AVOSETTA RIGA MEETING 2016

Permit procedures for industrial installations and infrastructure projects: Assessing integration and speeding up

QUESTIONNAIRE

Czech Republic

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A. Baseline information

I. Industrial Installations[1]

1. Forms and scope of permits

In broad terms, what are the forms and scope of permits[2] 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?

- planning permission and/or building permit
- special environmental decision[3]
- building and operating permit,
- stepwise permitting,
- other types of permit (nature, water extraction…)

If a plurality of permits etc. are required, is there a sort of co-ordination mechanism between them? Are they delivered by the same or different authorities, on what level (central, regional)? Is the procedure similar or not (including public participation)? What is the relation between them? Do you feel that the various procedures, taken as a whole, assure a full and sufficient integrated assessment and control of the environmental impacts

[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] Or similar acts such as mandatory favourable opinions.

[3] For instance in Poland the investment process begins with the decision on the environmental conditions. In context of proceedings for adoption of that decision EIA is carried out. This decision provides environmental conditions and is binding for future decisions issued in the investment process.

in the broad sense (nature, landscape, land use, climate, air, water, noise, soil, energy, mobility, safety…)?

General requirements:

Each change of the way the land is used (change of the arable land to vinyards, agricultural or other land to developed ares, forest land to agricultural land etc.) is subject to permitting procedures under the Building Code No. 183/2006 Coll., as amended, which is interconnected with proceedings and requirements of environmental laws. In general, each project requires a series of permits in the field of urban planning and environmental protection. Their specific content, the nature of required permits and competent authorities depend on the character of the installation (special regulatory requirements for installations under different environmental laws which are aimed at water protection, air protection, regulation of noise etc.) and their geographical situation (inside or close to special protection areas of nature, agricultural and/or forest land, outside construction areas, close to forests, close to objects protected under nature and cultural heritage protection, etc.).
First of all, each project must be consistent with land use plans; if not, the investor is entitled to propose a change of the land-use plan, however, his request does not have to be met.
To construct a new building, three basic stages are differentiated under the Building Code:

1. **development permit** (administrative decision on specific project that can be carried out in the given site) = planning permission
2. **building permit** (resp. construction permit) **-** (administrative decision enabling to start construction of the building/installation) **=** building permit
3. **final inspection approval** (consent to start to use the building confirming that it was built in compliance with the building permit and that conditions set by the building permit were met. Final construction approval is not issued in a form of an administrative decision and it is not possible to make an appeal against it - see decision of Chamber of the Supreme Administrative Court, No. 2 As 86/2010-76, 18 Sept. 2012).

For less significant project delimited by the law (such as buildings up to 50 m^2 of the built-up area and up to 5 m high etc.) the basic form of the above mentioned permits may be substituted by different administrative acts. Czech Building Code enables more simple procedures (development consent or public law contract which may substitute the development permit or the building permit, certificate issued by the authorized inspector etc.). However, these simplified procedures cannot be applied when the project is subject to the EIA assessment and/or is is situated outside construction areas delimited by the land-use plan and/or is exceeding the above mentioned limits.
Development permits and building permits (under the Building Act No. 183/2006 Sb.) are granted by the Building Authority based on the approvals/opinions/permits of competent

environmental protection authorities (water protection authority, air protection authority, agricultural land protection authority etc.) . The form of these administrative acts varies according to individual environmental laws requirements. The most frequent form is a **binding opinion[4].** The **environmental impact statement**, which is required for projects having significant impact on the environment, has the same character. The decision making authority (mostly Construction Authority) is bound by these opinions produced by different environmental authorities. They serve as the basis for the decision and conditions specified by those environmental protection authorities must be included in the development and building permits.

