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The System of the Environmental Permissions for Planning and Operating

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Abstract

The article offers a bird`s-eye view on the system of different environmental permits for the phase of planning, the phase of construction, and for the phase of operating. It considers a combination of nature conservation legislation and environmental protection rules, meaning that in certain cases a combination between both rules shall take place. Next, the article emphasises the role of the public (concerned), its position in the procedures, explaining the triangle among investor, the State and the public. It takes into account also, that certain procedures can be accelerated; this is true for cases where the State infrastructure is planned and constructed. The article does not deal with specific issues in deep detail, it rather uses the bird`s-eye view approach in order to clarify the system of environmental and nature protection permissions.

Povzetek

Članek podaja ptičji pogled na sistem različnih okoljevarstvenih dovoljenj za fazo načrtovanja, gradnje in za obratovanje. Upošteva tudi kombiniranje postopkov za pridobitev teh dovoljenj s pravili varstva okolja in pravili ohranjanja narave; v nekaterih primerih je namreč potrebno upoštevati oba sklopa pravil. Nadalje, članek trikotnik med investitorji, državo in (zadevno) javnostjo. Upošteva tudi, da so lahko nekateri postopki pospešeni; kot primer navajam državne infrastrukturne projekte. Članek se ne ukvarja s specifičnimi vprašanji in jih globlje ne analizira, ampak nudi ptičji pogled z namenom, da se prikaže sam sistem poudarja vlogo javnosti, njen položaj v postopkih, pri tem pa pojasnjuje okoljevarstvenih in naravo varstvenih dovoljenj.

Key words:

Environmental protection permits, Environmental protection consents, Strategic environmental assessments, Environmental impact assessments, Building permit, Operating permit, Aarhus convention, NGO, public concerned

Ključne besede: okoljevarstveno dovoljenje, okoljevarstveno soglasje, celovita presoja vplivov na okolje, gradbeno dovoljenje, uporabno dovoljenje, Aarhus konvencija, nevladne organizacije, zainteresirana javnost.

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1. Introduction

This article would like to offer, in broad terms, an overview regarding procedures and a 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). It deals with planning permission and building permit, further on the environmental protection permit, and other types of permits (especially to protect nature). When entangled with different environmental permits,

one can be quite lost in their different types, procedures that apply, interconnection of the procedures, the role of the public etc.

Permitting constructions on the one hand and permitting the operation of the industrial installations on the other hand are subject to different procedures, consents and permits. They are all (mostly) regulated under the *Environmental Protection Act*.¹ The most central procedure is the one for obtaining the *building permit*, which includes, among others, *Environmental Impact Assessment (EIA)* and the procedure to obtain *environmental protection consent (EPC)* and before the commencement of construction; also the *environmental protection permit (EPP)*.

Therefore, within the *building permit* (when it is necessary²) procedure some other (sub)procedures are necessary and very much interconnected. As noted, with respect to the environment, two crucial permits are necessary: the first one is the ***environmental protection consent - EPC*** (Art. 57 EPA). Importantly, the *EPC* procedure includes the *Environmental Impact Assessment (EIA)* procedure.³

The second permit is the ***environmental protection permit – EPP*** (*which shall be obtained before the commencement of the construction; Arts. 69, 82 and 86 EPA*).⁴ It is differently regulated for different kinds of installations and activities (Art. 68 EPP for *IPPC installations*, Art. 82 for *other installations, which emit emission and these emissions are legally regulated (limited)* and Art. 86 for *plants; i.e. Seveso permit*). All permit procedures (for the *EPC* and for different *EPP*) include the transparency and public participation procedure.

Moreover, alongside the *EPC*, a bunch of other procedures are necessary to obtain the concordances of different public service providers; namely, it is necessary to get the concordances that future industrial installation can be connected to public service infrastructure, such as electricity infrastructure, drinking water infrastructure, sewage infrastructure, etc. and to define conditions in all these aspects. All these concordances shall be applied for within the

¹ OJ of the RS, No. 41/2004 with later changes; hereinafter EPA.

² Namely, the above mentioned permits and consents are necessary also in cases where no building permit is obliged (for instance in case that certain activity with negative environmental effects does not involve construction at all).

