is issued by the Ministry, the only parties are the investor, owner of the property for which a building permit is to be issued and the holder of other real rights on that property.
 These parties are invited to access the file in order to provide their opinion. The public invitation is published on the website of the public authority, notice board, and on the property of the location for which the permit is being issued.
 The party failing to respond to the public invitation shall not be allowed to request a renewal of the procedure for issuing the permit on the ground that he/she did not have the right to participate in the procedure.

Direct inspection of the location is not obligatory, but optional for the competent authority

The permit is issued, if all the required conditions are fulfilled. A permit for the project, which was subject to EIA procedure or the screening procedure, or appropriate assessment of the impact of a project on the ecological network Natura 2000, shall be published, for the purpose of informing the public and public concerned, on the website of the public authority which issued that permit for at least thirty days.

Who are the competent authorities for issuing the permits?

Construction works are classified (under the Building Act) in view of the complexity of building-related procedures into five groups, from more to less complex, as follows:

- Group 1 – construction works planned by the State plan for spatial development;
- Group 2 – construction works which, under special regulations, are subject to special requirements prescribed in the EIA procedure or appropriate assessment of the impact of a project on the ecological network Natura 2000;
- Group 3 – construction works subject to special requirements;
- Group 4 – construction works subject to determining the connection requirements, but not other special requirements;
- Group 5 – construction works not classified in groups 1, 2, 3 or 4.

The permits for construction works in group 1 and for construction works in other groups in the territory of two or more counties or the City of Zagreb shall be issued by the Ministry of Construction and Physical Planning. No appeal shall be permitted against the permit/decision issued by the Ministry; however, an administrative dispute may be initiated.

The Ministry may transfer the authority for issuing the permit to the administrative body of a major city, City of Zagreb or a county. Furthermore, the permits for construction works in groups 2, 3, 4 and 5 shall be issued by the administrative body of the City of Zagreb or a major city for its own territory. The permits for construction works in groups 2, 3, 4 and 5 outside the territory of a major city shall be issued by the administrative body of a county for its own territory. In such cases, an appeal may be filed against the permit/decision. The Ministry shall bring a decision as the second instance body. Then, an administrative dispute may be initiated against the decision of the Ministry. Although the General Administrative Procedure Act prescribes that the time limit for deciding on the appeal is 60 days, this deadline is not respected in practice. Once this period has elapsed, the appellant may wait for the decision or initiate an administrative dispute before the administrative court for failure to bring a decision on appeal within the prescribe time limit. The action may be filed on the 68th day from the day of lodging an appeal or any day after the 68th day. There is no final deadline so long as the Ministry has not delivered its decision on the appeal.

Regarding the competence for issuing location permits the situation is very similar (Ministry or the county, City of Zagreb, or major city). The right to appeal and to initiate an administrative dispute is regulated in the same way.

Use permit

A completed or reconstructed construction work may be used or put into operation and a decision may be issued for performing activities in that construction work pursuant to a special act, after the use permit has been issued for that construction work. The party in the procedure for issuance of a use permit is the investor, or the construction work owner, who submitted the application initiating the procedure for issuance of that permit.

Final inspection shall be carried out for the purpose of establishing that the construction work is built in accordance with the building permit. The Ministry or the competent administrative body must carry out the final inspection of the construction work within thirty days, or within fifteen days from the date of receipt of a complete application for the issuance of a use permit. A use permit shall be issued within eight days from the date of performance of the final inspection, if all the necessary requirements are fulfilled.¹⁰ An appeal to the Ministry may be submitted if the use permit was issued by the administrative body of a major city, City of Zagreb or a county. If the use permit was issued by the Ministry, an administrative dispute may be initiated.

Waste management permit

The task was to present all the necessary permits for the waste disposal installation (Annex I, pt. 10 EIA Directive). Such installation must also obtain waste management permit pursuant to the Sustainable Waste Management Act (hereinafter: SWMA; OG no. 94/2013).¹¹

The competent authorities for issuing waste management permits are the Ministry and the administrative body of the county or City of Zagreb. Ministry decides on applications for a permit to carry out an operation which involves hazardous waste management and thermal treatment procedures for non-hazardous waste. The competent administrative body of a county or City of Zagreb considers applications for permits for operations that include management of non-hazardous industrial and municipal waste, except thermal treatment procedures for non-hazardous waste.

