

J&E Workplan 2007: SEA infrastructure CASE STUDY TEMPLATE

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1. Title of planning case:

“Resolution on National Development Projects for the Period 2007-2023.”

2. Matter of case:

An environmental organisation Umanotera challenged a Resolution on National Development Project for the Period 2007-2023 (hereinafter: Resolution) before the Constitutional court. One of the reasons was that the Resolution did not envisage an SEA procedure in case of accepted plans, whose realisation would certainly have impacts to the environment.

3. Country:

Slovenia

4. Location:

Entire territory of Slovenia.

5. Geographic dimension: (local, regional, national, EU, international - (especially, is the plan (shall it be) part of Trans-European Transport Network?))

National

6. Initiator of SEA/competent authority:

SEA was not carried out.

7. Participants involved:

Because there was no further case, no other participants were involved except Umanotera, but this organisation cooperated with several environmental NGOs.

8. Other interested parties and/or stakeholders:

Environmental NGOs

9. Background facts:

9.1. Account of facts (short summary of the planning case)

Resolution on National Development Project for the Period 2007-2023 was adopted by Slovenian Government on 12 October 2006. The Resolution foresees priority national development projects from 2007 to 2023, which include modernisation of railway system, constructions of power plants etc.

The Resolution was disputed by environmental NGO Umanotera, by filing initiative for the review of constitutionality.

The initial problem of this Resolution was that it was accepted by a non-competent authority – Resolution is a general legal act, for the acceptance of which the competent body is the National Assembly of the Republic of Slovenia.

Another problem of this document is that it is a set of plans for which SEA should and has to be done. However, because the Resolution was accepted by the Government, no SEA procedure has been done for the projects included in the Resolution.

9.2. Description of the project and its main environmental impacts

9.2.1. General description of the project

(*kind of the plan, its main goal, basic proportions, land-use requirements, etc.*)

The Resolution is a set of projects, which was accepted by the Slovenian government on the basis of the Slovenia's development strategy¹ (hereinafter: SDS), accepted on 23 June 2005.² The Resolution is very specific in its content and presents a very concrete plan of the projects. That is the main reason for the possible danger and worsening of the impacts to the environment.

The Resolution states key development and investment projects, in which Slovenia as a state will participate as well. The purpose or the main goal of the Resolution is to provide faster achievement of the SDS³ and National Development Programme⁴ (hereinafter: NDP) goals by clearly setting out priority national development projects from 2007 to 2023.

In the long run, the Resolutions goal is to create number of development synergies both at the national and also on the regional and local level. It will also link the public with the private (establishment of the public-private partnerships) and thus create conditions for the long-term implementation of development strategies.

According to the Article 3 and 4 of the *Decree on the categories of activities for which an environmental impact assessment is mandatory*⁵ which was accepted on the basis of Article 51 of Slovenian *Environmental Protection Act*⁶ (hereinafter: ZVO-1), SEA procedure would be obligatory for the following projects:

- artificial island in the sea;
- sustainable mobility;
- modernisation of railway system;
- modernisation of state road system;
- additional motorway program;
- park of Leon Štukelj – sport - commercial hall complex in Ljubljana;
- Nordic centre Planica;
- modernisation of electric system;
- construction of the new production facility of hydropower plant Spodnja Sava;
- construction of block 6 of Termoelektrarna Šoštanj;

¹ The SDS sets out the vision and objectives of the state development and paves the ways to achieve national objectives in a sustainable way and in line with the common European regulations, policies and strategies, particularly the revised Lisbon Strategy (abstract from the document).

² <http://www.umar.gov.si/projekti/srs/StrategijarazvojaSlovenije.pdf>.

³ Since SDS is a key development document for the state, it includes not only economy questions but also social, *environment*, political, legal and cultural relationships. One of the key fields, on which central development investment projects of the Resolution refer, is also effective management of the environment and sustainable energy.

⁴ The NDP includes all those development and investment programmes and projects in Slovenia in the period 2007-2013 that will be financed or co-financed from the national, and/or municipality budgets.

⁵ Official Gazette of the RS, [78/2006](#), [72/2007](#).

⁶ Official Gazette of the RS, 41/04, 20/06, 39/06.

- construction of block 2 of nuclear power plant Krško;
- construction of gas warehouse.

However, before the Resolution was adopted, no SEA was carried out. Although SEA might be carried out later, the assessment of different possibilities regarding possible impacts on the environment is pointless, if the projects are already selected and defined. This was also one of the main reasons for the initiation of proceedings before the Constitutional Court.

