Recent developments of environmental law (2015 – 2016)[1] Latvia

Legislation

New Construction Law

On 1 October 2014 the new Law on Construction came into force establishing a new system for building procedures with one of the main aims to improve the quality of it. That included the aim of speeding up procedures as well. Apart from good things introduced by it, the initial law (adopted in July 2013) cancelled necessity to organise public consultations. One of the main arguments for that – there would be consultation during the planning and, if a construction could significantly affect the environment or human health, during the EIA procedures.
However, since adoption of the new law and before it came into force it has been amended already several times. Three important changes through amendments:
(NB The first two connected with the tragic incident where roof of shopping centre crashed into the shop full with people (now, called tragedy of Maxima[2]):

1) The State Building Control Bureau revived (Art.5(7)). It was reorganised in 2009 allocating all control functions to the municipalities. The abolishment of the general state control of the contraction procedures was discussed as failure quite a while but assessed as such after Maxima tragedy.
2) Stricter liability/responsibilities of all involved in the permitting process, including the broader involvement of stakeholders and NGOs through inclusion of them in newly established Council of Constructions (consultative institution)
3) The obligation to organise **public participation back** in the process only in particular cases defined by law, e.g. the construction permitting authority is obliged to ensure that the public participation is organised if:
    - construction may significantly affect the environment (by odour, noise, vibrations or other type of pollution) *and* the EIA hasn't been requested;
    - the municipalities are authorised to decide about other type of constructions for which the public consultations have to be organised, through adoption of 'binding regulation' (general binding regulation of a municipality); except for those to which "green light" has been given by the Government.

Additionally, the "achievement" of the new law adopted in 2013 was the abolishment of suspensive effect of appeal. Suspension of an administrative act due to complain to the Administrative court is the general rule of the Administrative Procedure Law. According to the amendments of 2014 the 'abolishment' is cancelled, so the general

---

[1] Some information includes also the main developments within 2014 as no report about that was produced.
[2] You can find some information in English here: https://en.wikipedia.org/wiki/Zolit%C5%ABde_shopping_centre_roof_collapse

rule of the APL would apply, except for ‘objects of national interests’ (that are categorized as such by the act of Government or law).

Environmental Impact Assessment (EIA)

The Amendments to the Law on Environmental Impact Assessment

(*came into force already in 2014 but not reported therefore shortly about three main points*)

One of the main aims of those amendments – ‘modern one’, i.e. to reduce administrative burden, to improve the process etc.

1) **Amendments to both Annexes**, i.e. on mandatory EIA (I) and screening (II)
   The aim of those amendments was ‘to avoid a redundant stage’ in the permitting procedure where it is for sure that either:
   - an EIA will be required (thus, an activity added to the Annx I) or opposite
   - there would not be an EIA required although screening are applied due to being in Ann II.
   Just some examples: for the former, (i) wind parks included in the Annex I if more than 15 turbines or 15 MW planned; (ii) wind parks included in the Annex II (screening mandatory) if 5 turbines or 5 MW or above 30 m or closer to 500m to residential houses.
   For the latter: e.g. (i) we had quite far reaching formulation that any new planned activity within a protected area of water extraction place has to go through screening procedure. So, now it is more restrictively defined; (ii) some thresholds added to exclude very small, insignificant activities (this is always tricky issue taking into account case law of CJEU but still many Member States try).
2) **New stage within EIA procedure** – an obligation for a developer to consult a municipality of particular area where a development is planned.
   In fact, those changes were result of heavy lobby (from developer, investor representatives side) in order to get into the EIA procedure a decision of a municipality that the activity are supported to be developed in particular area. The willingness was to make such decision binding to other authorities and to municipality itself later in the EIA procedure in order to reduce a risk that a development would be refused due to some political grounds e.g. negative opinion of the public or ‘unfit’ into the overall development strategy of particular municipality.
   After intensive discussions within the drafting group as well in the Committee of the Parliament, there is only ‘*consultative*’ opinion of a municipality introduced, which a developer must obtain *prior* an EIA procedure (adding up to 15 days to the process, new Article 14). It has no binding effect on the approval of the development after an EIA, incl. public consultations stage. In the result there is additional stage (up to 15 days long) for a developer within the permitting procedure to consult municipality. However, in case of negative opinion, presumably a developer wouldn’t start an expensive EIA procedure.
3) More detailed regulation aimed **to avoid ‘salami slicing’** possibilities.

