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Permit procedures for industrial installations and infrastructure projects:

Assessing integration and speeding up

ITALIAN REPORT

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A. Baseline information

I. Industrial Installations

1. 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? Planning permission and/or building permit; special environmental decision; construction and operating permit; other types of permit.

In order to construct and operate an industrial installation, the following types of permits are normally needed:

1) building permit, which must be compatible with the spatial planning plan for the relevant area. The building permit is normally issued by the competent Municipality, which beforehand must have approved a spatial planning plan coherent with the project at stake.
2) EIA Decision, which is normally a sub-procedure of the administrative procedure for the approval of the project. EIA is issued by the Ministry of the Environment for projects of a national relevance. In all other cases, it is normally issued by the competent Region, which may sometimes further delegate the competence to Provinces for smaller projects;
3) Operating permit, which is issued at the end of the main administrative procedure for the approval of the project;
4) in some circumstances other types of consent (normally not in the form of separate permits) may be needed, for instance when the project falls within a nature conservation area, e.g. under the Habitats Directive. In such a case,

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normally, the relevant consent must be given in the framework of the main administrative procedure and not in the form of an independent permit.

It should be mentioned that in order to facilitate the filing of an application to construct and operate industrial installations, a simplification mechanism has been introduced a few years ago in Italian Law. According to such a mechanism, foreseen by Decree 160/2010, irrespective of the authority which is competent for the issuance of the permit, the application can be filed to the Single Office for Production Activities ("Sportello Unico per le Attività Produttive, or more simply SUAP"), which is located within each Municipality. The Single Office will then forward the application to the competent authority for the issuance of the permit and to all other authorities which need to be involved in the procedure.

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…)?

In case that a plurality of permits is required, Italian law (Law 241/1990, article 14 ff.) foresees a coordination mechanism named "Conferenza dei servizi". This is defined as the instrument to collect all the consents required by the law from different administrative authorities in connection with a certain project. The "Conferenza dei servizi" is steered by the authority which is competent to issue the operating permit. Such an authority may be at the State level (e.g. a Ministry) for project of a national interest or at the regional level (the Region, which may sometimes further delegate the competence to Provinces for smaller projects).

In general terms, it may be said that through the years the "Conferenza dei servizi" coordination mechanism has well performed; however, in recent times the simplification trend that is affecting Italian legislation is pushing for a speeding up of the duration of administrative procedures, which may sometimes negatively affect a proper assessment of all the relevant interests at stake.

Has there been a tendency to partially or fully integrate different types of permits? Is it an on-going process? How do you assess the plurality and integration of permits?

As for the integration of different types of permits within a single one, the first model of integration for industrial installations which was introduced in Italian Law is the integrated permit called AIA ("Autorizzazione Integrata Ambientale"). This type of integrated permit is regulated by the Environmental Code (Legislative Decree 152/2006

and its amendments) and covers all industrial installations falling within the scope of application of the IED Directive.

More recently, the so-called "Streamlining Decree" (Law Decree 5/2012 as converted into Law 35/2012, art. 23) has introduced a new type of single permit designed especially for small industrial plants managed by SMEs, that is named AUA ("Autorizzazione Unica Ambientale"). This new type of single permit applies to industrial plants which fulfil the following two criteria: 1) subjective criterion: they are managed by a SME; 2) objective criterion: they do not fall within the scope of industrial installations subject to an AIA authorisation (see above).

In general terms, it may be said that the progressive integration of various permits within a single one operated by the Italian legislature is generally considered a positive feature, since it tends to reduce bureaucracy and speed-up the timing for obtaining the authorisations required. However, there is a risk that it may sometimes lead to a diminished level of environmental protection and a reduced possibility for public participation within the authorisation procedure.

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).

In Italy, the case study chosen as a example would fall within the competence of the Region. The administrative procedure for the approval of the project and the issuance of the operating permit would start with an application for a permit lodged by the applicant before the "Single Office for Production Activities" (SUAP) competent by territory; the administrative procedure for the issuance of the permit (in this case: AIA for industrial installations) would start within 30 days; all interested Parties may submit their observations, within 60 days; within the following 30 days the competent authority may request further documents or information to the applicant, who must respond within the following 45 days.

Within 60 days a first meeting of the "Conferenza dei Servizi" is held for the discussion and decision on the EIA sub-procedure. After the decision on the EIA sub-procedure, the final meeting of the "Conferenza dei Servizi" is held for the discussion and decision on the application for the operating permit. The decision is taken within 120 days and is then formalized in an official administrative act by the competent Region.

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

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

The competent authority depends on the type and size of industrial installations. It may range from the State level (Ministry) to a Regional or sub-regional (Province) level.

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)?

EIA is integrated in the permitting procedure, as a sub-procedure. EIA is conducted not on the preliminary project, but rather on the executive project.

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?

Small installations are subject to a simplified authorisation procedure named AUA, as already mentioned above. For certain micro-scale installations especially listed by the relevant spatial planning legislation, it may be possible to substitute the authorisation with a notification requirement. In no case, an installation may be excluded even from the notification requirement.

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?

Consultation of all competent planning and environmental authorities is foreseen in the framework of mentioned coordination mechanism named “Conferenza dei servizi”. All opinions and consents given within the “Conferenza dei servizi” are binding and must be taken into account by the competent authority in the final decision.