The permit may not be issued if:

- (1) an environmental permit for the management of waste that contains properties which render it hazardous has not been obtained and
- 2) an environmental impact assessment has not been carried out, if provided for by the Environmental Protection Act.

¹⁰ Here are some basic information on the use permit in English language: <http://www.mgipu.hr/default.aspx?id=34304>.

¹¹ English translation of the Sustainable Waste Management Act is available on the website of the Ministry of Environmental and Nature Protection: http://mzoip.hr/doc/act_on_sustainable_waste_management.pdf.

The SWMA stipulates that the party to the procedure of issuing the permit is only the applicant, the owner of the real property for which the permit is being issued, the person holding other real rights to such real property and the local self-government unit in whose area the operation specified in the permit is to be carried out.¹²

The competent body shall ensure the information and public participation with respect to the permit application filed for:

1. incineration, recovery, chemical treatment or disposal of hazardous waste;
2. incineration of municipal waste in an amount exceeding 3 tonnes per hour;
3. disposal of non-hazardous waste in an amount exceeding 50 tonnes per day, and
4. disposal in landfills accepting over 10 tonnes of waste per day or landfills with a total capacity of over 25,000 tonnes, except inert waste landfills.

However, the SWMA stipulates that procedure for information and public participation shall not be required if such information and public participation was carried out as part of the process laid down by Environmental Protection Act (i.e. procedure of issuing environmental permit).

The permit issued by the competent administrative body of the county or City of Zagreb may be appealed to the Ministry. Against the permit or the decision issued by the Ministry, the appeal shall not be allowed, but an administrative dispute may be initiated.

The waste management permits are not published on the web sites of the competent authority, even in cases where the public has the right to participate. Moreover, even the information that the permit has been issued is not published! The public may find out whether the permit has been issued only if it regularly checks the register of permits on the web site of the Croatian Agency for Environmental and Nature Protection. In this way, filing an appeal or initiating an administrative dispute is made significantly difficult, because it will be very difficult to prove that the legal remedy was submitted on time. There are several cases where the environmental NGOs argued without success that they could not have known that the permit was issued to the operator (since this information was not published), and that they found out about the permit from the newspapers. The permit was issued without the prior EIA procedure. Unfortunately, the administrative court dismissed the NGO's action with the explanation that their action was not submitted within 30 days of the delivery of the permit to the operator! (How could the NGO had known when the permit had been delivered to the operator?!) However, this case law dates before the reform of the administrative disputes system, and there have been no new cases regarding this issue yet.

Who can lodge an appeal or initiate the administrative disputes?

The answer will be given with respect to all permits/decisions:

- a) Parties of the procedure.
- b) All the public authorities which participated in the procedures with their opinions, approvals or confirmations – however this is (to my knowledge) never issued in practice, since it is a new provision of the Administrative Disputes Act, and in my opinion the public authorities do not know about this possibility or they know, but for some reasons do not want to use it in practice.
- c) Environmental NGO which fulfils certain criteria prescribed by the Environmental Protection Act:
 1. if it is registered in accordance with special regulations governing associations (i.e. Act on Associations) and if protection and advancement of the environment, including protection of human health and protection or rational use of natural assets, is set out as a goal in its Statute, and
 2. if it has been registered within the meaning of item 1 at least two years prior to the initiation of the public authority's procedure in relation to which it is lodging an appeal or action, and if it can prove that in that period it actively participated in activities related to environmental protection on

¹² In Croatia anyone can file a proposal to the Constitutional Court for examining the constitutionality of the legislative act. Two years ago I personally submitted the proposal against the provisions of several legislative acts (Spatial Planning Act, Building Act, Sustainable Waste Management Act, Mining Act) which limit the position of parties to the administrative procedures contrary to the General Administrative Procedure Act. I still have not received an answer from the Constitutional Court, which is not surprising since the procedures for abstract control of the constitutionality of legislative acts last for many years.

the territory of the city or municipality where it has a registered seat in accordance with its Statute.