One of the projects, where SEA would certainly be obligatory and needed, is a construction of block 2 of nuclear power plant Krško. Because the Resolution presents a very specific and complete plan for project, there is a great danger for direct impact to the environment. Among other projects, the Resolution envisages the construction of new block of nuclear power in Krško, defining also the capacities for the new block (technology PWR⁷, 1000 megawatts net, year production 7,5 to 8,5 TWh, start of building in 2013, start of operation of the block in 2017). This construction is not even envisaged in the Resolution on national energy plan, which was accepted by the National Assembly. It has to be emphasised that the Resolution on the national energy plan was accepted in accordance with the procedure of the National Assembly, which envisages public participation. In contrary to that, the Resolution on National Development Projects for the Period 2007-2023 was accepted by non-competent body, whose procedure does not foresee public participation in sense of legislative procedure.

The problem with this project and all projects, listed above, is that there is a concrete danger of realisation of accepted plans. No further decision-making process is foreseen regarding the construction of the second block of nuclear power and all the concrete plans will be made, consequently without public participation.

9.2.2. Description of the affected area

- *general characteristics (scope, character of land, density and kind of settlement...)*

The Resolution covers the entire territory of Slovenia. Consequently, that means it covers various characters of land, where also density and settlement differ from one region to another. It should be emphasized that the projects in the Resolution, which support the achievement of goals set in SDS, include:

- **competitive economy and faster economic growth**, which will stimulate faster development of the entrepreneurship, small and medium-sized enterprises, form friendlier business environment and strengthen inflows of the domestic and foreign investments;
- **efficient creation, two-way flow and application of knowledge for economic development and high-quality jobs**, which will stimulate the formulation of more innovative and technologically advanced economy for the purpose of formation of the quality work places for more qualified labour force;

⁷ Pressurized Water Reactor

- **an efficient and less costly state**, which will improve the work and organisation of civil service and public sector, especially in health service and justice;
- **a modern social state and higher employment**, which will try to find balance between flexibility of employment and social security;
- **integration of measures to achieve sustainable development**, especially on the field of traffic, energetic and quality of life.

It is also very important that all listed projects included in the Resolution, do have and will have a substantial impact on the environment and also on the quality of the future life of the residents.

- most important environmental characteristics, e.g. quality of air, water resources, protected areas, fauna, flora, important cultural sites... ; if possible, map of the area or sketch map of the project)

All the projects included in the Resolution have an impact to the environment. Since the Resolution covers the entire territory of the Slovenia, the projects have various environmental characteristics. Most of the projects do affect the environment, especially with the construction of structures and facilities or their individual parts, but the environmental characteristics differ from one part to another.

- overall evaluation of quality of environment in the affected area before realization of the project, extent of its “environmental burden”

Since the Resolution in Slovenian case “covers” time period from 2007 to 2023, the realisation of the project has not started yet. For that reason the impact on the environment is still immeasurable, even though the environmental burden will certainly not be insignificant.

The problem in Slovenian case was that for the Resolution, accepted by the non-competent authority, SEA was not carried out, and SEA is not even envisaged. SEA procedure is according to Article 40 of Slovenian ZVO-1 carried out for a plan adopted pursuant to the law by the competent authority of the State or municipality for the area of spatial planning, water management, forest management, hunting, fisheries, mining, agriculture, energy, industry, transport, waste and waste water management, drinking water supply, telecommunications and tourism. Since the Resolution covers this kind of plans, SEA procedure would certainly be obligatory.

9.2.3. Description of the main impacts of the project

according to the kind of the plan - mainly climate change, emissions, noise, nuisances, conflicts with special protection areas, changing characteristic of the landscape...)

- possible cumulative effects with other projects

The Resolution has, as mentioned, various impacts to the environment. The projects covering **competitive economy and faster economic growth** do have or will have impacts to the environment, especially regarding noise, interventions in the physical space, changing characteristic of the landscape... The projects covering **integration of measures to achieve sustainable development** also include or will include noise, interventions in the physical space, nuisance, changing characteristic of the landscape etc.

We cannot predict possible cumulative effects with other projects.

9.3. Important interrelated aspects - transboundary impacts of the plan, relation to national and EU infrastructure (transport) development plans, EU funds etc.

- *TEN-T?*
- *National transport programme*
- *EIB-funded?*

By the anticipated modernisation of railway system, Slovenia has considered the development strategy of European railway infrastructure. The reason is that the main railway tracks of Slovenian railway infrastructure are a part of European railway structure. The modernisation of railway network is also part of basic directions of the TEN-T, which include more efficient railway infrastructure connections in the EU and the more efficient transfer of cargo from roads to railways.