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 foreseen (in any case) during the permitting procedure, usually during the activities of the "Conferenza dei servizi". It is broadly announced and widely used. Public participation takes place on the application (and not on the draft decision).

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)? 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?

A judiciary appeal before administrative courts if foreseen for all decisions on permits. Appeals can be lodged to the competent Regional Administrative Court of first instance ("Tribunale Amministrativo Regionale", or, more simply, "TAR") and, on appeal, to the Supreme Administrative Court ("Consiglio di Stato").
The time frame is very variable. Applications for injunctions are normally discussed by the competent administrative courts within 30 days. Decision of the merits may be taken after a long time, ranging from 6/8 months for decisions of the Regional Administrative Court - first instance (TAR) to 1 year minimum for decisions of the Supreme Administrative Court ("Consiglio di Stato"). In case of delay in the decision on the merits, the applicant may urge the Court to take a decision by means of the so-called "istanza di prelievo" procedure.
The appeal can be lodged by each party who has a legitimate interest in the administrative procedure, including NGOs and citizens.

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?

Normally, if an infrastructure project is not contained in the relevant spatial planning plan, it will be necessary to amend the plan before the project can be authorised. In such

a case, it may be necessary to draw up or to review a plan following the SEA Directive. The SEA procedure under Italian Law is foreseen by Legislative Decree 152/2006.

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?

An infrastructure project, such as the construction of a highway of the type indicated above, would need to undergo an EIA procedure, which will normally be conducted as a sub-procedure of the main administrative procedure for the operating permit, as explained above. The coordination mechanism which will be used in such circumstances is the so-called "Conferenza dei servizi" mentioned above.

The situation described above with regard to the need of a SEA and an EIA for the authorisation of infrastructural projects may be derogated if an infrastructural project falls within the special procedure for the realisation of an "infrastructural project of a national interest" introduced by the so-called "Legge Obiettivo" - Law 443/2001, recently restated, with minor modifications, by the new Public Procurement Code (Legislative Decree 50/2016) (see below for more details).

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: When was this done? What was the general justification? What types of projects does it apply to? 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.) Have there been any legal challenges to the changes? (e.g. non-compliance with EU environmental law, Aarhus etc.) 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 first example of specific legislation adopted in Italian Law with the objective to integrate and speed-up decision has been represented by special procedure introduced by the so-called "Legge Obiettivo" - Law 443/2001 (and its amendments). The special procedure aims at speeding up the relevant administrative procedures for the approval of infrastructural project of a national interest. According to such a special procedure, in case a certain project is designated by the Government as an infrastructural project of a national interest the application of SEA and EIA to such a project will be affected. In particular, in such a case, SEA and spatial planning requirements and plans may be

derogated and EIA may be performed in a simplified way. It should be noted that, despite the doubts that may be casted on its critical features, the special procedure mentioned above has been upheld by the Constitutional Court (Decision 303/2003). As mentioned above, the special procedure in question has been recently restated, with minor modifications, in the new Public Procurement Code (Legislative Decree 50/2016).

Following the model represented by the special procedure for infrastructural project of a national interest, more recently other simplified special regimes have been introduced into Italian law for certain types of industrial installations.

Firstly, the special regime for industrial installations managed by SMEs, named AUA, as already mentioned above, should be recalled here.

Secondly, two other simplified special regimes should be mentioned: 1) the special authorisation regime for renewable energy plants, introduced by Legislative Decree 387/2003, art. 12; 2) the special authorisation regime for waste management and disposal plants, foreseen by the Environmental Code (Legislative Decree 152/2006, article 208, as amended by Legislative Decree 205/2010). Both types of special regimes introduce a fast-track procedure for the approval of projects related to the mentioned types of industrial installations, on the basis of the assumption that they are "necessary" for "environmental purposes", relating to the promotion of renewable energy production on the one side and waste management on the other side. In both cases, SEA and spatial planning plans may be derogated, while only the EIA procedure is always and specifically carried out on the project at stake.

In sum, it may be said that the simplification trend promoted by the Italian legislature is not necessarily a negative feature. However, if combined with the speeding up measures and provisions, which tend to reduce the duration of the administrative procedures and shorten the time limit for the decision on applications, it may lead to a situation where environmental protection and land planning interests are not adequately assessed and, moreover, public participation may be compressed and reduced.

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.

Under Italian law, a local government (normally the relevant Municipality) has a general locus standi competence for lodging an appeal before administrative courts with regard to all environmental permits and other administrative acts which may cause a negative impact on the environment.

D. Further Comments

As a final remark, it may be mentioned that the introduction of simplification and speeding up procedures as well as the integration of permits have become in recent years a general feature which characterises Italian law. This is confirmed by the several legislative acts which have been adopted in this sense by the Italian legislature. Moreover, it should be underlined that "simplification" is now considered as a general principle of Italian law. This explains why, the Environmental Code (Legislative Decree 152/2006), at art. 3 *quinquies*, prescribes that "Regions may adopt more restrictive environmental measures" (with respect to general environmental measures adopted by the State) only "provided that they do not cause an unjustified discrimination, also by means of unjustified administrative burdens". Such a provision has been interpreted in the sense that Regions (within their own procedures) are prevented from introducing administrative provisions which, for instance, extend the deadline for the adoption of a certain decision, even in circumstances when this may aim at improving or extending public participation. Obviously, such an approach, even if it may be justified on the basis of the "simplification" objective, may finally end up in causing a reduced level of environmental protection.