AVOSETTA RIGA MEETING

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

Latvia

General introduction on permitting procedures

In Latvia, the main responsibility for policy on environmental protection lies with the Ministry of Environmental Protection and Regional Development. As can be seen from a title of the Ministry, it is responsible for both environmental protection (environment, nature and climate) and regional development including policy issues relating to municipalities and planning. There are *pros* and *cons* to have both those often contradicting policy issues under supervision of one political leadership. In case of Latvia, one of the main aims for re-uniting those 'two worlds' in 2009 (similar setup existed up to 2002) was to ensure a more coherent approach in developing policies for those areas. Whether this is performed accordingly to a large extent depends on political leadership in charge of the ministry. However, disputes that were previously quite visible during decision-making procedure in the Cabinet of Ministers on environmental protection or regional development now have to be agreed 'at home.' Prioritization of one or another area of course again depends on political priorities of particular leadership and it seems that regional development and municipalities issues are politically more attractive. Could it push towards speeding up and integration (in the context of focus of this questionnaire)? The answer would be positive at least as regards intentions and 'deaf ears.' On the other hand, as can be seen from the information below on procedures and regulations, the system is rather complicated and fragmented from a developer point of view, creating risks of redundant time consumption and procedural stages. Therefore, one could understand those incentives (political ideas) to reconsider major legislative requirements in the environmental protection field in order to assess whether we have transposed EU requirements too restrictively (due to the aim of speedy accession to the EU). Such incentives appear time to time together with political changes of the ministry's leadership or government (see more on this under section B)

In overall the permitting procedure for large and medium size installations and infrastructural projects are fragmented and inconsistent. If a project is labelled (by Government or Parliament) as 'Object of National Interest' (ONI)[1] then procedure is relatively eased (see below under A II).

Generally permitting process contains at least three subsequent procedures: Environmental Impact Assessment (EIA); Construction permitting procedure and Operational permitting procedure. In the latter two stages results of an EIA is used to substantiate those permits. A new industrial installation or infrastructural project would typically has to go through all three procedures and need to be in accordance with 'acceptable' activities of particular land use plan except in cases of ONI when it is not a precondition. It is worth noting that the system of ONI introduced quite recently (2011), thus, no many projects had been accepted as ONI till so far and the largest one is pending decision, i.e. '*RailBaltic*' for the development of railway through all territory of LV with 'rail trucks corresponding to Western European.'

A. Baseline information

I. Industrial Installations

1. Forms and scope of permits

[1] This term and regulation for ONI introduced according to the law on Spatial Development Planning (2011).

To construct and operate an industrial installation there are at least three sequent procedures as mentioned above, however, details of each depends on size, possible location and other parameters of a project. In the sense of Annexes I and II of Directive 2011/92/EU there are the following stages, forms and permits:

I stage: EIA

The main legal framework is in the Law on Environmental Impact Assessment (LEIA, 1998)

Annex I, i.e. when EIA is mandatory:

1.1. The procedure starts with an application to the **Environmental State Bureau**[2] and its **decision to start an EIA**. However, since 2014 there is additional stage introduced before EIA procedure starts, i.e. a developer is obliged to request **opinion** from a local government about possibility to implement intended activity in particular territory. However, a favourable opinion has no binding effect as regards any of decisions in the permitting procedure.[3]

In the end of EIA procedure **a local government** (except otherwise provided by law)[4] has to take a decision whether to accept particular activity – **Acceptance decision** (development consent). This decision is adopted taking into account the results of EIA including the public opinion and opinions of state institutions consulted during the process. And it contains conditions for a development if accepted. This decision is mandatory precondition to move to the next stage: Construction permit.

1.2. Annex II or '**screening procedure**.' Additional procedural stage is for activities that are included in Annex II of the LEIA as well as for other activities 'that could significantly affect the environment taking into account criteria defined by law (Art.3'2 of LEIA).

The procedure then starts with an application to the **State Environmental Services (SES)**.[5] SES makes an initial assessment and sends its recommendation for a positive or negative decision as regards need for an EIA to the Bureau. The Bureau adopts a decision on necessity to carry out an EIA for particular project. This decision according to the case law of the Administrative Supreme Court is 'interim-decision.' However, a positive decision requesting an EIA might be appealed by an addressee. Negative EIA decision could be re-assessed only during appeal of the final act (which in this case would be a construction permit).

