

Implementation of the EIA Directive in Croatia

Case Study

EIA

Justice and Environment 2012

Implementation of the EIA Directive in Croatia

Case Study

Introduction – EIA in Croatia

In Croatia implementation of environmental impact assessment is prescribed pursuant to the Environmental Protection Act (Official Gazette No. 110/07) (EPA) and Regulation on environmental impact assessment (Official Gazette No. 64/08, 67/09) (REIA). Through the adoption of these regulations the procedure has been systematically regulated and harmonized with the corresponding EU directives: Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, amended by Council Directive 97/11/EC of 3 March 1997 and by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003. Furthermore, the adopted regulations are based on the provisions of the international treaty which was ratified by the Republic of Croatia through the adoption of the Act on the Ratification of the Convention on Environmental Impact Assessment in a Transboundary Context (Official Gazette IT No. 6/96).

The environmental impact assessment, its evaluation and acceptability are assessed by the Advisory expert committee for the environmental impact assessment procedure (further: Committee) on the basis of the Environment Impact Study (EIS). Members of the committee can only be persons listed in the **List of persons eligible to be appointed members and deputy members of committees in procedures of strategic assessment, environmental impact assessment of projects and establishment of integrated environmental requirements** (OG No. 126/09, 65/12). Committee members are appointed among scientific and expert professionals, representatives of bodies and/or persons determined pursuant to a special regulation, representatives of local and regional self-government units, and representatives of the Ministry. The committee is appointed by the Ministry for projects determined in the List of projects from Annexes I and II of the Regulation on environmental impact assessment (Official Gazette No. 64/08, 67/09), and by the administrative body in the county or the City of Zagreb for projects from Annex III of the REIA. The committee performs its work in sessions and upon having established that the EIS is complete and well-founded in expert terms, it proposes to the competent authority that the public hearing on the study should be carried out. After the conducted public hearing, the committee delivers its opinion on project acceptability and submits it to the competent body for issuance of a decision which is the mandatory content of future permits for project implementation.

Public information and public participation

The obligation of public information and participation of the public and the public concerned in the environmental impact assessment procedures is determined by the provisions of Article 137 paragraph 1 of the Environmental Protection Act.

It is prescribed, among other, that in the procedures regulated by this Act that relate to environmental impact assessment, evaluation of the need for environmental impact assessment, establishing the content of the environmental impact study prior to its preparation, the public shall be informed on the submitted request and the issued act stating the decision on the request. The deadline which is set for informing the public in such cases may not be shorter than 30 days.

The public and the public concerned participate in the environmental impact assessment procedure via the public debate which should be conducted according to the provisions of the Environmental Protection Act and the **Regulation on information and participation of the public and public concerned in environmental matters** (OG No. 64/08).

Pursuant to the provisions of the Environmental Protection Act, the public and the public concerned shall be appropriately, timely and efficiently informed of their right to participate in the environmental impact assessment procedure in the early phase of the decision-making procedure for environmental issues relating to the relevant activity of the developer or the operator. The public and public concerned have the right to express their opinion, proposals and objections in relation to the issuing of a specific decision or official act by a public authority, in the manner and within the deadlines set out in the **Regulation on information and participation of the public and public concerned in environmental matters** (OG No. 64/08).

Participation of the public and public concerned in the environmental impact assessment procedures is conducted through public debate which includes public inspection and public display.

- **Title: Case Study - EIA procedure for Golf Course Brkač, City of Motovun, Istria County, Croatia**
- **Description of the developer - who is the developer, relevant experience in the same type of projects, financial capabilities, known attitude towards environmental protection, etc.**

The developer, a company STANCIJA DOLZANI Ltd. from Motovun, was founded with the sole task of realizing the construction of golf courses Brkač and construction of tourist facilities within the construction zone. The owner of the developer is the company iO Adria. iO Adria is, as of 2011, a new entity formed from Jupiter Adria AG, whose main activity is the development of tourism, with an emphasis on the development of golf courses. Jupiter Adria was a member of one of Britain's leading investment funds "Jupiter Investment Management Group", which is based in London. Its activities are directed towards construction, and then the long term management of a number of luxury resorts and other tourist capacities in Croatia, as well as in other parts of southeastern Europe. As the golf course Brkač consists of two parts, golf courses in the area of about 220 hectares and construction area of 16.2 hectares, the developer purchased construction area from private owners, while the area for golf is intended to be obtained from the government through concessions.

iO Adria has plans to develop another 2 golf courses in Istria county. It also owns a hotel resort Dubrovnik Sun Gardens in the vicinity of Dubrovnik. In this tourist resort they were able to register their 207 apartment villas as condominiums though this was not allowed at the time for real-estate in tourist designated zones. They now plan to sell these and employ them in some sort of time-share scheme. These practices target the most valuable spatial resources of Croatian Adriatic coast and tend to cause over-development.

