

## AVOSETTA RIGA MEETING

27-28 May 2016

Venue: Riga Graduate School of Law,  
str. Strelnieku 4k2, Riga  
room W20

see on map: <http://www.rgsl.edu.lv/en/contacts/>

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

#### **Introduction**

It seems that in recent years in more than one Member State (MS), initiatives have been taken or are under discussions to speed up and integrate decision-making proceedings in the field of the realization and operation of industrial installations and infrastructure projects<sup>1</sup>. Such initiatives fall within a streamlining trend promoted by the European Union. The present or former planning and permitting procedures are characterized by the business community and by the government, as being too cumbersome and lengthy, obstructing economic investment. One is thus advocating faster decisions, by reviewing planning and permitting procedures, by cutting delays, reducing opportunities for public participation, expert opinions and review procedures. From time to time one tries to secure the realization of projects through *Sondergesetze*, Hybrid Bills and alike (see e.g. the *Boxus* case C-128/09). On the other hand there are voices arguing that scattered decision making procedures, with various planning and permitting procedures to go through, each with a somewhat limited scope, do not warrant an integrated and balanced assessment and regulation of the overall environmental aspects – in a broad sense – of those projects. Integration would be needed to reach better decisions for the environment. This can also be a driver to review this type of legislation, which is of utmost importance for day by day environmental policy. Striking is that it is very difficult to find reliable information – in English–on what is really going on in the various MS in this respect, although in political discourse one refers from time to time to examples to follow, and which are difficult to check<sup>2</sup>. The objective of the meeting is to take stock of these developments and to assess them in a critical way.

---

<sup>1</sup> See e.g. G. ROLLER, "Quality and speed of administrative decision-making proceedings: tension or balance?" *Elni review* 2014/1, 51-57.

<sup>2</sup> E.g. during last year's election campaign in Belgium a leader of a conservative liberal party, was advocating the general introduction of the "*lexsilenciopositivo*" in environmental and planning law, that would in her mind solve all problems of delays, and would have already "FANTASTIC!" results in The Netherlands, ignoring, we suppose, the case law of the ECJ (see e.g. ECJ, 14 June 2001, C-230/00, *Commission v Belgium*, ECLI:EU:C:2001:341) and the Belgian Constitutional Court (see e.g. Constitutional Court, n° 78/2001, 7 June 2001). In Latvia, e.g. during discussions on amendments of the Construction Law, the Investors Board argued

The questionnaire is arranged to trigger some baseline information on permit procedures in the first part. The focus should be on complications caused by a plurality of permits, substantive criteria, competences and procedures that may give rise to quest for integration and speeding up. In the second part moves towards integration and speeding up shall be explained and evaluated. You are free to already deal with content of the second part in the first and concentrate on evaluations in the second.

**Please take into account that our aim is not to collect tiresome material on differences of national procedures but to focus on integration and speeding up. This means that your answers can be short and condensed without detailed description of procedures as regards the first part of questionnaire.** We appreciate that some questions may make more sense in some jurisdictions than others.

The questions are drafted rather taking perspective of Member States however, it is clear that the developments towards integration and speeding up have heavily been influenced by EU legislation. There is also a new genuine EU endeavour in that direction called *REFIT, Smart Regulation* as well some other initiatives like *MakeItWork* etc. It would be worth to include this into our discussion based on a report structured along the lines of the questionnaire.

**We would like to invite members to express your interest in drafting such report.** It would be useful to receive information about your willingness/readiness **by the end of November.**

As always we are not expecting you to spend an excessive time on the questionnaire, and ideally it could follow those suggestions:

- Please provide answers straightforward in order to enable us to make comparison
- Identify trends, drawbacks and advances
- Try to include leading cases
- There is no need to include references to all legislation that regulates the issue
- Suggested length of paper – not more than **10 pages**
- Deadline for submission – **10<sup>th</sup> of May, 2016** which we kindly ask to observe in order to allow us as well as all participants to make comparison and prepare for discussions.
- There is no special direction on styling; however, Harvard citation (author, year, page in brackets in the text, bibliography at the end) would be preferred.

## QUESTIONS

---

that we need to substantially limit public participation rights during the permitting process as nowhere else in Europa there would be so broad public rights . That argument was sufficient for the politicians to change that Law in 2013.

## A. Baseline information

### I. Industrial Installations<sup>3</sup>

#### 1. Forms and scope of permits

*In broad terms, what are the forms and scope of permits<sup>4</sup> 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<sup>5</sup>
- construction and operating permit,
- stepwise permitting,
- other types of permit (nature, water extraction...)

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

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?

#### 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).

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

---

<sup>3</sup>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 *natura2000* site, etc..)

<sup>4</sup> Or similar acts such as mandatory favourable opinions.

<sup>5</sup> 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.

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)?
- 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)?
- 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?
- 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?
- 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?
- 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?

## **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.

*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.

## **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?

## **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.<sup>6</sup>

#### **D. Further Comments**

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

---

<sup>6</sup> 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.