II stage: Construction permitting procedure

New legal framework law since 2014: the Law on Construction (LoC)

2.1. An institution of local government, i.e. **construction permitting authority** has to adopt a decision taking into account the results of an EIA. In 2014 the system of construction permitting has been changed since a new law came into force.[6] Although the new law on Construction was aimed to 'simplify and speed up' the permitting procedures for constructions, however and till so far dominantly negative opinions heard

[2] Environmental State Bureau (further also – Bureau) is state authority supervising and coordinating EIA process, and it makes also assessment of reports for both an environmental impact assessment and strategic environmental assessment procedures issuing 'Opinion' that has to be taken into account in further stages of a decision-making.
[3] See more details under section B below.
[4] The most typical 'other institution' would be the Cabinet of Ministers who are authorised to take a decision in particular cases, i.e. as regards developments within the Baltic Sea; or if 'affected' municipality request due to possibility that a development within vicinity of another municipality could affect the former.
[5] An application has to be submitted to its regional unit responsible for control of polluting activities within particular territory where activity is planned.
[6] See more in details in Recent development report.

claiming that it is rather complicating then simplifying. On the other hand, probably there is a time needed for the system to properly function as very crucial changes are made.

As regards '*form and scope'* of decisions in this stage an essential change is worth noting. There are two sequent decisions adopted during this procedure: '**Construction permit**' and '**Note**' on it. In fact, only the latter is real authorisation to start construction works after all conditions and requirements for construction design etc. are met. A *Construction permit* is rather the first step (after the consultation with the public if such need to be organised) within the process to get 'technical conditions' from state competent authorities. It is issued on the basis of construction design 'at minimum level.' Thus, this permit seems to be rather as 'scoping programme' if one uses terminology of an EIA procedure. At the same time, according to the new Construction law a decision on 'construction permit' is appealable (within 30 days after publication and announcement). Consequently, there are some discussions whether '*Note'* should be also appealable as being 'final decision' before construction starts (and could be very distant from the first decision on 'construction permit).[7] According to the previous system it would be rather '*Note*' (final decision authorising commencement of construction works) that was appealable and not 'an interim decision' as now is a 'construction permit' in substance. There is no any Supreme Court's case on either of those two stages based on the new law yet.

2.2. Possible additional sub-stage: Detailed plan

The main legal framework - the Spatial Development Planning Law (SDPL, 2011)

In case a construction project, 'creates a necessity for complex solutions and unless laid down otherwise in law' **a detailed plan**[8] shall be elaborated before a construction permit might be issued. A local government decides whether there is a need to develop a detailed plan for particular project taking into account criteria envisaged in the law. This issue has been quite contentious as opinions are often diverging whether the plan is need. According to the Administrative Supreme Court a detailed plan would certainly be required if there is a need to develop transport infrastructure, type of sewerage treatment and other such type of decisions on solutions for infrastructure (e.g. for residential buildings).[9] The consultation with the public is a mandatory stage in case a detailed plan is elaborated. That was pointed out by the court in the same judgment stating that the possibilities for the public to express their opinion is important part of the decision-making during a preparation of detailed plan.[10]

Form: A detailed plan is adopted as 'general administrative act' and could be appealed to the Administrative Court.

III stage: operational permits /environmental permit

The main legal framework - in Law on Pollution (LoP, 1998) and some other sectorial environmental laws e.g. Waste Management Act (WMA); Law on Subterranean Depths; Marine Environmental Protection and Management Law

[7] As could be seen from discussions of drafter of the new law and stakeholders involved in the process, an idea was indeed to limit possibilities of appeal: allowing it in the beginning of the process and excluding in the final stage when all procedure is finalized and one might start construction. Reasonable doubts are raised whether it would be interpreted in the same way by courts.

[8] As provided by Art.28 of Spatial Development Planning Law. According to the same law 'detailed plan' is a "plan of a part of local government territory developed in order to lay down the requirements for the use of specific land units and building parameters, as well as to adjust the borders of land units and restrictions." (Art.1(10))

[9] The Administrative Department of the Supreme Court judgement of 01.11.2012. case No SKA-532/2012.

[10] Ibid.

The main 'operational permit' for polluting activity would be an environmental permit to conduct an activity. However, some additional permits could be needed taking into account specificities of an activity, e.g. licence for activities with scrap-iron; licence for activities with ionizing materials etc. Further in this report I would include information only about 'environmental permits' as those others are only for some specific activities.

1) 'Permit for polluting activities'

The basic idea of 'integrated permits' was introduced in accordance with IPPC directive when the Law on Pollution was adopted in 1998; however, much broader approach to 'integrating permits' was taken covering all activities that could adversely affect the environment. The Law on Pollution established three categories of activities taking into account pollution load and its threat to health and environment. Accordingly, *A category*: mainly covers activities or installations of IPPC Ann I;[11] *B category*: other activities that could adversely affect the environment; and *C category*: minor effect to the environment. Activities under C category need to be just notified to the environmental authority but no 'integrated pollution control permit' needed.

Form and scope: Accordingly in the result of permitting procedure for polluting activity an operator would receive **A or B category permit for integrated control and prevention** that covers conditions as regards all elements of the environment: e.g. air, water, noise as well as waste handling. Additional environmental permit might be needed only if an operator performs some other activity not related directly to particular installation, for example, that could be some water extraction activities for commercial use then he would need also 'permit for extraction of water;' or permit for waste transportation (if the main permit is not for waste management activities). Additionally, for those installations that are in EU ETS one more permit is needed (to get allowances) – permit for greenhouse gas emission. According to the LoP the latter permit has to be coordinated with a basic A or B category permit of particular installation.