Environmental permits in the form of a decision should be granted under different environmental laws in specific cases if there is a need for a significant protection of certain part of the environment. For example, it is the case of exemptions from strict protection of specially protected species of plants and animals and their biotopes and of specially protected areas of nature, decisions allowing to cut down individual trees growing outside the forests and decision enabling the development in forested areas. For these decisions, it is typical that their integration is not possible (see e.g. judgment of the Supreme Administrative Court, No. 6 As 42/2008 508, 25 Feb. 2010) and they have a character of a stepwise decisions. Public participation (environmental NGOs) in decision-making procedures is usually permitted if these entities apply for it. Moreover, to operate the industrial installation, some environmental laws (for example the Air Act, Water Act, Waste disposal Act and others) impose the duty on the investor to apply for the **permit to operate**, (resp. to discharge waste waters etc.) which must be granted by specific environmental protection authorities (instead of these permits, the IPPC permit is sufficient for specific industrial installations) as a precondition to the final inspection approval which must be granted by the Building Authority as the final act.

Some of the permits mentioned above may be characterized as stepwise decisions. In general, more recent administrative act must comply with a legal act issued previously. Therefore during building permit procedure, it is verified whether the proposed installation is in compliance with conditions stated in the development permit. During the final inspection approval procedure, consistency of the installation with the building permit is

[4] Binding opinions of respective environmental authorities depend on the specific parts of environment which are supposed to be influenced by the proposed project (nature, landscape, land use, air, water, noise, soil etc.). These are issued prior to the development consent and also prior to the building permit. They are supposed to be issued separately (for both of these permitting proceedings) (see judgment of the Supreme Administrative Court, No. 1 As 6/2011-347, 1 June 2011). The respective authority which is empowered to issue corresponding binding oppinion, is most often the Municipal Authority with extended powers (local level) or Regional Authority (regional level). If the respective authority is identical regarding to different binding opinions, it is possible to issue **coordinated binding opinion**. There is no appeal possible against a binding opinion, nor a legal action to the administrative justice. It is possible to review the content of such opinion only during the administrative and judicial review of the final decision (either development permit or building permit) – see judgment of the Supreme Administrative Court, No. 2 As 75/2009 113, 23 Aug. 2011.