- d) Pursuant to the EPA, any natural or legal person who can prove a violation of his/her right due to the location of the project and/or the nature and impact of the project, but only if he/she participated in the procedure as the public concerned.
- e) The above provision of the EPA is not in line with the General Administrative Procedure Act and the Administrative Disputes Act; thus, in my opinion, any person who fulfils the general requirements from the Administrative Disputes Act may initiate an administrative dispute. The general requirement is the following: any natural or legal person who believes that his rights and legal interests were violated by a decision, by an act of the body of public law, or by the failure to adopt a decision or by failure to act within the time limit defined by law.

II. Infrastructural Projects

Here we would like to investigate how according to environmental and planning law a project that is not as such provided for in the land use plans can be realized. We can take as an example the construction of a highway of the type indicated in Annex I, point 7, (b), of the EIA Directive

1. Is there a need to draw up a plan or to review a plan in the sense of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment?

The State Plan for Spatial Development, which is adopted for the territory of the State, prescribes the requirements for implementation of projects for construction works of state significance. Highways and state roads are listed as the projects of state importance (Article 2 of the Regulation on the definition of construction works, other projects and surfaces of state and regional significance). In that sense, the construction of the highway would have to be predicted at the level of the State Plan for Spatial Development. The Ministry of Construction and Physical Planning is responsible for drawing up the spatial plan of the state level.

Strategic environmental assessment is mandatory for a strategy, plan and programme, including amendments thereto, which are adopted at the state level in the sector of spatial planning.¹³ The time periods are not prescribed for all the phases of the SEA. As an example, the SEA for the National Strategy of Spatial Development lasted for 16 months (from the date of publishing the decision to carry out the SEA till the date of giving responses to the comments submitted during the public debate). Here are simplified phases of the SEA:

1. Decision of the Minister to begin the SEA procedure
2. Scoping – 30 days; public participation, participation of public authorities pursuant to special regulations, optional: obtaining opinions from the local governments whose areas may be affected by the implementation of the plan.
3. Decision on the content of the strategic study
4. Selection of the legal person authorized for performing professional environmental protection activities which will develop the strategic study
5. Delivery of the decisions on the content of the strategic study and the draft proposal of the plan to the selected authorized person
6. The Minister appoints the members of the expert committee which shall review the strategic study
7. Delivery of the strategic study and the draft proposal of the plan to the committee
8. Assessment of the completeness and correctness of the strategic study by the committee
9. Public debate on the strategic study and the draft proposal of the plan – 30 days
10. All opinions, comments and proposals from the public debate and the opinions of the public authorities pursuant to the special regulation (water, cultural goods, nature, air protection...) are delivered to the authorized person and to the public authority responsible for drawing up the spatial plan

¹³ It is very likely that there would also be an obligation to carry out the appropriate assessment of the impact of the plan on the ecological network Natura 2000.

11. Finalization of the plan
12. Obtaining the opinion from the Ministry of Environmental and Nature Protection on the implementation of the SEA procedure
13. Adoption of the report on the implementation of the SEA and informing the public about the report and the adoption of the plan and its publication
14. Adoption of the environmental monitoring program in relation to the implementation of the plan

There is no appeal since the State Plan for Spatial Development is not an individual/concrete administrative act. However, anyone can submit a proposal for examining the constitutionality/legality of the Plan to the Constitutional Court if they believe that the law (including international treaties) has been violated by the adoption of the Plan. Usually these proposals wait for several years to be examined by the Constitutional Court, so they are not an effective remedy.

2. Would there be a need to obtain one or more permits to construct and operate the highway mentioned under point II?

An EIA is necessary for the construction of motorways and state roads. All information is described above under point I. (EIA, location permit, building permit, use permit).¹⁴

B. Describing and evaluating integration and speed up legislation

Have there been initiatives in your legal order to introduce specific legislation to integrate and speed up decision making for infrastructure projects/industrial installations?