- **Subject of the case: description of the project, if it is national, local, trans-border, etc**

At the mainly agricultural and forest area at the foot of the medieval Motovun, in the valley of the river Mirna, company Jupiter Adria (now iO Adria) is planning the construction of:

- Two golf courses with 18 holes,
- 498 beds in 67 buildings (250 m² apartment villas with 2000 m² yard area, 200 m² apartment villas with 1500 m² yard area both with swimming pools, hotels, and apartment buildings),
- Tourist resort in 7 dispersed construction areas, 1.2 hectares in total,
- Golf house, commercial buildings, waste-water treatment facilities, golf club facilities, locker rooms,
- Conference center with a 250 persons capacity ,
- Wellness center,
- Smaller restaurants and similar facilities,
- Parking lots (a total of 603 parking spaces),
- Tennis courts,
- Infrastructure for connection to the existing infrastructure,
- Local gas distribution network with embedded tanks,
- 21 artificial lake,
- 2 water accumulations with 150,000 m³ capacity each, 4 meters deep, built in the 3rd category water protection zone,
- Access roads following the left bank of Mirna river including a bridge over Mirna river.

- **Location of the project – geographical area: if it is urban, if it is a natural protected area / what kind (Nature 2000, national park, natural reservation, etc)**

The total area of Istria is about 2813 km², and stretches from the border with Slovenia in the north to mountain ridge Učka and Ćićarija in the west. Istria has 206,000 inhabitants according to the 2001 Census. In the interior of Istria there are just few major settlements that have developed from the former seat of feudal estates on hilltops (so-called acropolis settlements). These are Motovun, Labin, Buzet Oportalj, and Grožnjan. Surface Area of municipality Motovun is 33.58 km², and according to the 2001 census Motovun has 983 residents, and the medieval town Motovun 531. The river Mirna flows below the hill on which Motovun town is situated and on the other side of the river there is the famous Motovun forest, an area of about 10 square kilometers in the valley of the river Mirna, of which 280 hectares (690 acres) is specially protected. This area differs completely not only from the nearby forests, but also from those of the entire surrounding karst region because of its wild life, moist soil and its richness with prized black and white truffles (*Tuber magnatum*), which grow successfully there.

In order to preserve natural conditions for the development of the Motovun forest, the protected area is occasionally flooded, even though the River Mirna is controlled and its entire valley protected from flooding. Brkač, where golf courses are intended, is between 1 and 2 km away from the proposed Natura 2000 network Motovun forest site. Also, the town of Motovun is a protected historic urban site. Therefore, any developments should take into account the impact on the visual identity and harmony of this cultural heritage spot.

- **Interested public involved**

Notice of the public hearing for the study of the environmental impact of golf courses "Brkač" was released in major local newspapers "Glas Istre" 30th September 2008 issue, at the official website of Istria County and that of Ministry of Environment Protection, Spatial Planning and Construction (MEPSPC).
Public hearing period: from 9 October 2008 to 8 November 2008 (30 days)

Around 40 people participated at the public presentation held on 21 October 2008 (among them members of the Municipal Council, representatives of investors - company Stancija DOLZANI from Motovun, EIS authors, environmental NGOs, citizens).

- **Estimated environmental impact of the project**

- The study says that 21% of the project surface is planned for construction on the high-value agricultural land (52 hectares), 11 hectares or 4.5% on the valuable agricultural land and 75 hectares or 31.5% on less valuable agricultural land. Thus, 25.5% of the land is a highly valuable and valuable agricultural soil, part of which is still used. In total 57% of the area used will be converted from food production purposes to real-estate development purposes.
- The area of the planned construction is characterized by typical geomorphological and geological features that enable the rapid flow of extracted surface precipitation. In such an environment rainwater quickly drains towards the lowest point in the relief and thus takes away the potential contamination from the working area to Krvar stream and other minor occasional or constant flows that are found along the rim of the planned construction. The construction would also affect the river Mirna to which all streams flow.
- Impact to the fauna of amphibians and reptiles
- Significant impact on the natural values and ecological network areas
- Impact on endangered and rare species of fauna

- **Description of the EIA procedure emphasizing the illegalities/shortcomings**

Some of the shortcomings of the EIA procedure for "Brkač" project are as follows:

- The EIS does not specify the surface areas of forest to be removed nor does it estimate the loss of forest ecosystem services. It does not address the issue of forest land usage so the question whether the forest will be given in concession and under which terms remains unanswered.
- Water consumption for irrigation is assessed too abstractly and assesses no alternative scenarios in case of water shortages from the planned sources.
- Deadline set in the REIA for convening the first meeting of the Committee was breached
- Deadlines for updating the shortcomings of the EIS were granted in more occasions and in periods longer than the ones prescribed in the REIA. REIA prescribes declining the EIA

requests i.e. finding the project environmentally unacceptable, when the EIS is of such a quality that the shortcomings cannot be addressed within one 30 day update.