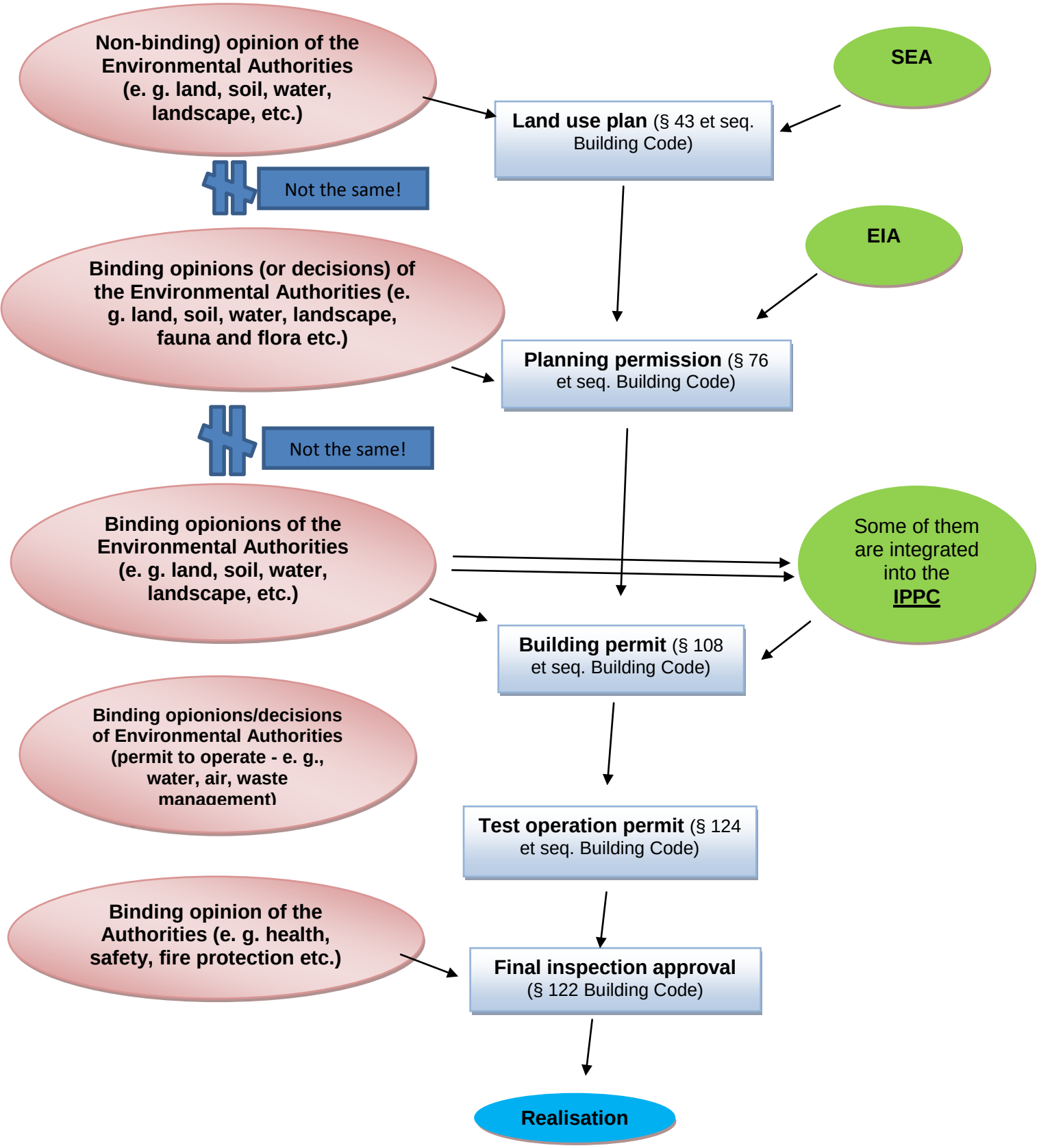
investigated. This may result in rejection to grant the final inspection approval if the installation was not carried out in compliance with development permit and building permit.
From above mentioned, it is evident that the protection of particular parts of environment is truly properly assured in the Czech legal system. However, this high level of protection along with broad possibilities for participation of the public is often the reason for lengthiness and expensiveness of individual decision-making proceedings. The Building Code and Integrated Prevention Act provide for integration to some reasonable extent.

Has there been a tendency to partially or fully integrate different types of permits? Is it an on-going process?

There is an obvious historical trend to have particular types of separate permits, even though the Building Code (currently effective) provides for the integration of binding opinions which were granted under different environmental laws by common competent authority which is protecting different environmental interests. Moreover, the Building Code enables to grant the development and building permits in a joint procedure.
A certain change is expected in this area, which could be brought by a big amendment of the Building Act. This amendment is currently going through legislative process at governmental level. However, it will probably bring no radical change in integrating of all procedures, which is quite suitable for the Czech conditions.
Substantial integration was carried out under the Integrated Prevention Act (IPPC) which was adopted in 2003 - one year before the Czech Republic entered European Union.

How do you assess the plurality and integration of permits?

In my opinion, there is a need for certain level of integration of permits, on the other hand I feel that there are boundaries to such integration if we do not want to resign to environmental protection. The most annoying rule for investors in the Czech law I consider their duty to apply for each individual environmental opinion/permit separately. If the investor would fail to enclose some of these documents to his application for the development/building permit, the Building Authority would interrupt the administrative procedure and sets additional time period in which these documents should be submitted.


Non-binding) opinion of the Environmental Authorities (e. g. land, soil, water, landscape, etc.)
SEA
Land use plan (§ 43 et seq. Building Code)
Not the same!
Binding opinions (or decisions) of the Environmental Authorities (e. g. land, soil, water, landscape, fauna and flora etc.)
EIA
Planning permission (§ 76 et seq. Building Code)
Not the same!
Binding opionions of the Environmental Authorities (e. g. land, soil, water, landscape, etc.)
Some of them are integrated into the IPPC
Building permit (§ 108 et seq. Building Code)
Binding opionions/decisions of Environmental Authorities (permit to operate - e. g., water, air, waste management)
Test operation permit (§ 124 et seq. Building Code)
Binding opinion of the Authorities (e. g. health, safety, fire protection etc.)
Final inspection approval (§ 122 Building Code)
Realisation

2. Procedures

2.1. Short case study: Can you present a simple flowchart of a permitting procedure for the following installation, indicating the (estimated) time frames of the various steps, key authorities involved, including EIA, and the total time needed to go through the whole procedure in case of administrative appeal ?