³ The procedure for the *EPC* (as mentioned above it includes *EIA*) is separated from the procedure for obtaining the *building permit* and it is conducted by the Ministry for the environment. This procedure is based on the *environmental impact report*. Once the *EPC* is awarded, the procedure for *building permit* can start (or to be continued if started without it) Art. 63 of the EPA.

⁴ This is also important – the main reason for this rule is that a construction (whatever facility) will, at the end of the day, be able to operate. Namely, if the facility is constructed, but it cannot obtain the *EPP*, it will not operate, but the sole encumbrance of the environment has already occurred (the construction as such is a one-way step and changes the surface of the environment). In order to prevent even the construction as such, in case that it will not be operable, it is prescribed that *EPP* is necessary after the *building permit* is obtained, but prior the construction.

building permit procedure. This means that the building permit procedure is a kind of umbrella procedure, combining several other sub- or special procedures.

In general, procedures to obtain the building permit (which includes the *EPC* and *EIA*) are prescribed for the phase prior to the construction. And this is not all; even before the commencement of the construction activities, another type of procedure is necessary. This procedure aims to obtain the *permit to use* the industrial installation (but not from technical and construction point of view, but from the environmental point of view). Within this permit the *EPP* (okoljevarstveno dovoljenje, i.e. OVD in Slovene) shall be issued. The *EPP* is a legal notion that comprises different kinds of environmental protection permits, depending on the facility and activities. As noted above, the main three are:

- EPP for IPPC installations (nowadays installations from Industrial Emission Directive - IE);
- EPP installations, which emit emission and these emissions are legally regulated (this permit is subject to different *lex specialis* regulations, like emission from incineration plants; emission from sewage waters, emissions from other different installations like waste treatment etc). A list of these acts is a long one and comprehensive.
- Seveso EPP to prevent industrial accidents with dangerous substances.

The planning and construction phase on the one hand and operating on the other are separated and, of course, a permit to build is no guarantee that the facility will also obtain any of the EPP. This is why, the EPP needs to be obtained prior to any commencement of construction of the facility (otherwise the construction might be finished, but it might not operate due to the lack of the EPP; it means that the environment is changed, built-up, but in vain since the facility cannot operate. In order to avoid such a case, the EPP needs to be issued before the commencement of the construction activities).⁵

2. The plurality of permits

One can assess that a plurality of permits is a fact in Slovenian legal system, but there is a sort of coordination, i.e. mechanism between them. The two phases (planning / building on the one hand and operating on the other hand) are to be distinguished. In the initial phase (planning and construction) the SEA and EIA, respectively, are necessary (together with public participation). Even before the commencement of the construction activities the EPP needs also to be obtained. After the construction is finished the operator (the investor) needs the *operation permit (OP)*. These two phases are separated but to some extent interconnected. Namely, in the case of the EPP procedures, the EIA prepared in the phase of the EPC, is a part of documentation as well (Art. 70, par. 2 EPA).

⁵ See also the fn 6 above.

It is also true that certain permits are delivered by different authorities, also on a different level (we differ between municipality and state level). The EPC is such an example since only the *Ministry for the environment* is competent to decide upon it. On the other hand, the *building permit* can be issued by the same ministry, also by its individual territorial units which are based in different parts of the country (basically in every town). This is not true in cases where certain industrial installations are of state importance, like different infrastructures, for instance waste water treatment plants, incineration plants etc. In such cases the Ministry for the environment itself is competent to issue the building permit (Art. 7 of the *Construction Act*⁶).

In any case, where EIA is necessary, public participation is mandatory. The EIA is the central legal institute that makes it possible to integrate assessment and future control of the environmental impacts in the broadest sense.

The EIA shall take these into account (Art. 51 EPA). With respect to the EPPs (as noted above, Slovenian rules provide several of them, but the main three groups are: IPPC/IE EPP, Seveso EPP and different emissions EPP) it is possible to combine the issuance of all EPPs in only one procedure. Art. 93 EPA foresees this option. When the plant or part of the plant referred to in Article 86 (Seveso EPP) is at the same time the installation referred to in Article 68 (IPPC/IE EPP), or any other installation referred to in Article 82 (emissions EPP), the compliance with the requirements for issuing the EPP for the plant may be established on the request of the investor or the operator of the plant, in the procedure for issuing the EPP for that installation (as a Seveso EPP). In such a case, the application for obtaining umbrella EPP shall include additional documents which relate to the Seveso permit conditions. Also in this integrated procedure, public participation needs to be assured (the condition is part of the Seveso EPP procedure).