Waste

Amendments to the Waste Management Law (during 2014 and 2015)

This is the law that we tend to amend quite often…(the same seems to be true for the EU level).

Main points from the recent amendments:

1) A little bit delayed implementation of some remaining requirements of Directive 2012/19 on e-waste – in fact, finally agreed upon after infringement procedure started by COM)

   That delayed implementation was about requirements for t**ransboundary movements of e-waste**; a difficult part that is now transposed is on 'waste-goods-waste' issue: how to classify, who are responsible and how to divide the Tax authority and the State Environmental Service involvement and responsibility therein.

   Some other provisions on e-waste, e.g. to improve possibilities for the residents to take part in separate collection; defined procedures for retailors of electric and electronic equipment to collect that equipment from the users free of charge

2) **New permit introduced** – for digging up of closed and, according to EU requirements, re-cultivated waste dumpsites.

   There were problems reported on activities in those dumpsites (as 5 years prohibition expired) and no regulation or any authorisation was in place/required for such activities. Thus, a new permitting procedure introduced with specific, "heavy" requirements. It seems it is introduced with an aim rather not to authorise or if one is willing to make activities in that area then very strict requirements need to be fulfilled.

3) **Obligation introduced for waste holders** (producers) to conclude an agreement within 2 months after a municipality has announced which waste management company has been chosen for particular area according to a public procurement procedure (each 5 years, that is now extended to 7 years when a new procurement needs to be launched).

RES (feed-in-tariffs)

As reported in 2014[3] there were the decision suspending adoption of any new permission to get 'feed-in-tariff' from 2013 to 2016 as regards new projects aimed to use renewables. By 2016 it was supposed to adopt a new regulation on Renewables. The draft is pending in the Parliament since 2011 but it seems there is no ambition to adopt it anymore. Additionally, since 2014 there was a tax[4] applied to energy production from renewables.

Some comments on this from 2016 perspective:

- very cumbersome and unclear system on support schemes, which are regulated in different laws, enactments of the Government etc., and no common framework law has been adopted.
- there are no any new RES projects since 2013 (i.e. since feed-in tariffs suspended)

[3] Under the responses from LV on questionnaire.

[4] 5 %, 10% or 15 % depending on type of renewable used

- the system of ‘feed-in-tariffs’ cancelled except for those already authorised prior to suspension. So, for existing activities temporary feed-in-tariff up to 2036 (depending on stage and type of RES)

Case law on RES - Constitutional Court
Both decisions were challenged before the Constitution Court:

1. **The cancellation of licencing was questioned before the Constitutional Court** by the Administrative Supreme Court (ASC) due to a case before it (No. 420442812). In that case an applicant required issuing a positive administrative act to allow *increase* of electricity produced from RES using feed-in-tariff conditions already received at the first stage for its project. This increase were denied due to the Government decision that has suspended the tariff (mentioned above)
   The Constitutional Court holds that the decision of Government is valid law (is in compliance with the Constitution). Judgment of 14.10.2015. in case No. 2015-05-03.
2. **The taxes on electricity produced** from RES were appealed by 90 applicants (companies – producers) The Constitutional Court uphold the tax as compliant with the Constitution i.e. not breaching property rights (Art 105 of the Constitution) applying the proportionality test in its assessment.

Natural Resources Tax Law (NRT)

Amendments (came into force in the end of 2014) were connected with one of the politically most difficult questions – increase of NRT needed already for a while (from the environmental point of view)

Thus, finally agreed, it is providing **increase of the tax rates** (aprox. by 25%) to the following:

- use of the natural resources,

- domestic waste disposal in landfills, (The increase on disposal rates was the most difficult part of agreement declined so far with the main argument that in result of this increase majority of waste would be dumped into the forest),

- for certain emission of pollutants in water and air,

- for the product packaging and environmentally hazardous goods.

Additionally, **a new tax** was introduced for small hydro power stations (HPS). The tax: 0,00853 EUR/per 100 km3 water going through HPS.

This tax has been challenged before the Constitutional Court by owners of small (up to 2 MW) HPS.

Case law on new tax (NRT)

Judgment of 25.03.2015. of the Constitutional Court in case No. 2014-11-0103

The applicants challenged both a fact that tax has to be paid as well as calculation methods.