"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).

1. Consistency with land use plans.
2. Environmental Impact Assessment Procedure (EIA): notification, screening and scoping procedure regarding to information that must be dealt with, elaboration of EIA documentation, EIA review, their publication, public hearing, Environmental Impact Statement (in the form of binding opinion).
3. Submission of application for binding opinions pursuant to environmental laws (depending on the location of the projected facility).
4. Compilation of documents, including Environmental Impact Statement and all binding opinions.
5. Submission of application for the development permit. Required environmental documents must be enclosed.
6. Public notice that an application was submitted, where and how the documents are made accessible, that comments may be filed, and whether and when a hearing will be held (30 days for the announcement) and display of documents (project description, EIA etc.)
7. Receival of comments from the public hearing, comments made by participants of the administrative procedure including public concerned and municipality concerned, receival of binding opinions/opinions/decisions elaborated by environmental protection authorities.
8. Coherence stamp - verification of the EIA statement.
9. Development permit issued by the Constuction Authority; the reasoning include the final EIA and other documents and comments. The decision is accompanied by numerous conditions of construction.
10. Publication of decision on location (siting) of the facility (development permit).
11. Submission of application for integrated permit (IPPC permit).
12. IPPC permit must be submitted as a basis for the decision on building permit.
13. Submission of application for the building permit (including IPPC and other required documents, including binding opinions issued according to environmental laws)
14. Comments and objections made by participants of the decision-making procedure and by competent authorities which prepared opinions/permits

15. Building permit.
16. Submission of application for opinions/permits required under special laws as the basis for final inspection approval.
17. Submission of application for the approval to use the building based on final inspection approval.

2.2 What are the main characteristics of the applicable permit procedure or procedures?

The questions are about the different permits if more than one permit is needed for an 'intended activity'

- **Who is (are) the competent authority (authorities)?**

o In case of this project, the competent authority for the EIA assessment is Ministry of Environment (pt. 10.2. of Annex 1 in category A column A of the EIA Act); Regional Authority is competent authority for projects posing less threat to the environment.

o For other proceedings emerging from particular environmental acts and the Building Act, the competent authorities were stated above – typically, it is Building Authority at local level and competent environmental authorities at local or regional level (nature protection authority, air protection authority, water prpotection authority etc.).

- **Is EIA integrated in the permitting procedure or is it an autonomous procedure that precedes the introduction of an application for a permit (or for the various permits)? In the latter case, can EIA be carried out once more at the next stage of the development process (e.g. in the building or environmental permit procedure)?**

o It is an autonomous proceeding that is regulated by Act (No. 100/2001 Coll.). The Environmental Impact Statement) is the outcome of this procedure. It has the form of a binding opinion. It is a source material for all following proceedings, typically a planning permission and a building permit.

o Before these consequent decision-making proceedings will begin, the investor has a duty to apply for a so-called coherence stamp. It certifies that the project in question is in accordance with already issued binding EIA assessment.

- **Is there a differentiation between large, intermediate and smaller installations? Is a notification to the relevant public authority in some cases sufficient? Is there a possibility to exclude certain installations even from the notification requirement?**

o In the assigned case (installation defined in pt. 10.2. of Annex No. 1 in category I. column A of the EIA Act, which corresponds to Annex I, pt. 10 EIA Directive), it is necessary to proceed through the whole EIA without a possibility of an exemption.