3. Integration of permits procedures

The integration of different types of permitting is basically an ongoing issue. Several steps have been made so far. The biggest one was conducted in 2010, when the “*Siting of Spatial Arrangements of National Importance Act*”⁷ was adopted.⁸ This act had foreseen that the

⁶ Gradbeni zakon, in English Construction Act, OJ RS, No. 61/2017, 72/2017, hereinafter: CA.

⁷ OJ of the RS, No 80/10, 106/10, 57/12, hereinafter SSANIA.

⁸ The plurality and integration of permits’ procedures have been deeply discussed by the private sector, i.e. investors, especially in the cases of energy installations and infrastructure. Namely, on the one hand, Slovenia accepted a string commitment (in 2009) to the EU to use renewable energy resources (20% until 2020), but actually it lacks appropriate infrastructure. To accelerate procedures, especially those relating to the environmental conditions and planning, it was necessary to combine certain procedures. The level of integration is quite high, however, but not as much as the private sector would like it. For instance, private investors would also like to have faster (short or simple) procedures for installations, that are like installations already installed anywhere in

strategic environmental assessment (SEA) could have been conducted together with EIA, simultaneously. This was, however, true only for infrastructure projects of state relevance. It did not matter if the investor is a private party (for instance a concessionaire). For certain projects and installations which were part of state public infrastructure (like roads, highways, energy infrastructure, infrastructure of the environmental protection, waste water treatment plants, railway infrastructure, etc), was also possible to combine SEA and EIA. This, however, did not relate to industrial installations, even though that state would be the investor. As noted, these rules had referred only to public infrastructure of a state importance.

The law was abandoned with the Spatial Management Act (Art. 299).⁹ The system current in force also allows certain simplification of a plurality of permits, but not that SEA and EIA would coexist in the same procedure. These two procedures are now separated, the first being necessary for general spatial planning acts on the state and the local level, and the second for the assessment of an individual project, which can end with the EPC.

Also, the integration of procedures is possible in a case that concerns the *nature conservation* (which is regulated in the *Nature Conservation Act*¹⁰). The *Assessment of the acceptability of plans* (i.e. it is a kind of SEA in the nature, not in the environment) is to be conducted within the SEA procedure (Art. 101¹¹). This means that different procedures (SEA regarding the environment and SEA regarding nature conservation) are combined in the single one.

It is also possible to combine in the same procedure the EIA, and the *nature protection opinion* (Art. 101e of the *Nature Conservation Act*¹²); namely the *Institute of the Republic of Slovenia*

Slovenia, meaning that an already issued building permit, including the EPP, would be a kind of proof or evidence that the similar installation can also be built. This is, so far, not the case. On the other hand, the problem is also at the very beginning of the planning chain – i.e. every plan needs to be in line with the general spatial acts (plans) of a certain municipality, and confirmed by the state (the Government). Municipalities are rather late in adopting general spatial acts and these acts are also subject to political decisions, of SEA and public participation. The public frequently contravenes the plans and the consequence is a delay in building permit procedure, including the EIA-procedure.

⁹ Spatial Management Act (ZUreP-2), OJ of the RS No 61/2017, hereinafter SPA-2.

¹⁰ OJ of the RS, Nr. 56/1999 with later changes.

¹¹ Art. 101, par. 2 reads: “An assessment of the acceptability of the effects or consequences of a plan on the area referred to in the preceding paragraph shall be delivered by the Ministry within the procedure for comprehensive environmental impact assessment. The procedure shall be carried out in accordance with the provisions of the Act regulating environmental protection, unless otherwise provided by this Act.”

¹² Art. 101e, par. 2 reads: »The impacts and consequences of the activities affecting nature [...] for which an environmental impact assessment must be carried out in accordance with the provisions of the Act regulating environmental protection and this Act shall be identified in the procedure for environmental impact assessment. The procedure shall be conducted in accordance with the provisions of the Act regulating environmental protection, unless otherwise provided by this Act.»

for Nature Conservation (IRSNC¹³) prepares opinions, taking into account nature conservation conditions and the Ministry for the Environment needs to take the opinion into account.