Act on Strategic Investment Projects of the Republic of Croatia (OG no. 133/2013, 152/2014, 22/2016) was adopted in 2013. By proposing this Act to the Parliament the Croatian Government “responded to the need of urgent initiation of the investment cycle in Croatia”.¹⁵

Strategic investment projects are private, public or public- private investment projects which include the construction of buildings in the field of: economy, energy, tourism, transport, infrastructure, electronic communication, postal services, environmental protection, public utilities, agriculture, forestry, water management, fishery, health care, culture, science, defence, judiciary, technology and education;

whose implementation:

- creates conditions for the employment of the larger number of workers, depending on the type and location of the project,
- significantly contributes to the development or improvement of conditions and standards for the production of goods and provision of services,
- introduces and develops new technologies that are increasing competitiveness and efficiency in the economy or public sector and/or,
- rises the overall level of safety and quality of life of citizens and environmental protection,
- has a positive effect on more economic activities and the implementation of which creates added value,
- contributes to sustainable development and environment and space protection,
- largely contributes to competitiveness of the Croatian economy;

which are in line with:

- the physical planning documents with the exception of implementing physical planning documents (urban development plan and detailed arrangement plan) if the same are not already adopted,
- commitments under international treaties,
- strategic documents of the EU and Republic of Croatia;

which have a total value of capital investment costs:

¹⁴ In October 2014 it was published by the Croatian media that many of the current highways in Croatia do not have the use permit (although according to the Building Act they have to obtain it).

¹⁵ This is a citation from the Final Proposal of the Act.

- equal to or greater than 20 million EUR (approximately, when converted from Croatian Kuna), or
- equal to or greater than 10 million EUR (approx.), and have the ability to be co-financed from the funds and programs of the European Union , or
- equal to or greater than 2.5 million EUR (approx.), and are realized in assisted areas, or in the units of local (regional) self-government of the 1st group or in the units of local self-government of the 1st and 2nd groups, in accordance with the act governing the regional development of the Republic of Croatia, or on islands, or if the investment falls within the area of agriculture and fisheries;

and if the investment relates to: Production and Processing Activities, Development and Innovation Activities, Business Support Activities, Activities of High Added Value Services, Activities in Energy Sector, Infrastructure and Activities related to Agriculture and Fisheries.

The application procedure for determining the status of strategic investment project is explained in English in the Guide for the Investors.¹⁶ Here I will cover the provisions of the Act which are relevant for the topic of issuing permits.

The first Proposal of the Act was very harmful for the achieved standards related to the procedures governed by the Environmental Protection Act, and also for the achieved standard of public participation. The proposed provision of the Act prescribed that all the opinions necessary for issuing administrative acts must be issued by the competent authorities within 10 days; otherwise it shall be deemed that the positive approvals/opinions for the project were given. However, after a great pressure from the public, this provision was changed and the Act now prescribes that in case of the obligations to carry out procedure for environmental impact assessment, obtaining environmental permits, and/or appropriate assessment of acceptability of the project for the ecological network Natura 2000, the procedure is carried out in accordance with Environmental Protection Act and Nature Protection Act (NPA)). Thus, there are no derogations from the obligations prescribed by the said Acts and public participation procedures.

In relation to other procedures of issuing permits (those not governed by the EPA and NPA), the Act prescribes that all the necessary acts must be issued within 15 days from the day of submitting a complete application from the investor. If a civil servant (person within the competent public authority who is conducting the administrative procedure) breaches the deadline – this violation shall be considered as a serious breach of his/her official duties. The sanctions imposed on the public servant may be: fine, transfer to another duty of a lower rank, additional ban of the possibility of promotion for two years, and even a termination of employment. There is an additional sanction which may be imposed to the public authority where this civil servant works – a fine for the misdemeanour of 666 EUR (approx.) for each day of delay.

On the basis of the Act on Strategic Investment Projects only four projects have been declared as strategic projects by the Croatian Government, and they are far from any soon realization. Within these projects is a highly controversial project of a coal power plant Plomin C, whose implementation is still under question. So at the moment, in my opinion, there isn't any particular success of the application of this Act i.e. the Act did not initiate any special investment cycle in Croatia so far.

C. Locus standi for a local government within the permitting procedure

The former Administrative Disputes Act expressly stipulated that when an unit of local/regional government issued an administrative act in the first instance, and an appeal against the act was adjudicated by a higher public authority, an administrative dispute may be also initiated by the local/regional government if it deems that the second-instance authority violated its right to local self-government. The current Act does not have this provision, but I believe that a local/regional government always has a right to file an action before the administrative court if it deems that the administrative act violated its right to local/regional self-government (since this a constitutional right).

¹⁶ http://www.aik-invest.hr/wp-content/uploads/2014/03/Act-on-Strategic-Investment-Projects_Investors-Guide.pdf. More information is also available in English here: <http://www.aik-invest.hr/en/strategic-investment-projects/>.