- In case of smaller projects on the list – II. category (e.g. less than 100 tons per day), so-called scoping procedure takes place at first, during which it is decided whether the project will be subject to EIA procedure or not.
- In case of a project not reaching the limit values in Annex 1 to the Act, the competent authority decides on the possibility to subject this project to scoping procedure.
- Specific rules for NATURA 2000 (if the Nature Protection Authority would not exclude possible negative impact on these areas, such projects must be subject to EIA without regard to scope of the EIA Act).

- **Are competent planning and environmental authorities consulted during the decision-making procedure or procedures, if more than one permit is needed? Within what time limit have they to give their opinion? Are these opinions binding or not? Do they have some weight in practice?**

- Decisions and opinions of competent environmental authorities are rarely disregarded and their conditions, expressed during the process of permitting a project, are regularly met. In general, it is a rule for environmental permits and binding opinions; even if opinions of these authorities are not binding, they are usually responded to positively.
- Time limit for elaboration of a decision/opinion is governed by general administrative procedure rules (e.g. 30 days in general, extensive time limit up to 60 days). Time limit for objections of environmental authorities during the development permit procedure is 15 days, in the building permit procedure 10 days.

- **Is there public participation in every case? At which stage of the development? Is it broadly announced and used? What time frames apply? Is the public participation on the application or on the draft decision?**

- Public can participate in the EIA process. People can submit written comments to the competent authority in 20 days since the announcement of theproject. It is not obligatory to take into consideration comments which were made after the period.
- Later, public is entitled to comment upon the documentation in 30 days after the EIA documentation was published. Tardily delivered comments can be disregarded.
- Public may also submit written comments on the EIA review and on the final Environmental Impact Statement in 30 days time period. Tardily delivered statements can be disregarded.
- Public (anybody) is entitled to comment upon the project in the development permit procedure and participate in public hearing. Moreover, there is a possibility for the public concerned (including NGOs) to become an official participant of decision making proceedures held by the Building Authority. In the course of those, public can submit its comments and objections on the project. Comments can be submitted in 15 days period (30 days if the project is subject to the EIA) since the information was published on the official notice board. NGOs are entitled to act as traditional participants of administrative

proceedings and appeal the decision. They have to meet certain criteria set by the law, though.

- Environmental groups can also take an action to revoke a decision issued in decision-making proceedings (development permit, building permit) and object to substantive and procedural legality of such decision (traditional deadline to take such action is two months).
- From the above mentioned implies that the participation of public (especially environmental groups) is more than sufficiently assured in the course of the whole EIA proceedings and the subsequent decision-making procedures (planning permission and a building permit).

- **What time frame applies from the introduction of the application to the decision in first administrative instance (i.e. when a developer receives final decision allowing to start development, however, before possible appeal to a higher authority)?**

- The answer to this question depends on how many administrative documents must be issued based on environmental reasons (e.g. necessity to grant an exemption from the interfering in biotopes of specially protected types of plants and animals etc.).

- However, in a project of this case study, if there is a regular procedure without any appeal and if it is a case with a need to carry out the EIA assessment, followed by a development consent, a building permit and a final inspection approval, the shortest period of time would be two years. However, this period is unrealistic especially in case of such projects. Appeals and judicial reviews are widely used remedies, making the average length of court proceedings up to two years long. This greatly prolonges the whole proceedings. Moreover, there can be more than one action submitted to the courts (for example one against the development consent (e.g. planning permission) and one against the building permit).

- **Is there an administrative appeal against a decision on a permit or the various needed permits? What is the competent authority (or authorities) to whom an appeal can be lodged? Who can lodge the appeal (only parties of the proceeding, NGO, everybody), within what time? What time frame applies to reach a decision on appeal? What if the time frames are not respected?**

- It is not possible to appeal binding opinions directly, because they have a character of an expertise, even though they are binding for the decision-making authority; to object these binding opinions (for example Environmental Impact Statement), it is necessary to appeal the decision which has been issued in subsequent decision-making proceedings - typically the development consent (planning permission) and building permit. The appeal is submitted to the superior authority (if the decision was made by a Municipal Building Authority, the appeal is to be made to the Regional Building Authority). In case of subsequent proceedings to the EIA process, the option of making an appeal is open not

only to the regular participants of the proceedings but also to environmental NGOs. The appeal must be submitted in 15 days, and the competent authority has to make a decision without delay – no later than in 30 days, eventually in 60 days if it is an especially difficult case. If the authority does not issue its decision in this period, there is a possibility of another legal remedy – protection against the inactivity of an administrative authority. This protection can be assured also by the action to the administrative court.