The main aspect of these accelerated procedures is the avoidance of duplication and similar procedures, especially SEA and EIA (although they are, of course, different in their objects, goals, comprehensiveness etc). SEA is the one that especially suffers.¹⁴ Public participation in this regard is not neglected or disregarded. Basically, public participation is not effected in this respect, although it is in the sphere of public participation where the projects are facing delays.

The integration of procedures is necessary. It is important that IRSNC retained its position and it is still competent to give opinions from the nature conservation viewpoints. Also, the expropriations, with which we are not dealing in detail, are within the limits of the principle of proportionality. Namely, it was true that individuals hesitated to sell the land to the investor, especially when the investor was the state. To a certain extent blackmailing was at stake. Individuals were aware that when the state is ready to make them a better offer, the more urgent it is to start with the construction of certain project. This was especially true in the case of highways constructions. On the other hand, the expropriations procedures may last a long time, especially when dispute reaches the courts. According to SSANIA the court procedure cannot prevent the full effect of the expropriation as a proof to right to conduct construction.

4. Procedural overview

Let us imagine that waste disposal installation 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) needs permits to be built and to operate. The waste disposal installation can only be built in an area which is foreseen for such projects by general act of the municipality and approved by the state (spatial plans).¹⁵ To include such an installation into spatial plans, the SEA needs to be performed. To check whether this is indeed the condition, the investor shall use a special Governmental decree¹⁶ - this decree mandates directly which facilities needs to undergo the EIA. The decree

¹³ RSNC is a professional national (public) institution. It is not a political body. In compliance with the authorizations allocated to it by Slovene legislation or, to be more precise, by the Law on the Conservation of Nature (Nature Conservation Act), it cares for the conservation of Slovene nature, with special attention given to the most valuable nature conservation areas in the country.

¹⁴ Biotehniška fakulteta UL, Oddelek za krajinsko arhitekturo v sodelovanju z Institut "Jožef Stefan" Aquarius ekološki inženiring d.o.o. Ljubljana Inštitut za neionizirna sevanja Raziskovalni projekt v okviru ciljnega raziskovalnega programa "Konkurenčnost Slovenije 2006-2013": Uporaba in učinkovitost celovite presoje vplivov na okolje ter presoja vplivov na človekovo zdravje, Ljubljana, Oktober 2016, zaključno poročilo.

¹⁵ In case of the infrastructure projects of state's importance, the strategic plan is prepared on state level. See in this respect Art. 50 of ZUreP-2.

¹⁶ Decree on environmental encroachments that require environmental impact assessments, OJ of the RS, No. 51/14, 57/15 and 26/17).

implements the EIA Directive 2011/92/EU. If the facility is listed in the decree, the SEA also needs to be performed. This link is imposed in Art. 40, par. 2 of the EPA, i.e. if the EIA is necessary, then also the SEA will have to be performed (but in a reverse order - first the SEA, then the EIA). The SEA procedure is conducted by the Ministry for the environment, whereby the procedure is transparent and 30 days period is given to NGOs¹⁷ for comments to the environmental report.¹⁸ The same is true for all individuals. For SEA the public is not divided to the general public and the public concerned. Namely, the public concerned shall be defined in the *Comprehensive Assessment of Environmental Impact* which forms a basis for the EIA procedure that follows the SEA procedure.¹⁹ The public concerned under EIA procedure is the public situated within the affected area of the future installation (these are individuals that are living or having property within the affected area).²⁰

Once the SEA and the EIA, together with the *nature protection opinion* by IRSNC (in case of spatial planning/project assessment in the area of nature conservation, like also Natura 2000), are adopted, the procedure continues in order for the *building permit* to be issued (in where necessary). It is quite difficult to predict and to estimate the time needed for the whole procedure. SEA also explores different options; actually, the spatial plans are requested to explore options (Art. 87 ZUreP-2) and hence also the SEA is affected with different options. Also the public may request different options when commenting the draft plans.²¹ The public participation is of huge importance also in the dimension of time. It might be that the public not only delay the procedures, but it can also stop it. NGOs and the public concerned can also use different legal remedies. In the event of an appeal, the case is brought into the Ministry (into the dispute procedure) and further on (with the legal suit) to the administrative court-dispute procedure at the Administrative Court. The latter is in principle one stage procedure but might also be a two-stage procedure if a legal remedy to the Supreme Court is accepted (for instance if the case at hand relates to an important legal question not yet solved by the jurisprudence). It takes approximately 1,5 years, but in more complex cases two years for the case to be decided at the first instance.

