Hungary – integrated permits

Gyula Bándi
Jean Monnet Professor of EU Environmental Law,
Pázmány Péter Catholic University, Jean Monnet Centre of Excellence
bandi.gyula@jak.ppke.hu

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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]
- construction and operating permit,
- stepwise permitting,
- other types of permit (nature, water extraction…)

The Hungarian permitting system is complex and complicated, requiring several different steps and permit. There is a system of so-called 'integrated environmental permits', developed in the last 15 years, the content of which has been attached to the EU requirements, also the major procedural guarantees – participation of different authorities, public participation and participation of local government – are available, while the exact place and role of the permitting authority has been constantly changing (see the last Hungarian national development report in 2015).

Within the group of integrated environmental permits, we may make a distinction between:

– new operations (or at least substantially modified operations) or activities, and
– ongoing activities, operations.

new operations or substantial modifications ↙ ↓ ↘ — ongoing activities ↙ ↘

environmental permit (based upon an EIA) ↓

'IPPC' or environmental uses permit ↘

operation permit (based upon an environmental review)

Unified environmental permit (exists on paper only)

[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 provide environmental conditions and is binding for future decisions issued in the investment process.

Consequently, three types of specific environmental permits are available for Annex I and II installations (plus the option for an operation permit, in case of ongoing activities on the basis of a direct obligation on behalf of the authority), while in all other cases there are specific other permits, meeting the requirements of the given subject matter – e.g. nature conservation permit in case of Natura 2000 areas or waste management permit in case operations which do not reach the level of *Directive 2011/92/EU*.

Of course, neither the integrated, nor the subject-specific environmental permit may replace the other types of permit – this might mean building permit, operation permit, permit for a site or all other permits covering different environmental media (like water uses) which do not belong to the competence of environmental authorities.

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

I refer again back to my summary on the Hungarian changes of the public administration structure, which focus on the elimination of previous system of specific authorities having their own functions and structure. The idea is to collect all or most of these authorities into the general 'Government Office', organized in each county and Budapest. This is a territorial level authority, within which most of the public administration functions are available – there are very few exceptions, like water management, industrial risks, and some non-environmental function like taxation or customs. The territorial scope of different authorities has not been changed, thus only 10 of the 20 government offices has environmental protection authorities, 5 of the 20 has mining authority, etc. All the others must communicate with these having such a special role.

Seemingly it means that the best way of integrating the different aspects is to eliminate all special authorities and having only one – like in Highlander: "There can be only one" – which concentrates all the functions and authorities. Unfortunately this might be true, but does not necessarily useful from the point of view of environmental roles. The addressee of all the authorities is the head of the government office, who is a politican, so the chance to protect environmental interests even against political or huge investment interests is lost. On the other hand it is of course easier to come to an agreement with other government functions, of mot of them are under one cap.

The procedural requirements are governed by the different legal regulations related to the authorization or also on administrative procedure, thus all those options which were available beforehand, are still available – thus the public participation is attached to the subject matter, so if it an environmental procedure, the environmental NGOs may be parties. Unfortunately the major problem, mentioned in my 2015 introduction[4] has not been solved up till now.

[4] The National Environmental Protection Council argued that the changes in the administrative structures and procedures shall have a direct impact on the right of public participation, as in most of the future procedures there is no mention about environmental authority as a specific authority, instead they speak about environmental expertise within the framework of the unified administrative organ. Thus, the exact role and right of public participation in environmental decision-making shall be clarified again or might be limited.

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

The permitting system has not been changed, only the structure of public administration. The different environmental fields still belong to different departments of the government office, so the idea of environmental integration via concentrating the functions of the different authorities is still far from the reality. The different departments have their own role, while of course internal communication within one huge authority might be easier then outside. Integration of environmental permitting is mostly based upon the EU requirements.

How do you assess the plurality and integration of permits?

The current diversity of permit procedures has a relatively long history in Hungary. The new integrated environmental permits did not change substantially the system itself, instead they added to the diversity their own permitting requirements. Still the integration within the field of environmental protection seems to work, but with modest results.

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).

According to the Hungarian system[5] this means compulsory EIA (environmental permit) under Annex 1 of the Decree and also an 'IPPC' permit (environmental uses permit) under Annex 2 of the same. Beside the environmental permits, a building permit is also needed.

The government office is responsible for the procedure, within this the specific environmental department. As a first important step we must mention that on the basis of the request of the applicant, the authority may decide to merge the two – EIA and IPPC procedure – which otherwise shall be undertaken subsequently. If the procedures are not merged, the environmental permit (EIA) shall first be obtained.

The whole begins with a preliminary examination process (the procedure may also begin with a preliminary consultation, which does not have a formal decision at the end of the procedure, but may be continued along the lines of the permit procedure, if the outcome is positive). In theory this – both the preliminary examination or the consultation - takes 30 days, if there is a need for public hearing at this stage this may be 45 days altogether. The time for additional information requested by the authority does not count. Also the procedure of special authorities which usually participate in the procedure, does not count – this is 21 days (the general time is 15 according to the rules of general administrative procedure). In this specific case, as it requires a compulsory EIA, the preliminary examination is not necessary, but the preliminary consultation process still might be initiated. In case of preliminary consultation the time used by the specific authorities for consultation may not be added to the general 30 days.

[5] Government Decree 314/2005. (XII. 25.) Korm. rendelet a környezeti hatásvizsgálati és az egységes környezethasználati engedélyezési eljárásról.