2) Sectorial permits

Those are required to activities that are not covered by the Law on Pollution or some particular activities to which additional requirements apply. Here is impossible to list all sectorial laws that requires some operational permit, but just to give insight with some examples:

Law on Subterranean Depths – requires permit (licence) for use or extraction of natural resources.

Waste Management Law – permits for disposal of waste, recovery, collection or transportation.

Marine Environmental Protection and Management Law – permits (and different procedure) for activities in the Sea, e.g. offshore wind power farms.

Law on Protected Zones– additional *decision* from Government needed if one wants to construct anything on forestland of protected zone of the Baltic Sea (150 – 300 m).
etc.

All environmental permits mentioned above are issued by one competent authority – State Environmental Service (except where Government have some specific competence to decide, e.g. two latter examples on sectorial laws). The State Environmental Bureau is the administrative appellant body reassessing the SES decisions on environmental permits. A decision of the Bureau is appealable to the Administrative Court.

[11] At this moment there are only 94 installations classified as A category activities and holding IPPC permit in Latvia.

The system that decisions on environmental permits are taken by one centralized state authority could be regarded as 'co-ordination mechanisms.'

It is difficult to assess whether the system assures 'sufficient' integrated assessment, but it could be acknowledged as rather comprehensive, especially with additional requirements to those mentioned above, i.e.,a developer has to get from the environmental authority a 'technical regulation on environmental conditions' for other activities that don't need EIA or environmental permit. On the one hand, the system with quite many different permits seems to be rather cumbersome. On the other hand, the fact that all main environmental permits are issued by one environmental authority (SES) with some exceptions when government and local authorities are involved could be assessed positively from 'coordination perspective.'

As regards tendencies to integrate environmental permitting system: the major integration 'move' took place before Latvia join the EU with transposition of IPPC Directive and establishment of system covering much broader range of activities than covered by IPPC Directive.

However, in general three separate procedures and additional 'sectorial' permits or licences are rather cumbersome process from a developer perspective. At the same time one could imagine that public authorities don't complain, as they are less bound to corporate or find common solutions (as would be in case of integrated procedures, e.g. through 'one-stop-shop' approach). So, from this point of view one could claim that it is rather 'government or bureaucratically' centred approach not 'a client.'

Public participation and '**wide access to justice**:'

In the process of three main stages of permitting procedure the public has to be informed about launch of a procedure. In general, permitting procedure is public during all three stages; however, as regards particular details, means for distribution of information and participation forms etc. those are different.[12] One common feature is 'standing' to submit comments that are provided for 'every one.' The **wide legal standing approach** to challenge decisions within the permitting procedure is provided only for 'environmental disputes,' i.e. if an act or omission of a public authority (incl. local government) might have been contravening environmental law.[13] For a dispute to be admitted as 'environmental' an applicant has appreciably demonstrated that the main concern of a dispute is based on breach of environmental law.[14] According to the Law on Environmental Protection (2006) the **legal standing is for 'anybody'** if 'environmental law is violated.' The Administrative Supreme Court has pointed out that 'in cases where applicant claims that environmental law is violated by a public authority 'any person' natural or legal right is determined by law as exception from the right-based approach embedded in the Administrative Procedure Law (APL).`[15]

2. Procedures

2.1. Short case study:

[12] See more details on differences under 2.2. below.
[13] Since 2010 we have already several cases of the Administrative Supreme Court acknowledging 'any person' right to stand before a court in environmental disputes, e.g. The Administrative Department of the Supreme Court in the decision of 31.03.2010. case No SKA-325/2010. It is worth noting that in case of normative acts, including Land use plan that could be challenged only before the Constitutional Court the legal standing approach is different.
[14] The Administrative Department of the Supreme Court judgement of 18.06.2015. case No SKA-912/2015.
[15] The Administrative Department of the Supreme Court in judgment of 30.10.2012.case No.SKA-139/2012, para 30

"*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 Law on Pollution waste disposal installations for the incineration (from 3 tonnes/hour) and for chemical-treatment (from 50 tonnes/day) shall have *A category* permit to operate but *prior* to this other two procedures mentioned above would need to be carry out.

I stage: EIA[16]

See flowchart on EIA procedure in the attachment (Annex 1). Accordingly, overall time together with mandatory procedure of public hearing is 'at least 6 months.' However, in cases of development of waste disposal project a final decision accepting particular project (location, solution) could be transferred from a local government to the Cabinet of Ministers, i.e. if any municipality 'concerned' that could be affected by that project request so. It is worth noting that since there are national and regional waste management plans adopted by government in consultations with local governments concerned, there are no Acceptance decisions transferred to the government level.

