

Recent developments 2016 Croatia

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1. Deadlock of regulation

Environmental Protection Act was amended in July 2015 in order to comply with requirements of Directives 2012/18/EU, 2001/42/EZ and 2011/92/EU. On January 1, 2016 the Renewable Energy and High Efficient Cogeneration Act (NN no. 100/15) came into force. Other than that there have been no significant developments in environmental regulation, due to 2015 Croatian parliamentary election that were held at the beginning of November. The elections produced a hung parliament, with the then ruling coalition winning 56 seats, and the main opposition (now ruling coalition) winning 59 seats. It took 76 days of negotiations to form the Government. However, the problems are still occurring within the Parliament. The ruling majority is very often lacking a quorum in order to even be able to pass laws in Parliament. Many important legislation and plans and programmes have not been adopted, and there is a possibility for the European Commission to initiate infringement procedures. For instance, the Commission sent a reasoned opinion to Croatia in April 2016 and urged Croatia to draw up a waste management plan and a waste prevention programme.

2. Central web portal “e-Consultations” for public consultations

One year ago the Croatian government launched a central web portal “e-Consultations” for public consultations (<https://esavjetovanja.gov.hr/>). The web portal enables inclusion of public in the process of preparing laws and regulations before they are sent in the procedure of adoption. The public is consulted on the draft of the proposal of legislative acts, governmental regulations, ministers’ ordinances and the like. In other words, the web portal is used in the process of preparation of laws and regulations which are adopted by Parliament and central governmental bodies and public authorities. This web portal unfortunately is not used for public consultations in the process of preparing decisions (general acts) which are adopted by local and regional government (counties, cities, municipalities). Consultations should last in principle for 30 days, pursuant to the Act on the Right of Access to Information. However, in 88% of cases they the duration is less than 30 days. The final report on consultations (with answers to the received comments) is published on the website. Benefits of the portal are the following:¹ (1) easy access to all open consultations in one place, (2) easier submission of comments to the drafts of legislation and other regulations, (3) more effective analysis of comments received from the public, (4) easier publication of reports on the results of consultation process, (5) greater public control over the quality of the responses of government bodies to comments received from the public, (6) generally improved communication between government bodies and citizens and all interested social groups in the process of creating public policy.

3. Important case law

Judgment of the High Administrative Court, no: UsII-209/15-8

One reporter asked from the Ministry of Economy access to the Agreement that was signed by Ministry of Economy of Republic of Croatia and Spectrum Geo Limited.² The subject matter of the

¹ Governmental Office for Cooperation with NGOs: Report on the implementation of consultations with public concerned in procedures of adopting laws, other regulations and acts in 2015, p. 4-5.

² „Spectrum is a Multi-Client seismic data specialist supplying the global oil and gas industry with class-leading sub-surface imagery on a non-exclusive basis.“ <http://www.spectrumgeo.com/>

Agreement was co-operation for multi-client new seismic data acquisition, processing, interpretation, reprocessing, interpretation, sales and marketing. The approval of 2D seismic data surveys in the internal waters, territorial sea and continental shelf of the Republic of Croatia was given to the Spectrum without public tender. The Ministry of Economy refused the request for providing access to the Agreement. The explanation for refusing access was: (1) protection of entrepreneurial freedom, (2) publication of agreement will jeopardize economic interest and investment climate, (3) Spectrum Geo Ltd has not given consent to the publication of the Agreement, and (4) there is a possibility that Spectrum will claim damages for breaching its rights. The reporter appealed to the Information Commissioner who accepted the appeal and granted the access. However, the Ministry filed an action against the Information Commissioner and the case was decided by the High Administrative Court. The Court ruled in favour of giving access to the Agreement confirming the reasoning from the Information Commissioner's decision: "...agreements concluded by central government bodies with companies in private ownership are the topic of discussion in the media and are of interest to general public. Thus, the denial of the requested information to citizens undermines the transparency of public authorities and creates unnecessary mistrust in their work. The plaintiff who is a central government authority should ensure maximum transparency of its work to the citizens, and especially when concluding contracts with companies in private ownership because the case involves the interest of the Republic of Croatia and all its citizens in relation to financial and other obligations arising out of the contract on the exploitation of hydrocarbons in the Adriatic sea."

