

The Nyergesújfalú Cement Factory in Hungary

EIA

Case Study

Justice and Environment 2011

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- I. Description of the developer: who is the developer, relevant experience in the same type of projects, financial capabilities, known attitude towards environmental protection, etc.

Holcim Hungária Zrt. is a multinational company with significant experience in similar types of projects and which has great financial capabilities. The company is the leading force of the environmental sub-committee of the Hungarian Business Leaders Forum (HBLF), and the company could run for the Business in Environment Prize of the HBLF. The company received the third place prize in 2007.

- II. Subject of the case: description of the project, if it is national, local, transborder, etc.

The project is the development of a new cement factory that, according to the company, could be the most modern in Europe at the time of application. The cement factory is linked with limestone mines located 8 kilometers away. This linkage would be guaranteed by a conveyor belt. The new factory would replace an outdated factory, located practically in the heart of Látatlan that was originally established in the 19th century. Local NGOs mention the possibility of a transboundary impact, but this has not been proven.

- III. Location of the project and geographical area: if it is urban, if it is a natural protected area, and if so, what kind (Nature 2000, national park, natural reservation, etc.)

The project is located northeast of Budapest, close to the Danube. The conveyor belt would go through a Natura 2000 site (approx. 700 meters). The plant would be a green field investment that is located outside, and in some cases the project would be close to residential areas.

- IV. Interested public involved

There are four local governments involved. One of them (not the closest neighborhood) claims that the plant may have an impact on their environment. There are also two local NGOs and one national NGO involved in the judicial phase. There was an invitation sent to the Slovakian authorities about their possible involvement, but they did not find proof of a transboundary impact.

- V. Estimated environmental impact of the project

The possible environmental impacts include the following:

- Air pollution, mostly particulates – this impact is still in question within the judicial phase, as there are two independent expert opinions that are controversial. But actually, the major problem is not the too much emissions (nobody really mentions this), but rather the method of measuring air pollution and calculating the impact area;
- possible Natura 2000 impacts with the conveyor belt – however, the judicial phase seemed not to question the original estimation made during the public administration phase, namely that there is the lack of significant effect;
- possible impact on the landscape – possible impact of a would-be tourist area and possible impact on the view;
- possible impact on residential areas, meaning air pollution, possible landscape impact, etc,;
- possible negative impacts on the social and economic situation of the villages involved in the project;
- possible impact on water catchment areas.

VI. Analysis of the national/European legislation

The Hungarian EIA legislation follows the line of the EU legislation, i.e. there is a full harmonization. Sometimes, proper transposition is questioned in relation to the method of making decisions about the “significance” of Annex II projects. However, this is not an issue in this case because, according to Hungarian legislation, an EIA is obligatory for this project.

VII. Description of the EIA procedure emphasizing the illegalities/shortcomings

Knowing that the EIA procedure in the Hungarian legislation follows the EU method, there is not too much to be described here. The only notable element unique to Hungary in this case is how the IPPC and EIA procedure may be undertaken in one unified procedure. The main method here is that the common issues are not specified, but all the unique elements of the two procedures, which one may not find in the other, should for a part of the whole unified process. For example, public hearing is not a part of the IPPC procedure, but it should be a part of the unified procedure; in the case of BAT, it is the other way around.

Still, there are some points that require further clarification:

- the legal situation related to county plans versus local physical plans;
- the questions related to the social and economic impact of a project;
- the role of the so-called specific authorities;
- determining a satisfactory way for organizing public hearing.

1. One very important question raised within the project is the relevance of local and regional development and physical plans. While local governments have the right to regulate their areas via obligatory legal regulations, the impact of the development plans adopted by the county governments is questionable from a legal point of view. The local governments are not subordinated to the counties according to the local government legislation, and the counties may only *coordinate* local actions but not govern them. Consequently, it seems to be that although the county plans did not support the plant development, these plans are not really binding, thus they may not be taken as legal requirements. The main problem here is that the counties may also issue a legal regulation – i.e. a decree – similar to the local governments, thus there is a difference between the legal forces of the different decrees.