- The decision of the superior (appellate) administrative authority becomes legally effective, however, it is reviewable by the Administrative Court. To object the decision of the court, one can use extraordinary legal remedy – a cassation complaint addressed to the Supreme Administrative Court. In legal practice this procedure is described as 2+2 (two instances of administrative procedures, two instances of proceedings at administrative courts).

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?

If yes, can you in a concise way give an overview of what this means in terms of procedure, including SEA, public participation, administrative appeal (if any), and time frames?

You may refer, when the occasion arises, to what has been said under part I of the questionnaire.

- If the highway construction is not envisaged in the regional and local land use plans, these planning documents must be changed. This may be initiated by the investor. The change of the land-use plan is issued in a specific administrative form (measure of general character). This is a specific administrative act – not a statute, nor a decision. No appeal is possible against it; the only possible legal remedy is the action at administrative justice, or perhaps even a cassation complaint. Public participation is very strong after the influence of the latest jurisprudence. Environmental groups are allowed to participate in a drafting of the land-use plans and also to submit an action to the court to revoke them (see decision of the Constitutional Court, No. I. US 59/14, 30 May 2014). Changes of planning documentations are subject to the SEA – strategic environmental assessment which has a form of a simple (non-binding) opinion (according to the Building Act and the jurisprudence of administrative courts

– see judgment of the Supreme Administrative Court, No. 2 Ao 2/2008-62, 7 Jan. 2009). Despite this, it is still of a binding nature for the town and country planning authorities. Before the change of the land-use plan can be finalized, there is also a need for other environmental assessments (protection of forests, soil etc.) The above mentioned general regulations apply to these.

2. Would there be a need to obtain one or more permits to construct and operate the highway mentioned under point II? Is an EIA necessary? Is there a coordination mechanism integrating the substance and procedure of the permits? If appropriate and available, a flow chart could be attached. What are the characteristics of the procedures?

You may refer, when the occasion arises, to what has been said under part A of the questionnaire.

- Here it must be noted, that in the Czech Republic, the SEA and the EIA are separate processes. In case of a change of planning documentation, there is still necessity to apply all subsequent permitting regimes as mentioned before, because there is a strict line separating legally the procedures of town and country planning and development consent (planning permission) proceedings and building permit proceedings. That is why there is no place for integration of permits in other proceedings (e.g. EIA) when the projected activity is approved in the SEA process. When building a highway, it is always obligatory to make an assessment in the EIA process. The respective authority will be the Ministry of Environment (pt. 9.3. of Annex No. 1 in category A column A of the EIA Act). Everything mentioned above for a project in a point 2. 1. of this questionnaire is relevant in this case, however, based on the Act No. 416/2009 Coll., on speeding-up of infrastructure projects, as amended, the time periods for judicial reviews are shortened by a half and there is a time limit of 90 days set by this law within which the court is obligated to decide the case. Moreover, the investor is allowed to require unification of the development consent and building permit proceedings.

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?

Yes, in a reaction to the European legislation (originally Directive 96/91/EC), the Act No. 76/2002 Coll., on integrated prevention and reducing the pollution and on integrated pollution register, was adopted.

Regarding to infrastructure projects, the Act No. 416/2009 Coll., on speeding-up of infrastructure projects was amended with the aim to cut the time period necessary to “push the project through”.

If so:

(a) When was this done?
- Legislation was adopted in 2002, resp. 2014 .

(b) What was the general justification?
- In accordance with the European Union Law, the aim of the IPPC Act was to reach a high level of protection of environment as a whole by applying an integrated prevention and reducing the pollution originated due to the activities stated in Annex No. 1 to this Act.