Judgments of Administrative Court in Rijeka – no. USI-160/13 and USI-144/14

In case USI-160/13 one environmental NGO filed an action against the Ministry of Environmental and Nature Protection and challenged the legality of the decision on environmental acceptability of the project that was adopted in the EIA procedure. The said NGO did not participate with its comments in the EIA procedure, but nevertheless challenged the decision when it was adopted. The Ministry argued that the NGO does not have a right to file action, since the Environmental Protection Act prescribed that members of public concerned (under certain conditions) have access to courts only if they participated in the administrative procedure in which the act being challenged was adopted. The NGO argued that European Court of Justice in case C-268/08 Djurgården-Lilla determined that participation in the decision-making procedure has no effect on the conditions for access to the review procedure. The Administrative Court ruled that NGO has the right to file an action. It repeated the same in another case USI-144/14. These judgments are important because the Administrative Court did not apply provision of the Environmental Protection Act that is contrary to Article 11 of (EIA) Directive 2011/92/EU (i.e. Article 10a of Directive 85/337).

As mentioned earlier, Environmental Protection Act was amended in July 2015. The requirement of participation in administrative procedures was removed in relation to environmental NGOs registered for at least 2 years, but was kept in relation to other members of public concerned. I participated with my comments during public consultation and argued (with many reasons) that the requirement of participating in the administrative procedure as a condition for filing action has to be removed from the Act in relation to all members of public concerned which in anyway have the right to file action on the basis of the Administrative Disputes Act.³ It is absurd that conditions for access

³ Pursuant to the Administrative Disputes Act the filing of a lawsuit is allowed when a person deems that the individual act violated his/her rights or legal interests. The Administrative Disputes Act does not impose any additional requirement that the plaintiff had to participate in the administrative procedure, except that he/she had to use an administrative appeal if the appeal was allowed.

to administrative courts on the basis of Environmental Protection Act⁴ are worse for possible plaintiffs than they would be if only Administrative Disputes Act applied. My comments were rejected by the Ministry with very short explanation that keeping the requirement of participation in administrative procedures is in compliance with Article 9 of the Aarhus Convention.

4. Status of controversial energy projects (from the last year's report on recent developments in Croatia)

- A) Exploration and production of oil and gas in the Adriatic Sea – Marathon Oil and OMV stopped their plans for the exploration and exploitation of hydrocarbons in the Adriatic, offshore Croatia. In its last session the former Government revoked the licences for these companies and decided that the concessions for the remaining ones would be awarded after the Parliamentary election. However, it seems that the new Croatian Government is against implementing the plans of the former Government.
- B) Ombla hydropower plant – the Ministry of Environmental and Nature Protection accepted the opinion of the of the Croatian State Institute for Nature Protection that significant negative impacts are possible on the population of bats, habitat types “caves and pits closed to the public” and the endemic fish species - popovska gaovica. Therefore, the Ministry decided that it is not possible to exclude a significant negative impact on the conservation objectives and integrity of the ecological network, and the project was dismissed. Such decisions that determine significant negative impact are almost never passed i.e. this is the second one in the case law of the Ministry.
- C) Plomin C coal power plant – The new Minister of Environment and Nature Protection is not inclined to support coal power plant; he stated that it would be not only environmentally, but also economically unsustainable system. But the new Minister of Economy is not rejecting the project. The major problem now with this plant is of financial nature. The previous Government selected as the best partner Japanese company Marubeni. However, there is a disputed clause in the contract with Marubeni according to which Croatian national power company will purchase half of the electricity at a fixed price. The European Commission is now looking whether such an agreement between Croatian national power company and Marubeni is illegal under EU state aid rules.

⁴ Pursuant to the Environmental Protection Act a lawsuit is allowed if it is filed by any natural or legal person who due to location of the project and/or because of the nature and impact of the project may prove that his/her right is violated and if she/he participated in the proceedings as a member of the public concerned.