No administrative appeal stage as there is no 'higher authority' above 'local government' or the Cabinet of Ministers as regards decisions on Acceptance of such development. So, this kind of decisions may be appealed to the Administrative court.

II stage: construction permitting procedure

A decision on construction permit is to be issued by an institution of local government – construction permitting authority (details see above). It could be appealed within administrative procedure to higher authority of local government. According to the law on Construction (2014) a decision on appeal at administrative level needs to be adopted within 60 days.

III stage: environmental permit

Detailed procedure see in table of Attachment 2. General comment on timing: if a developer has submitted all necessary information then total time for an A category permit would be up to 110 days. That could be extended if an operator is not organising the public hearing or has organised too late in the process that the authority is unable to adopt its final decision. However, there are no cases reported with such extension, as usually operators are interested to commence an action as soon as possible so, not delaying those mandatory stages.

For administrative appeal that could be submitted to the Environmental State Bureau – 30 days (with possibility to extend to 4 months). As practice indicates an average for A category cases this stage of decision would be up to 3 months (rare, if any, within 'original' time of 30 days). So, total timing for two "environmental stages:" EIA and environmental permit: **6 months + 60 days for Acceptance decision and + 110 days – environmental permit** (without time needed if appealed).

The general comment on the timing for the Administrative Court procedures if any of those three permits are appealed, i.e. Acceptance decision, Construction permit and Environmental permit: average time for each instance of a court 5 to 8 months, thus, if all three instances involved – 1-2.5 years (for one decision).

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

- **Competent authorities**: Generally two main players within the permitting procedure: planning, Acceptance decision (development consent) and construction issues under a local government's competence; environmental permits and EIA/SEA – two environmental authorities. Taking into

[16] According to Annex I of EIAL an EIA is mandatory stage for such installations when planned capacity is 10 tonnes/day.

account stages of permitting procedure as divided above, the following division in the light of 'competent authority:'

EIA – Environmental State Bureau (makes assessment of report and adopts **Opinion**); if 'screening' procedure needed then SES is involved making initial recommendation on necessity of an EIA and bureau adopts negative or positive decision.

Acceptance decision (or development consent) – a local government (except where otherwise stated by law, thus, as exception it could be government or e.g. port authority)

Construction permits – construction authorising authority (institution of a local government); if a detailed plan needed - a local government.

Environmental permits – State Environmental Service (SES)

- EIA is a separate procedure that precedes the request for a construction permit or any other permit. Normally, an EIA wouldn't be carried out in any of later stage for permitting procedures. However, one has to take into account that an Opinion of the Bureau on the EIA report is in force 3 years, thus, if within that time there is no consent to the development (Acceptance decision) a developer would need to carry out a new EIA.

- There is a differentiation between large - *A category activities* (BAT applies), medium and small (that threatened health and environment) – *B category activities* and some other activities with minor risk to the environment - *C category*. The latter shall be just notified to the environmental authority and usually there are some specific general regulations that they have to observe without need for individualized permit. On exclusion, if the threshold established by law is exceeded a procedure for a permit shall be initiated.

- Usually in all three stages of the permitting process competent authorities mentioned above under first intend are cross-consulting each other within the others procedure. During the planning and construction-permitting procedure the environmental authorities are consulted (in this case, including one more, i.e. Nature Conservation Agency). And *vice versa* a local government is consulted during environmental permitting procedures and EIA. Additionally, some other institutions could (or in some cases 'shall') be consulted, e.g. Health Inspectorate, Inspectorate for Protection of State Cultural Heritage, Nature Conservation Agency etc. In general, their opinions are to be adopted between 14 to 30 days. Apart from some exceptions, usually, their views and recommendations expressed have consultative 'opinion' status, however, having an important weight in practice, and if disregarded justification need to be given.

- **Public participation**

Information to the public as well **public hearing** (in form of meeting) is a mandatory part within an EIA as well for decision-making on Environmental permit for category A activities and for some activities under B category. Recently, amendments were adopted allowing to skip the second hearing i.e. during IPPC permit *if* the hearing was hold during an EIA and not more than 2 years have passed; however, it doesn't change an obligation to consult the public opening a possibility to submit comments on the draft permit.
Some comments about public participation in different stages:
Within EIA procedure: 1) consultations may be organised already during a **screening** stage upon request of the environmental authorities or a municipality; 2) during a **scoping** stage – public (anybody) may submit their comments and suggestions to the Bureau;[17] 3) during preparation of **EIA Report** – public hearing has to be organised.[18] Consultations with the public on the Report last at least 30 days including a public hearing.
Within Construction permitting

[17] Recent practice indicate that it is actively used ring consultation on large scale projects as *RailBaltic*, there was 600 comments submitted during the scoping stage.
[18] The Administrative Supreme Court has pointed out that one of the main aims of an EIA is 'to get public opinion.' Judgment of 30.10.2012. No. SKA-139/2012

By 2014 there were wider possibilities for the public to be consulted for different projects (mainly with the public significance or public funding). However, in 2013 when a new Law on Construction was adopted the public consultations were abandoned. After some pressure from the society, debate in the Parliament, the law was amended (before it came into force) and an obligation to consult the public (under some limiting conditions) was 're-installed.' The law defines that the public need to be consulted only if an EIA is not applied but construction may significantly affect the environment (by odour, noise, vibrations or other type of pollution).[19] Thus, if there has been an EIA, no consultations with the public in this stage.
During preparation of a detailed plan (if need be) – public participation is mandatory part of process.