The competent authority to issue a *building permit* is the Ministry for the environment and spatial planning. However, this ministry has so- called *administrative units* in every town across Slovenia; these administrative units are competent to decide on building permits. Exceptionally, when a building permit shall be issued for a construction of state importance, the ministry itself is the competent authority from the very beginning (Art. 7 CA).

¹⁷ Those NGOs, having the decision of the authority that they are acting in the public interest; i.e. public participation is not possible for every single NGO.

¹⁸ See Arts. 42 and 43 of the EPA.

¹⁹ See Art. 54, par. 2, point 6 in combination with Art. 58, par. 2, point 3. These individuals are parties in the procedure according to Art. 64. par. 2 The same is true for NGOs with special status (active in the public interest).

²⁰ See Art. 64, par. 2.

²¹ See Art. 88 ZUreP-2.

On the other hand, the *environmental protection permits* – EPP and the *environmental protection consents* – EPC are to be issued by the *Agency for environmental protection* (Agencija za okolje RS, ARSO). This agency is an administrative body within the ministry, competent for environmental decision-making regarding individual acts, such as the *environmental permits/consents*. If the future installation produces also impacts on nature, the *assessment of the acceptability of plans /projects* will also be necessary. Here, IRSNC, which is an independent public institute, issues an opinion on whether the project's effects are suitable also from the viewpoint of nature protection and conservation. This opinion is used and assessed in the procedure for the EPC.

5. EIA

The EIA is not a fully-integrated permitting procedure. It is a procedure which is conducted by the Ministry, apart from the procedure to obtain a building permit (where necessary).²² It starts based on the environmental report, prepared by the investor.²³

Which installations are subject to EIA is defined by special decree, adopted by the Government (mentioned above²⁴). There is no difference between large, intermediate or small installations; however, the margin is sent to a lower level, meaning that anything that is above the margin, or above the regulated level, is subject to EIA. However, there might be a preliminary procedure conducted (Art. 3 of the mentioned decree) aiming to assess whether a certain plant installation shall or shall not be subject to the EIA. This means that notification to the relevant public authority (Ministry for the environment), will only be sufficient in cases that this preliminary procedure produces positive results, in a sense that EIA is not necessary. Namely, according to 51.a EPA, the investor can ask the Ministry for the environmental and spatial planning for the preliminary opinion whether EIA shall or shall not be conducted.²⁵ An answer to this request will be given into the preliminary procedure conducted by the ministry. Actually, this is a kind of exemption, while the ministry is generally not seen as an opinion maker, but as a decision maker. However, such opinion as mentioned is foreseen by the EPA itself and is binding in its nature. It helps the investor to find out which procedures will be applicable for his plans and

²² The procedure for issuing the building permit very much depends on the EIA procedure. Only once the EIA is positive and final, where no regular legal remedies are possible, can the procedure for issuing the building permit continue (Art. 53 / 62 EPA).

²³ Art. 41 EPA defines: »The producer of the plan for which an environmental impact assessment is to be carried out has to produce an environmental report before the environmental impact is assessed. The report has to define, describe and evaluate the environmental impact of the plan and possible alternatives while taking into account the goals and geographic characteristics of the area to which the plan pertains«.

In addition, Art. 54 of EPA defines the content of the environmental report.

²⁴ Above f.n. 18.

²⁵ This rule is further on regulated in detail in the Regulation on environmental encroachments that require environmental impact assessments, OJ RS, No. 51/14 in 57/15). See Art. 3

corollary whether the public will be a part of these procedures and who can be a party in the procedure. The EIA, if mandated, opens the door for the public concerned and NGOs.