2. The social and economic impact, according the Hungarian EIA legislation, should form a part of the impact study. The major problem here that is that it is unclear what should be covered and what kind of proof may be taken into consideration. Consequently, it is very difficult for the interested parties to prove their possible negative impact, and the developer may face similar difficulties, as well. Usually, the section of the EIA study on social and economic impact is very vague, and it is not really possible to make it more specific. Thus better guidance, perhaps a guiding document (such as those, issued by the Commission in case of Natura 2000 sites), would be necessary.

3. According to the Hungarian administrative procedure, there is one major authority that is the ‘master’ of the procedure – in the case of IPPC and EIA, it is the regional environmental authority – and those other authorities that may have an interest are invited to give their comments. There are some ‘specific authorities’ that have obligatory involvement, which in this case is the public health authority. Finally, the ‘master’ may decide upon the other involved authorities by selecting them from a list of authorities. Because it is not clear enough which authority may or shall be involved, this process is a shortcoming in the administrative procedure.

The decision of these ‘specific’ authorities is binding in a way because the permit may not be granted if they give a negative opinion. If they give a “positive opinion,” then the ‘master’ is still free to decide, taking into consideration all the other specific aspects. In this case, the conditions given by the specific authority shall be listed.

The role of those general authorities taken as ‘specific’ – such as the local government clerk, who decides in local planning or environmental cases – is the most controversial. These opinions shall always be backed by legal rules and in many cases the local regulations are not specific enough. Thus there is a legal challenge here over what should be done in such cases. Should a controversial or unclear opinion be taken into consideration and consequently have a decisive effect? Or should they not have a decisive effect due to the vagueness of such opinions, which may mean here the lack of proper legal basis? The environmental authorities decided along the line of the second option, which was not satisfactory for the local governments and NGOs.

In this regards, both ends may be either taken as legal and also as illegal. Illegal because how is it possible for the 'master' to overrule the opinion of the specific authorities if, generally speaking, their opinion would be obligatory? Legal if we consider that, in case of going beyond their competence, the opinion may deprive other authorities of their competence; this could be taken as a direct misuse of powers, and the task of the 'master' authority is to uphold the legality of the procedure.

4. The legal requirements do not specify how many hearings shall be organized, or where and in what time they shall occur. According to the NGOs involved in the given procedure, the method of organizing the hearing was not satisfactory because there were fewer hearings than necessary, the people could not always reach the places properly and the timing (the hearings occurred during the day) made it impossible to attend for people who worked during the day. On the other hand, according to formal law, this method could not be taken as illegal. Thus, in order to use public participation better, some methodological guidance would be necessary.

VIII. Actions of the public during the procedure

Public participation could take place in the following ways:

- comments given in the preparatory phase, open for the public involved;
- public hearing, open for the public involved;
- participation in the administrative procedure as a party (environmental NGOs and interested local governments that, according to the impact area, are 'affected' may be parties in the given procedure. In such cases, the party has the same rights as the developer);
- being parties, the representatives of the public – NGOs and local government – may challenge the decisions, thus they could appeal the first instance decision;
- being parties, the representatives of the public – NGOs and local government – may challenge the second instance decisions in front of the court, thus they could start an action.

IX. Decision of the environmental authority

Both the first instance and second instance environmental authorities issued the permit, but with many conditions. It is also worth mentioning that the studies on the impact of the project on Natura 2000 sites have been widely improved in the second instance phase.

X. Current status of the case

Based upon the claim entered by the seven parties mentioned above (four local governments and three NGOs), there is an ongoing judicial review procedure.

Both sides view the proceedings as being unsatisfactory because the case started in July 2008 and there is still not a clear outcome. The court has one hearing per year, and meanwhile a very slow procedure of expert review is taking place. After three-and-a-half years, legal certainty is a need for all the parties.

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