The general time frame for public administration procedures is 21 days, but there are certain exceptions, like in the case of such complex issues as EIA or IPPC, where this time is 70 days. Again the time for additional information requested by the authority and the procedure of special authorities which always participate in the procedure (21 days), does not count, neither the time needed for foreign procedures in case of transboundary effects. If experts shall be invited in the procedure, their time is also added to the whole, so does not count again to the general time frame.

The decision of the authorities may be appealed within the structure of public administration within 15 days. The appeal has a delaying force.

In case of appeal, the specific authorities (of course second instance) shall be invited again. As the second instance procedure might also include additional procedure for taking evidence the time frame is the same as in the case of the first instance procedure, thus 70 days. Of course the second instance authority might also given back the whole to the first instance to restart the whole.

So, taking the official maximum as a basis:

- preliminary 30+21
- EIA/IPPC 70+21 (may be double if these are seperate)
- second instance 70+21

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)?

The environmental authority as usual, but this has been melted into the government office.

- 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)?

The EIA serves the basis of an individual permit procedure, that is the environmental permit, which precedes any other. The environmental uses permit might be carried on together with the environmental permit. This permit is the precondition of the others, but does not provide any right to any activities. The permit is valid usually for 5 years, in case of significant transport infrastructure development 10 years, but in exceptional cases may have an indefinite time scope.

- 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?

Large, infrastructural, transport installations, or those which are taken by the Government as significant from the point of view of public interest might have special requirements, for example less time open for public participation, shorter periods for any comments, etc. Notification is not enough, this may not replace the permit.

- 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?

The environmental and also planning authorities shall be consulted – specific authority or similar procedures – and their opinion shall be given in 15 days, or in case of integrated environmental permits, 21 days. Their opinion in theory is binding, but it is questionable today, in case if these authorities belong to the same government office. In that case this binding effect has less or no weight any longer, knowing that the addressee of the authority is the head of the office and not the head of the given department.

- 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 participation is a general condition in one sense – the 1995 environmental act provides the rights of the party to the environmental NGOs in environmental interest cases. The exact meaning of environmental case is not clear today, it has been clarified by the Supreme Court in 2004 and later in 2010, but at the structure of public administration has been changed, these guidelines shall be reconsidered. Also public hearing is a requirement on the basis of general administrative procedure if the case (any case) involves more then 50 possible parties.

The EIA and IPPC permit procedures contain direct and specific requirements for the announcement and also for the public participation. In the preliminary procedures and also in case of IPPC this means a public consultation process, while in case of EIA permit, this must be a public hearing. The final decision shall also be published.

- 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)?

Only the second instance decision has a legal force, except the case if there is no appeal.

- 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?

Administrative appeal is always open, and must be lodged in 15 days. Any party may lodge the appeal, those who could participate in the proceedings and also those who might be parties but did not participate.

The general rule is the procedural obligation or the duty to act. It means according to Article 20 of the general procedural act (Ket.): '(1) The authority shall proceed within its area of jurisdiction in the cases for which it has competence, and also on the basis of designation.' There are certain rules prescribed in Ket. which react on the problem, what happens in the event of an authority's failure to comply with the obligation described here. There are several means of obligatory decisions, for example according to paragraph (3) 'the supervisory organ shall forthwith transfer the case to another authority of similar competence … and shall bring disciplinary charges against the head of the defaulting authority'. One other option is that – according to paragraph (9) – 'In the event of the authority's failure to execute its obligation to

act, the competent public prosecutor may bring action before the court ... to order the authority to execute said obligation as required.'

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.

The SEA regulations may be found in a separate decree (Goverment Decree 2/2005. (I.11.) Korm. rend.) providing the details of such procedure. The plans related to transport infrastructures require a SEA procedure. The general constituents of the plan are listed in the decree. The plans shall be publicly available and anybody might have comments. It is the National Environmental Council which is the only specific body, representing public and business interests at the same time, beside expertises, which shall always be informed and involved – they only provide a non-binding opinion. There are no exact time frames and no appeal as this planning system does not belong to the scope of administrative procedure.

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.

There are some additional regulations in connection with highway construction – there is a chapter on those infrastructure and other investments, which are taken as significant from the point of view of national economy. The permit is still required and usually the road construction shall not be divided into different pieces but is taken as one investment. The differences – as referred to above – mean the simplification and speeding up of permit procedures.

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?

If so:

(a) When was this done?
(b) What was the general justification?
(c) What types of projects does it apply to?
(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.)
(e) Have there been any legal challenges to the changes? (e.g. non-compliance with EU environmental law, Aarhus etc.)
(f) Has there been any evaluation of previous situations and/or the impact of speeding up?

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

The basis is the Act LIII of 2006 on investments, which are taken as significant from the point of view of national economy (on the one hand this may mean projects, the financing of which is based on EU or central government budgetary sources; those, connected with concession; greater environmental, educational, social, research and public health projects; world or national heritage projects) The act provides the list of those items which may be taken as subjects of this special treatment. Also there are authorities defined in the act, having a national competence in this respect – useful from the point of view of integration. The act also provides the conditions to define a coordinating organ. There is a separate part within the act related to the infrastructure investments. There are several elements of speeding up the procedure, even the court procedure is regulated in a more stringent way – requiring special time frames. The most recent changes in the EIA procedure happened in 2012. Before that time there was not such a pressure. The whole part is relatively short, limiting the time frames only.

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.[6]

Local governments are informed and also shall be involved in the EIA/IPPC permit procedures. They have the right to give comments. Also the local governments are taken as legal representatives of their local community, consequently they may appeal or turn to court against decisions of the authorities.

D. Further Comments

Please feel free to add any comment on your legal system you like to share.

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[6] 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.