Therefore, once it is decided that EIA is necessary, public participation will be mandatory. It is not foreseen that the public is part of the decision-making procedure if the answer was negative, i.e. if EIA is not necessary. The public is given the possibility to be involved in the decision-making procedure (in the procedure to issue the environmental protection consent – EPC and the environmental protection permit - EPP). The public is involved during the EIA procedure. A period of 30 days is given to the public to express remarks and opinions.²⁶ The base for this is the plan, i.e. the future project; the base is not a draft decision of the authorities. Notice given to the public shall be published in the media and on the internet. There is a condition that the media shall take into account the usual communication (i.e. the notice shall not be published in a newspaper which is not usually read in certain areas).

6. Time frames and legal remedies

According to the *General Administrative Procedure Act*,²⁷ the decision of the administrative authorities shall be issued in 60 days, and this time period starts to run once the application is completed. However, the EPA specifically defines time frames; i.e. three months for the *EPC* to be issued (Art. 61, par. 2). The same is true for the *EPP* (Art. 84 for installations with emissions to air, soil, water, Art. 89 for Seveso permit). Only IPPC/IE *EPP* is to be issued in six months. With a respect to the *EPC* (EIA) the authorities can use 21 days for inter-ministry opinions, and 60 days to decide whether EIA is at all necessary, 15 days for assessment whether EIA and the application for building permit are congruent, 30 days for public to give opinions in EIA decision, etc.

Legal remedies are different for building permit decisions on the one hand and on the other hand for EIA decisions (reflected in the *EPC* and also in the *EPP*). An appeal against the building permit is possible to the Ministry itself, except in cases of installations of state importance where the ministry itself issues a decision; (in such a case a lawsuit in administrative dispute is possible to the Administrative court).

Against the decisions on permitting (the *EPC* and also the *EPP*) a complaint is possible to the Ministry for the environment and further on, against the decision of the Ministry the lawsuit is possible at the Administrative court (administrative dispute can commence in 30 days' time from the day the party is served). NGOs do have *locus standi* in these cases. And, it has to be stressed that not all NGOs can have *locus standi*, but only those that have a special decision by the authorities, that they are acting in the public interest (Art. 152 EPA). These NGOs can also

²⁶ See Art. 58 EPA.

²⁷ OJ of the RS, No 80/1999 with later changes.

request the court to apply judgement of the EU Court of Justice (C-263/08)²⁸ under which a participation in the decision-making procedure has no effect on the conditions for access to the review procedure, meaning that it is not obligatory for the NGO to be a party in the administrative procedure in order to be a party in the administrative dispute in front of the Administrative court.²⁹

Individuals can be party to the administrative appeal and can also file the lawsuit at the Administrative court only if they are party to the administrative procedures. This means only those individuals who are living or have property within the affected area (the public concerned) of the future planned installation (Art. 73 EPA). If the time frames for a decision-making are not respected *lex silentio positivo* is not the case. The action for inactivity is only possible. The effect of the inactivity is a negative one, meaning that the party can lodge the legal remedies as in the case when a permit is rejected. *Directive on services on the internal market*, which is implemented in to the *Act on services in the internal market*³⁰ is not helping in this case. Namely, according to Art. 11 of the mentioned act, procedures relating to the environmental permits are not part of the act and not part of the *lex silentio positivo* solution.

7. Conclusions

The above offers a bird's-eye view on the system of different environmental permits for the phase of planning, the phase of construction, and for the phase of operating. The picture is not clear and different particularities make it complicated. The EU law is reflected in the substantive rules. From procedural point of view, the national legal system possesses certain procedural autonomy. The Slovene rules tried to simplify a bit the procedures. The plans and the projects are assessed in the same procedure even if they refer to the nature conservation areas, not to the environment. However, substantive rules differ. In both cases the SEA and EIA procedures are divided as requested by the EU rules. Also, as mandated by EU rules and international obligations, the public, the NGOs and the public concerned are part of the decision-making procedures, including the use of the legal remedies. The article does not deal with specific issues in deep detail, it rather uses the bird's-eye view approach in order to clarify the system of environmental and nature protection permissions. A framework picture of a system of permits and consents one can better understand also the importance of the time management. Namely, obtaining consents and permits is, above all, a procedure that demands