- The consultations are on the draft decisions and offered solutions rather than on application.

- Average timeframe for all permitting process it is impossible to calculate as it is variable depending on very different conditions. However, as regards 'environmental stages' (EIA and Pollution permits) and only taking into account time limits for the public authorities involved than one could estimate: EIA 4 – 6 months (however, usually extended for complex projects) and decision on pollution permit after application with sufficient information is submitted – 60 (B category) to 90 days (A category).

- **Appeals**
As all main three stages/permitting procedures are separate and each of it results with a final decision for particular stage, there are possibilities to appeal all three decisions: Acceptance decision (development consent), Construction permit and Environmental Permit.
As regards legal standing – see under section A above specific – wide approach for environmental disputes.
According to the Administrative Procedure Law (APL) complain may be submitted within **30 days** after notification of particular decision. (Or **one year** if there is no indications about timing and institution where a decision might be appealed. From the outset of APL (2004) this provision was quite effective, facilitating mechanism to persuade public authorities to include such information in an administrative act. It was very often missing part of a decision prior the APL came into force.)
At administrative level the timeframe for reaction on an appeal is between 30 days and 60 days (latter e.g. on construction permits) According to the APL a deadline could be extended to 4 months (or in extreme cases to 1 year) 'except otherwise provided by law.'

II. Infrastructural Projects

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?

Generally, any development also infrastructural has to be envisaged in land use plan to be accepted or plan would need to be amended. A strategic environmental assessment (SEA) would be requested in such case. However, since 2011 a possibility of 'Objects of National Interest' (ONI) are introduced providing exception from a need of adjustments to land use plans. Additionally, infrastructural projects might be planned through adoption of a 'local plan'[20]allowing to avoid a need to "open general land use plan" but amending it through separate procedure resulting with 'local plan' detailing or amending part of land use plan for particular territory. A strategic environmental assessment would be a mandatory part of such plan. Accordingly, several options are available for planning of infrastructure projects. However, one could presume that a project of large scale as the example of highway most likely would be classified as 'object of national interest' and thus, specific procedure would apply without the need to adjust land use plans.

[19] See more details in Recent development report of Latvia.
[20] According to SDPL (2011) a new type for planning document is introduced, as 'a local government long-term spatial development planning document,' that might be developed for a part of a territory of particular municipality 'for solving a planning task or detailing or amending' a land use plan. (Art.1(9))

There are no highways in Latvia but I could take for analysis relatively similar example of large-scale project pending decision at the moment, i.e. *Railbaltic* developing infrastructure for railway. The project was envisaged in the National development plan of 2014-2020 for which SEA has been carried out. However, it is not envisaged in any of land use plans of municipalities concerned. The decision of the Government to define this project as ONI allowed escaping amendments of many land use plans as well as from a need to get agreement from municipalities concerned (although consulted during the process). In any case, an EIA was needed to be carried out and construction permit need to be received. If the project of railway construction wouldn't be envisaged in the National Development plan then the amendments to that plan would have to be adopted and accordingly strategic environmental assessment carried out, notwithstanding to the ONI status of particular project.

In principle, SEA procedure for spatial planning documents is similar to the EIA for projects including such as notifications means, competent authorities involved. However, the major difference would be an appeal procedure. SEA is an integral part of land use plan and the latter is adopted by regulation of a local government (normative nature). Therefore, that could be appealed only before the Constitutional Court. According to the law on Constitutional Court (as amended) there is a possibility to submit 'constitutional complaint' including for environmental NGOs, however, much stricter legal standing criteria are applied if compared with those within the Administrative court 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?...

Yes, both Acceptance decision (development consent) in the result of an EIA and construction permit. See answer under point II.1. There is no exception for infrastructural projects as regards permits even in case that it is defined as 'object of national interest.' In the same time there are some specifics, e.g. no suspensive effect of appeal.