Modernisation of state road system will certainly have indirect impact on the European road system and will contribute to sustainable development.

10. Applicable articles of SEA Directive, relationship to EIA Directive, habitats and bird-Directives

The entire Resolution is according to Article 2 of SEA Directive and Slovenian ZVO-1 a plan, for which SEA procedure is needed. SEA Directive regulates in Article 4 and 15 that SEA procedure is an important tool for implementing environmental aspects into the preparation and acceptance of plans and programmes. It also states that the consultation with authorities, which are responsible for environmental tasks and the communication with the public are needed.

The Resolution does not mention EIA procedure. But since the listed projects represent an activity affecting the environment, EIA procedure would certainly be needed. The same goes for the habitats and birds - Directives.

11. Applicable national laws:

Slovenian Environmental Protection Act (ZVO), in force since 7.05.2004

Decree laying down the content of environmental report and on detailed procedure for the assessment of the effects on certain plans and programmes on the environment

12. Legal framework of SEA-proceeding:

- *Position in legal system*

SEA was transposed into our legal system with the adoption of SEA Directive and is regulated in the Slovenian ZVO-1 in Articles from 40-49. SEA is the basis for EIA, which is regulated in Articles 50-56 of the same act. The provisions of SEA Directive were more precisely transposed into our legal system with the adoption of the *Decree laying down the content of environmental report and on detailed procedure for the assessment of the effects on certain plans and programmes on the environment* (OJ~RS, no~73/05).

- *Administrative proceeding?*

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- *particular planning proceeding?*

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- *legal form of decision*

Legal form of decision is a Resolution, which is a political document. In initiator's opinion the resolution is a general legal act issued to enact a public authorisation, but the Constitutional Court in its decision U-I-436/06-4 (25.1.2007) decided that the Resolution is not a general legal act nor the regulation.

- *legal form of plan*

Because of the reasons described in the previous paragraph legal form of the plan cannot be defined.

- *possibility to appeal against SEA decision and plan?*

There was no possibility to appeal against SEA decision and plan in Slovenian case, because SEA procedure has not been carried out in the Resolution.

13. SEA/planning procedural history/timeline:

- *information on formal proceeding (initiation of SEA, PP, decision etc)*

- *information on other relevant planning (political decision for the plan, start of internal planning, scheduled construction start)*

- *information on time between SEA and formal adoption of the plan*

- *information on scheduled timeframe between adoption of plan and (EIA)-permit proceeding and scheduled construction start*

Since the case started because the SEA was not carried out at all, we can not answer this question.

14. Relationship to EIA

Please explain the relationship of EIA and SEA in the legal system and planning/project practice in particular with problems indicated in J&E Workplan 2006 on EIA/infrastructure

In Slovenia SEA is a basis for EIA as is stated in Article 40, paragraph 2 of ZVO-1. It states that SEA shall be carried out for a plan adopted by the state or municipality for the area of spatial planning, water management, forest management, hunting, fisheries, mining, agriculture, energy, industry, *transport*, waste and waste water management, drinking water supply, telecommunications and tourism. That means that SEA is carried out when the plan lays down or foresees an activity affecting the environment for which EIA also has to be carried out in accordance with Article 51 of this Act, where EIA is regulated. The same procedure has to be done when the plan covers a special protection area under the regulations of the conservation of nature.

The main difference between SEA and EIA procedure is that SEA procedure has to be done before the actual activity affecting the environment takes place, on the basis of the spatial planning document made by the municipality or the state. After that EIA procedure follows if necessary.

Questions from 15 – 18.5 cannot be answered, because SEA was not implemented at all.

15. Description of “significant effects” in environmental report (Article 5/1, Annex I (f))

- *How does the environmental report deal with “significant effects” as compared to other parts of the report (Does elaboration of “significant effects” have a high priority in environmental report)?*

- Does the report and to what extent analyze the issues mentioned in Annex I f (biodiversity, climate, air, soil, interrelationships..)?
- Does and to what extent the environmental report cover with regard to significant effects
 - cumulative, secondary and synergetic effects?
 - short-term, long-term, permanent and temporary effects?
 - positive and negative effects related to environment?

16. Assessment of “reasonable alternatives” (Article 5/1, Annex I (h))

- what kind of alternatives are covered, for example different locations, different means of transport (like railways, motorways, water-ways)
- Are respective alternatives analyzed in a “reasonable” and serious way?
- Does and to what extent the report cover the significant effects of alternatives?