(c) What types of projects does it apply to?
- Typically for IPPC, it is industrial activity in power engineering, manufacture and processing of metals, processing of minerals, chemical industry, manipulation with waste and other (e.g. intensive industrial and agricultural activities – identical to the Industrial Emissions Directive). It is mandatory to apply for an integrated permit when dealing with the projects mentioned in Annex 1 of the discussed Act.
- Infrastructure projects are defined as traffic infrastructure, waterworks, energy infrastructure.

(d) What key aspects of procedure are speeded up? (public participation, greater integration of criteria and procedures to avoid duplication, notification instead of permit requirement, consent by time lapse, stepwise permitting etc.)
- By adopting of IPPC Act, some kinds of binding environmental opipnions issued in the "pre-building permit phase" (not the "pre-planning permission phase") were substituted by one permit – so-called integrated permit. It substitutes the binding opinions dealing with technological issues of a structure, not those dealing with landscape. The building permit cannot be issued without an integrated permit being in force. Among the binding opinions that are being replaced by issuing of an integrated permit are:
  - binding opinions and other permits according to the Water Act
  - binding opinions and other permits according to the Act on Air Protection
  - binding opinions and other permits according to Act on Waste
  - binding opinions according to the Act of Spas
  - some permitting regimes according to the Act on Protection of Public Health
  - binding opinions according to the Veterinary Act.
- Looking at this list, it is clear that e.g. binding opinions dealing with forests, soil, nature and landscape protection and others, are not integrated into this permit. Therefore, it is still mandatory for a developer to obtain these binding opinions prior to the building permit. However, there was still an overall

acceleration of proceedings preceding a building permit; participation of public remained unchanged.

(e) Have there been any legal challenges to the changes? (e.g. non-compliance with EU environmental law, Aarhus etc.)

- Regulation was motivated by aim to unify Czech legal code with the European Law. Therefore, the regulation was aimed at prevention of such problems.

(f) Has there been any evaluation of previous situations and/or the impact of speeding up?

- Without any doubt, IPPC led to acceleration of permitting proceedure in a phase before a building permit is issued.
- The need to speed up infrastructure projects had led to adoption of the Act No. 416/2009 Coll., on speeding up of construction of traffic, water and energy infrastructure. This law brought specific rules enabling to speed up decision-making procedures and expropriation of the property. These procedures were simplified by cutting of time-limits and by derogation of some strict requirements set by the Building Code.

(g) What is your own assessment of integration and speeding up measures?

O Regarding to IPPC, I believe the intergration is beneficial. Generally, greater integration of permitting regimes is the way to faster decisions, but if we want to protect the environment and enable participation of the public at the same time, the decision-making procedures should reflex all those contravening interests in proportionate way. The environmental protection is really demanding regarding to the quality of expertise which serve as the basic for a good decision-making practice. According to my opinion, speeding up in respect of this is not the right steps we should take.

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

Under what conditions (and whether at all) a local government may file a complaint against an environmental permit for an installation or infrastructure project.[5]

The Supreme Administrative Court and the Constitutional Court repeatedly confirmed that a municipality (local government), due to its nature as a public law corporation of citizens, is regarded as a subject of the right to favourable environment (see e.g. decisions of the Constitutional Court, No. Pl. US 45/06, 11 Dec. 2007, and No. Pl. Us 30/06, 22 May 2007, judgment of the Supreme Court, No. 2 Cdon 330/97, 25 Aug. 1999, and judgment of the Supreme Administrative Court, No. 6 As 1/2014, 14 Nov. 2014). Therefore, a municipality has an active standing in all types of legal actions recognized by the Code of Administrative Justice due to infringement of its right to favourable environment. At court, it is allowed to object to legality of legal act set to protect private right of a municipality, but also to legality of the Act protecting (almost) solely the public interest in favourable environment. So a municipality has a right to take an action against all of above mentioned decisions.

[5] Right now this is topical issue in Latvia as well as locus standi for municipality was recently intesively discussed before the Aarhus Convention Compliance Committee in connection with admissibility of the case from a local government of Germany.