B. Describing and evaluating integration and speed up legislation

The discussions how *to improve* permitting procedures, how to better *ensure coordination* of different public authorities and procedures, as well as how *to reduce* 'administrative burden' for developers? Have been on the political agenda for a while and in Latvia actively started with some initiatives at EU level on 'better regulation' (around 2004). The aim of those intentions was seen beneficial also from environmental perspective, as quick and efficient administration without redundant procedures could certainly benefit environmental protection. However, the notion of what reforms was aimed for changed during the economic crises around 2008. And it's simply to guess which requirements could lose if one assess the system in the light of narrow economic development perspective. Although the slogans used sounds very reasonable, e.g. to get rid of redundant procedures and requirements however, the difference is in the understanding what one might see as 'redundant?' One of ideas that indicate the trend was about a re-assessment of the environmental legislation to eliminate those requirements which are more than 'minimum requirements of EU norms.'

On the other hand and till so far, there are no major changes at least as regards existing environmental legislation that could be evaluated as 'negative perspective,' (although any new requirements to enhance environmental protection could be rather difficult to pursue). At the same time there are some examples where this notion of 2008 mentioned above was 'driving force' together with proclaimed aim to speed-up procedures and to improve ratings of Latvia in e.g. 'doing business' index of World Bank.[21]

Thus, **a new Construction Law** was claimed to be the major step towards 'speeding up' permitting procedures when adopted in 2013 (that came into force in 2014).[22] When the law was adopted apart from substantial changes in the construction permitting system there was also some important changes from the general public viewpoint. The public participation procedure was abandoned. As indicated above the new

[21] The discussions in the Committee of the Parliament on draft for Construction law (2013, 2014.)
[22] See information on it also in Recent development report

law did not contain any provision or obligation as regards consultations with the public. It was 're-installed' during 2014 (Art.14). The version of law adopted in 2013 also "cancelled" the general rule of the APL on suspensive effect of appeal. It is changed "back" by amendments of 2014, thus, an appeal to the Administrative court would have suspensive effect except for 'Objects of National Interest' (Art.15(7)).

Abandoned separate authorisation for 'forest transformation'

According to the **Forest law** one had to receive a separate authorisation from the State Forest Service to be allowed to change the usage of the forestland to another purpose (than forestry). According to the amendments of the Forest law in 2012 (and quite many other laws that contained reference to such authorisation) the system was 'integrated' into the other permitting procedure, abandoning a requirement for separate permit. This and quite many other changes in legislation of Forestry were made with an aim 'to reduce administrative burden.'[23]

'Procedural time limits' and changes in Annexes of EIA

Rather as positive results of aim 'to speed up' permitting procedures one could assess the amendments of the **Law on Environmental Impact Assessment** both in 2010 and 2014. According to amendments of 2010 there were 'procedural time limits' introduced for different stages within an EIA procedure to improve predictability of time a decision could be adopted and to reduce time of an EIA procedure. According to amendments of 2014 some important changes could be noticed as regards annexes I and II where some activities were included or excluded from 'mandatory' EIA or 'screening' requirements in order to reduce 'redundant' procedures, e.g. carrying out screening procedure although it is clear that an EIA will be needed (for example, in case of large wind power farms). Accordingly wind power farms with more than 15 turbines or 15 MW were included in Annex I where no screening procedure needed and an EIA would be required. (See more info in Recent developments).

At the same time I would abstain to evaluate as a positive trend the amendment introducing a new (additional) stage within an EIA procedure. According to the new Article 14 a developer has to receive an opinion from a local government about the possibility to realize a particular project in its territory prior EIA has started.[24] On the one hand, it was aimed to avoid possibilities that the municipality may refuse the development after quite expensive and time consuming procedure. On the other hand, a local government would have to adopt 'initial decision' at the stage when neither the public nor environmental institutions has been heard. In result, after quite difficult discussions during the drafting of amendments stage there is 'consultative opinion' introduced that a developer has to obtain before an EIA. Its place in the decision-making procedure is not very clear, yet.

Permits without time limit

Some changes in **Law on Pollution** were aimed to simplify procedures in light of those initiatives on 'better regulation' mentioned above. For example, from the outset a time limit for pollution permits of A and B categories activities were very short – 5 years (or 7 for EMAS enterprises). Thus, an operator has to go through quite cumbersome procedure every 5 or 7 years. According to the amendments of Law on Pollution (came into force in 2010) the time limit for those permits was abandoned. And instead an obligation of 'interim evaluation' each 7 years (10 for enterprise under EMAS) was introduced (Art 32(3'2)). Consequently there is no need to go through quite long permitting procedure including consultation with the public, except if there are significant changes in the polluting activity.