The Court upheld the tax as not breaching Article 105 of the Constitution (property rights). The assessment was made applying the proportionality test. As regards calculation methods the Court pointed out that the state has wide discretion as regards defining and applying the tax policy. Thus, the court limited its scope of review assessing whether that tax law is not 'disproportional burden on tax payers' and whether it is in compliance with the general principles of law.

Conclusion was that the law introducing the tax complies with the Constitution.

Case law of the Administrative Supreme Court (further – ASC)

1. **Case No. SKA-38/2016**, (decision of 23.03.2016.): dispute about enforcement of the decision to remove illegally dumped waste

   By case SKA-38/2016 the ASC refused to accept a defendant complain and thus, the Appellate Court judgment of 01.07.2014. came into force **on NGOs right to request and a public authority duty to act** in case of violation of the environmental law; reference to the Aarhus Convention

This case was specific with "two rounds" of three court's levels, thus, after 13 years resulting in 'victory' for the environmental NGOs requesting to remove a waste illegally dumped next to the public lake (later also appearing into the lake). I am not so sure that it could be claimed 'the victory' for the environment as well taking into account the timing of the case pending since the first request to act in 2003. However, there are some important points to note from Court's conclusions:

- ✓ The society rights to live in such environment that is not illegally changed – is protected by Article 115 of the Constitution (providing 'every one right to live in benevolent environment')
- ✓ The NGO has a right to request to the public authority, whose duty is to prevent the breach of the environmental law, to ensure that its act is implemented. The Court referred to the Aarhus Convention as the basis for such right.

Shortly about the case: from the outset there was a request from environmental NGO to municipality (as the land owner) to remove illegally dumped waste from the area of the public lake. In the process of long procedures, the competent authority (State Environmental Service) has issued an order obliging the municipality to remove illegal waste. However, the implementation of the order was fulfilled only partly as not *all* waste was removed. Thus, the NGO requested through the court that all waste is removed.

As in that time there was no law authorising a third person to request implementation of a negative (to addressee) administrative act, the Court stated that **the Aarhus Convention is sufficient ground to acknowledge a person's right to request** a public authority, whose duty is to prevent particular breach of the environmental law, to act efficiently (in this case to ensure that its order is implemented and all waste is removed).

2. **Case SKA-77/2015** of 29.04.2015. (*Karvas HES*) dispute about building permit (extension) for a small hydropower station (HES)

- ✓ Confirmation of **NGOs right to submit an application in cases of violation of the environmental law by a public authority** – no need to prove existence of subjective right or legal interest.
- ✓ Right to challenge *extension* of the building permit as that decision on extension may have contravened the environmental law. (The building is planned on the river where building of any HES has been prohibited since 2002; however, the original permit has been issued based on conditional exception provided by law of that time.)

3. **Case No. SKA – 22/2015 of 05.03.2015. on building permit** for development of park **in the protected zone** of the coastal dunes of the Baltic Sea.
    - ✓ In the environmental cases there is no need to prove existence of breach to 'subjective rights of a person.'
    - ✓ 'any person' (incl.organisations) may submit application to the court against such act or omission that damages or threat to damage the environment.
    - ✓ Through this broad approach the legislator has emphasised the important and sensitive area where enhanced protection is needed.

4. **Case No. SKA-912/2015 of 18.06.2015. on building permit without detailed plan**
    - ✓ The Court reiterated the broad approach to the public rights to submit application to the court established by the Law on Environmental Protection as exception from the right-based approach embedded in the Administrative Procedural Law (APL) (in some other cases the court referred to that exception stemming from the environmental law as '*actio popularis*)
    - ✓ In the same time the court has pointed out the obligation of an applicant to substantiate a claim demonstrating that the environmental concerns are 'the main basis for the complaint.'

Shortly about the case: the developer requested a reconstruction permit to build hotel instead of existing pension located in the coastal area of the Baltic Sea. The environmental NGO disputed the permit claiming that in reality there is going to be a residential area (submitting some proves) for which elaboration of a detailed plan is a mandatory requirement (and, then public participation as well) *prior* to the building permit. In this case the first instance rejected an application from the environmental NGO as inadmissible. According to that court there was no environmental concerns involved to admit the case without 'subjective rights' breached. The ASC repealed that decision stating that main argument of the claim was based on the violation of law requesting detailed plan and that is too early to conclude that there is no environmental concerns involved as those are assessed during elaboration of detailed plan. The court pointed out that the missing plan prevented also the public from the possibility to be involved in the permitting procedure.

May 2016.