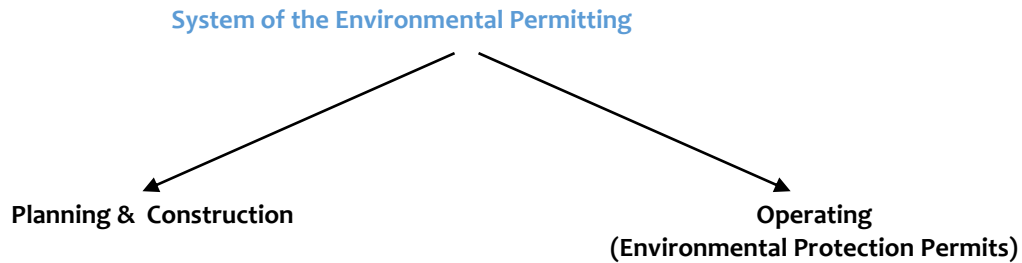
²⁸ ECLI:EU:C:2009:631

²⁹ The EU Court explains in par. 38 two reasons: "First, the right of access to a review procedure within the meaning of Article 10a of Directive 85/337 does not depend on whether the authority which adopted the decision or act at issue is an administrative body or a court of law. Second, participation in an environmental decision-making procedure under the conditions laid down in Articles 2(2) and 6(4) of Directive 85/337 is separate and has a different purpose from a legal review, since the latter may, where appropriate, be directed at a decision adopted at the end of that procedure."

³⁰ OJ RS, No 21/10.

time and involvement of different stakeholders, including the public, which may influence substantially the development of the procedure or even to stop the project.

The main structure of the permits follows from this chart:



- **SEA**

- State Level (General Acts)
- Municipal level (General Acts)
- Is based on the Environmental Report (Art. 41 EPA) and the Nature Protection Guidelines (Art. 97 NCA)
- 30 days for the public consultations
- For Nature Protected Areas: Nature Protection Opinion (Art. 97.6) by IRNSC:
 - Possible mitigation measures if the plan is conditionally acceptable
 - Compensation Measures if the plan is not acceptable
 - In case of negative EPA the project is still possible for imperative reasons in overriding public interest, but mandatory are compensatory measures and EU approval (Art. 101c BCA)

- **EIA (Art. 51 EPA)**

- It is condition precedent for the Env. Protection Consent (EPC)
- Preliminary Procedure: MEP to decide whether EIA is necessary (Art. 51a EPA)
- Investor shall prepare (Art. 53 EPA):
 - Project for planned activity effecting the environment
 - Report on the Environmental Impacts of the planned activity

These are inputs for the EIA

- In case of the protected areas:
 - Opinion of the IRNSC (Art. 101 e NCA)
Opinion might request mitigation measures, compensatory measures (Art. 102 NCA)

- **IPPC Environmental Permit (now IED) (Art. 68 EPA)**

- **Emissions Environmental Permit (Art. 82 EPA)**

- Emissions to:
 - Air (incinerations...)
 - Water (ind. Installations, WWTP...)
 - Soil
 - Asbestos

- **Seveso II Env. Permit (Art. 86 EPA)**

- In case of constructions: Art. 105 NCA foresees two add. Acts: Nature Protection Conditions and Nature Protection Consent issued by MEP, but based on the opinion of IRNSC
- In case no permit is required based on EPA, the NCA foresees:
 - In every case concerns the biodiversity, the protection area the Nature Protection Permit shall be issued (Art. 105.2 NCA)
- **EPC (Art. 57, 58 EPA)**
 - Is based on EIA
 - 30 days for public participation (to public is given an application for EPC, EIA report, draft EPC; opinion of the public and the remarks are possible)
 - MEP includes also other ministries
 - IRNSC can also generate remarks in 21 days (Art. 61 EPA)
 - 3 months for the decision (EPC) (Art. 61 EPA)
 - EPC and its conditions part part of the building permit (Art. 61.6 EPA) and the MEP controls if the project (appli.) for the building permit is in line with EPC (Art. 61 EPA)
 - EPC shall be notified to the public in 30 days after its service to the parties

A planning phase (including construction) is divided from the operating part. The aim of the permits from different or at least not totally the same. Permits from the planning part do not guaranty any permission for the operating part for the facility. However, certain documents from planning are taking into account also permission procedure for operating part. Two accelerate procedure at the planning part, special statute *Siting of Spatial Arrangements of National Importance Act* has been adopted in 2010, combining certain procedures like EPA and EIA. But in no case, the nature protection documents (opinions), and public participation are not limited.

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