Nature protection and planning area

[23] As can be seen from the Annotation for the amendments of Forest Law of 2011.
[24] See information in Recent development report

After some intensive public discussions[25] there was one of the conclusions that the nature protection requirements have to be integrated much better with requirements on land use. In 2014 some pilot project is launched within one of planning areas to develop recommendations and legal assessment how and whether those 'two aspects' of regulations at different levels could be integrated. Thus, it is one of activities that could be reported as 'on-going' with an aim of 'integration' of requirements stemming from different laws applicable to areas for nature protection. At the moment those two issues are claimed to be as 'two different worlds:" restrictions aimed for nature protection are set by Government Regulations. In the same time 'requirements for land use and building' are set in land use plan of a local government and often the latter doesn't reflect specific and complex requirements for nature protection. There is no doubts that those two aspects need to be approximated, at the same time some risks exists that "the nature could lose" if the system of strict requirements envisaged in the Government enactments would be abandoned in favour of some other legal form, e.g. general administrative acts as discussed at the moment (within the working groups of particular pilot project).

In conclusion, apart from major reform in the *construction permitting system* initially abandoning public participation procedure, there is no major changes introduced as regards environmental legislation which could be evaluated as 'negative' trend of speeding up or integration. It seems to be rather opposite, i.e. that changes made till so far could be evaluated as 'positive' perspective reducing administrative burden without compromising requirements for environmental protection. However, the latter example mentioned above on nature protection, which is pending assessment and recommendations, is under question mark how to be evaluated.

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

Locus standi – within appeal procedures

The Administrative Procedure Law (APL) provides that 'a public legal entity may be the applicant in cases: (i) on a public legal contracts; (ii) if it is the addressee of the administrative act or may be affected by actual conduct; (iii) or otherwise provided by law.

In principle, a local government could be on "both sides" i.e. as a public authority for example, adopting 'Acceptance decision' after an EIA procedure and, thus, as a 'defendant' before the court if one challenges that decision. And it (rather in exceptional cases) could be as 'an applicant' before the court against state (public authority) if there is a difference between state interest, on the one hand, and a local government, on the other. The Administrative Supreme Court has stressed that in principle a local government is representing state and is in one hierarchical system with the public authorities protecting 'common interests.' However, there could be situations were a local government[26] may submit application to the court 'representing interest of distinct public that is contrary (or different) to general public interest.'[27]

Usually, within the environmental permitting procedure a local government shall be consulted and is expected to submit its opinion on particular permit or EIA process. Although, its opinion is not binding upon the environmental authority as regards environmental conditions, however, it is expected that a

[25] Especially during seminars for different stakeholders that were aimed to find and discuss ideas 'how to improve the system for nature protection'? The author of this report was chair of those seminars-discussions which took place in 2010.
[26] 'derived public person' according to State Administration law.
[27] The Administrative Department of the Supreme Court judgement of 28.04.2012. case No SKA-424/2012., para 8.

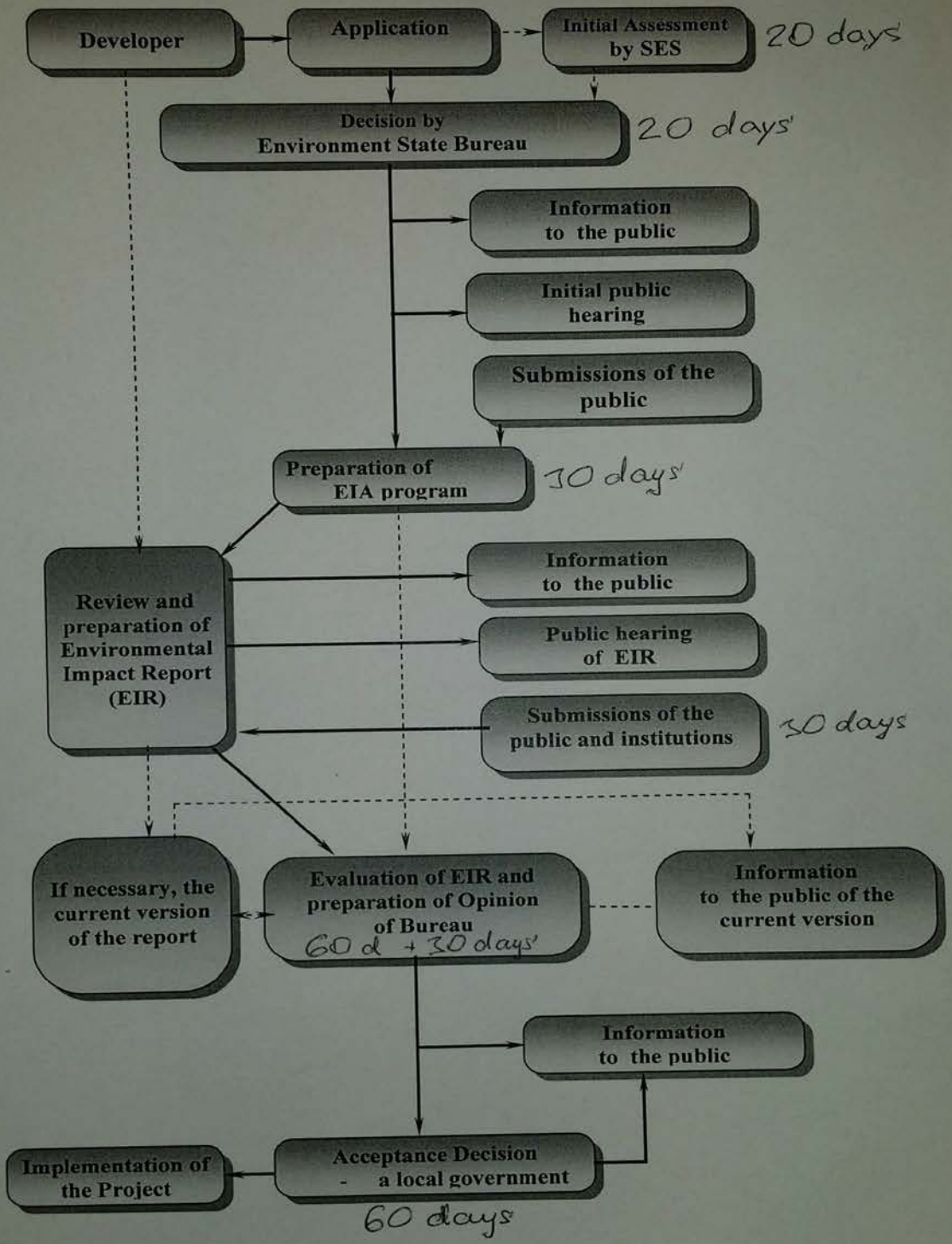
solution is found through 'cooperation form' rather than appeal to the court as both sides are representing 'state and thus common interests.'[28]