17. Early and effective public participation (Article 6 and 7)

- How was the public informed on SEA?
- At what stage in planning procedure does PP take place?
- At what stage in SEA procedure does PP take place?
- Did the SEA provide for early and effective PP at a planning stage when all options are open (in theory and effectively)?
- Has the SEA provided for sufficient time frame and arrangements to guarantee fair and effective PP?
- Is the information provided for consultation sufficient to assess the plan?
- In case of transboundary SEA
 - When and how was the public of the other country informed on SEA?
 - What information was provided for consultations?
 - Where SEA documents translated?

18. Consideration of SEA in planning decision (Article 8, Article 9)

18.1. Information and form of decision

- In what form is the plan adopted?
- How was the public informed on the adoption and results of SEA?

18.2. Integration and consideration of SEA in decision

- Did (and to what extent) the published statement summarizing SEA (Article 9/1/b) explain how **environmental considerations** have been integrated into the plan, in particular how
 - the environmental report with regard to “significant effects” and
 - the opinions of the public were **taken into account** in accordance with Article 8?
- Was SEA taken into account effectively?

18.3. Reasoning for alternative chosen

- Did the decision statement clearly state the reasons for choosing the plan adopted, by the light of other reasonable alternatives dealt with?
- Is the reasoning understandable and clear with regard to environmental impacts?

18.4. Arrangement of Monitoring

- *Did the decision statement name the decided measures concerning monitoring of significant environmental effects in order to identify early stage unforeseen adverse effects in accordance with Article 10?*

18.5. Was there any other particular problem with regard to decision making?

19. Remedies taken:

Is there a legal possibility to appeal against SEA decision?

If there would be a SEA procedure carried out, there would be a possibility to appeal against SEA decision. But in a case when the Government would confirm a plan during the SEA there would be no appeal because of the new Administrative Dispute Act, which states that decisions, made by executive bodies and based on discretion, delegated by the constitution or law, are not administrative acts. That happened when the OPs for structural funds were accepted by the Government. For the Operational program for the development of environmental and transport infrastructure for the period 2007-2013 public display was open from February 6th 2007 till March 8th 2007, but the Government confirmed the OPs on February 16th. Discouraged by the Constitutional Court's decision, NGOs decided not to act in this case because they did not know which legal remedy to use.

20. Judicial procedural history/timeline (if relevant):

Not relevant in Slovenian case.

20. Outcome of the actions:

Slovenian case is rather specific, but this is the only case regarding SEA procedure in the judicial practice so far. As mentioned before, Slovenian court dismissed the initiative because of lack of its jurisdiction. The initiative for the review of constitutionality was filed by the NGO, who proposed to assess conformity of general legal acts with the Constitution and laws. Therefore, the initiator proposed assessment of the Resolution on National Development Projects for the Period 2007-2023, which was accepted by Slovenian government. The initiator contested the entire accepted act.

In the grounds of its decision the Constitutional Court stated that according to the Article 160 of the Slovenian constitution the Constitutional court is competent to decide on the conformity of laws with the Constitution, on the conformity of laws and other regulations with ratified treaties and with the general principles of international law, on the conformity of regulations with the Constitution and with laws, on the conformity of local community regulations with the Constitution and with laws and on the conformity of general acts issued for the exercise of public authority with the Constitution, laws and regulations. While the Resolution is neither a regulation nor general legal act, issued to enact a public authorisation, the Constitutional court is not competent to decide on this matter. In the view of above the initiative was dismissed.

Consequently, the Slovenian NGOs do not know what kind of remedy to use if some plan or in this case Resolution is in contrary to the law having in mind also the recent changes of Administrative Dispute Act.

21. Current status of planning case:

Because the initiative was dismissed, nothing has changed in the Resolution and some of the projects were included in the OPs for structural funds. Of course SEA may still be carried out. But after a number of already taken political decisions SEA would be just a charade to "proper" implementation of the law, but in reality everything has already been decided.

22. Follow-up actions planned and their timeline

NGOs were aware of the possibility to take the case to the Aarhus Convention Compliance Committee, but did not have the capacity (lack of knowledge, financial and human resources) to do so. They assess that they have learned a lot from this case and will act when the opportunity comes.

23. Conclusions:

The core of Slovenian case study is not SEA procedure itself but the lack of it. Because of the legal nature of the Resolution all projects, for which SEA procedure would be needed or would at least be recommended, were already precisely defined and for that reason they could be performed without accessing the impacts on the environment.

The initiative filed by Slovenian NGO was not successful and as a consequence of the new Administrative Dispute Act Slovenian NGOs do not know what kind of remedy to use if some plan or in this case Resolution is in contrary to the law. It can be concluded that in Slovenia there is a legal gap, which certainly has to be filled.

24. Lawyer and organization:

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