Some time ago a dispute arose when the environmental authority issued an environmental permit (B category) and a local government was objecting to it. The local government tried to challenge that environmental permit through the Administrative court. In the court the local government based its submission *inter alia* on the Aarhus Convention claiming protection of the public interests in the environmental protection as the main ground for objections. Thus, requested to be permitted as being 'the member of the public' representing the society of that municipality. The case was dismissed as inadmissible. However, the court stated that 'the state has very broad discretion how the provisions of the Aarhus Convention are to be introduced in the national system, and especially as regards Article 9. Therefore, it is not excluded that the state could envisage such rights to sue for a local government in certain cases.[29]

At the moment there are some incentives from local governments to broaden their rights to that direction. At the same time taking into account case law of the Administrative Court referring also to 'doctrine of administrative law' a local government could have standing against state in cases of 'difference in interests' as mentioned above[30] or objecting to interference in their autonomous functions.

[28] The Administrative Department of the Supreme Court decision of 18.09.2015. case No SKA-1028/2015.
[29] The Administrative Department of the Supreme Court judgement of 28.04.2012. case No SKA-424/2012.
[30] The Administrative Department of the Supreme Court decision of 18.09.2015. case No SKA-1028/2015.

Annex 1



Based on the information from Environment State Bureau

EIA procedure

Annex 2

Environmental permit
Permit for polluting activity of A category
Waste disposal exceeding 100 tnn/day

Action	**Who**	**Time** (days)	**Notes**
Submission	Developer	--	to the Environmental State Service (SES)
Statement on sufficiency of information	SES	20	Usually within 10 days SES issues confirmation
Submission of missing information (if any)	Developer	[20]	[this stage only if a developer has submitted incomplete information]
Procedures:			Those below are parallel procedures with a permit preparation by SES. Therefore, calculated in the same time limit – 90 days that is provided for adoption of final decision
Information:			
Information on submission - Webpage of SES	SES	7	
Sending notification about available information to: - *local government* - *Health inspectorate* - *other institutions* if need to be consulted - *NGOs* – who have applied to SES indicating their interest to receive such information (in general)	SES		
Information to the public through: - Web - individual letters to owners of neighbouring real estates - Official journal (since 2012 only electronic version) and at least 1	Developer	14	Information note shall include *inter alia*: about place and time of public hearing, time and place where to submit comments etc.

local newspaper - state radio and local one			
Consultations			
Opinion of institutions consulted	- Local government - Health inspectorate - other	30	
Public hearing (meeting)	Developer with participation of local government		Shall be organized not earlier than 5 days after notification
Public written comments	'Anybody' (without any limiting criteria)	30	after notification
Response (especially if negative opinions expressed)	Developer	14	Before final decision is taken
Final decision			
Adoption of decision	SES	**90**	
Notification			
Information to all involved	Developer	within 8 days	through notifications almost in the same way as about submission
Information on webpage	Bureau	8	On that web page is information about as well permits of all A and B category activities
Total for permit issuance:		**20 + 90 days** or **40 + 100 days** *(if missing information in submission)*	
Appeal			
Complaint	- addressee - anyone whose rights or legal interests are concerned - any one if 'environmental dispute'	30 (after notification)	To Environmental State Bureau as appellant administrative body 30 days may be extended according to APL – 4 months or extreme 1 year (usually for A category appeal case would take up to 3 months)