- Time-frame for the EIA procedure set in EPA to four months, six months maximum in exceptional cases, was breached and the procedure lasted for thirteen months.

- After making several public appearances in which he strongly criticized the EIS and assessment of the procedure in the Committee, the chair of the Committee was removed from the Committee before the last session. In the last session of the Committee instead of the vice-chair presiding the Committee, the chair was replaced by a representative of the Ministry of Tourism who has not previously participated in the work of the Committee.

- State Institute for Nature Protection and Croatian Herpetological Society complained that the EIS was produced based on data which were not, as the legislation mandates, "recent, reliable and available".

They claimed that the list of species and groups that live in the area and their classification as protected and/or endangered species was flawed and did not take into account the findings of their research which did not work in their favor; there was no analysis of the impact to the fauna of amphibians and reptiles; the impact on endangered and rare species of fauna were not considered; impact on fauna during construction was assessed as moderate and acceptable whereas the impact would be significant and long-term; the EIS completely omitted the existence of Bern Convention which specifically protects natural habitats threatened with extinction; the EIS did not consider obligations stemming from the international conventions to which Croatia is a party. In conclusion the State Institute for Nature Protection is of opinion that the project could have a significant impact on the natural values and ecological network areas and finds it necessary to conduct the assessment of the acceptability of intervention, in accordance with Art. 36 of Nature Protection Act.

- Head of EIA unit in the Ministry, which was present at two out of four Committee meetings, claimed that the comments received from State Institute for Nature Protection and Croatian Herpetological Society were irrelevant because they asked for an alternative assessment with different project propositions. He maintained that the EIA should be conducted according to the propositions outlined in the EIS and that the findings that the project is unacceptable can only be given after the public hearing was conducted.

- Following issues raised by the committee members were left unanswered or insufficiently elaborated:

- Golf courses should be planned and built, if necessary, on lower quality agricultural land
- Fundamental phenomena of landscape should be respected
- Landscape of Krvar stream should be protected
- Cultivated landscape of hilly areas with ancient settlements, which represent valuable and recognizable landscape spatial units in the Municipality of Motovun should be protected
- Motovun with its overall landscape, which has all the properties of cultural heritage, and forms especially valuable and protected ensemble should be protected

- The investor ignored the demands of the committee to submit an updated EIS with reduced lodging capacities and instead re-submitted the EIS in which only the spatial distribution of the same amount of lodging capacities was changed. This was done with the approval of the competent authority in spite of Committee's resistance to such a solution.

- NGO "Motovun Eco-city" attempted through its website to mobilize international public, and its president made numerous statements to the public. His activities led to two lawsuits against him: one by Motovun mayor, and the other by municipal council. This was perceived by him as Strategic Litigation Against Public Participation (SLAPP).

- **Actions of the public during the procedure**

- Public provided comments on the EIS during the public hearing period. Written comments were provided by NGOs Zelena Istra, Motovun eko-grad (Motovun Eco-city), HYL A- Society for the Protection of Amphibians, and by the State Institute for Nature Protection. Some members of the Committee also provided written comments to the EIS.
- NGO representatives made many public appearances regarding the proposed project alarming the public of its many shortcomings
- NGO Zelena Istra, after many administrative obstacles and after a lot of postponement, managed to obtain minutes of the Committee meetings based on access to information request
- NGO Zelena Istra raised 2 lawsuits (Administrative Court, 1 in 2009, 1 in 2011) against the EIA permits issued by the Ministry.

- **Decision of the environmental authority**

- Ministry of Environment Protection, Spatial Planning and Construction, the competent authority, issued a permit on 10th March 2009 allowing the project in question to proceed if certain mitigation measures were implemented.
- Without conducting a new EIA procedure or parts of it the Ministry issued a new permit on 25 October 2011 after the 2009 permit was successfully appealed in the Administrative Court by the NGO Zelena Istra

- **Current status of the case**

The case is now being reviewed by the Administrative Court based on the 7 December 2011 lawsuit raised by NGO Zelena Istra against the second permit issued by the Ministry. First, 2009 permit, was revoked because it did not sufficiently elaborate why it dismissed the comments raised by State Institute for Nature Protection, including a request for Nature Impact Assessment (Art. 36 of NPA), and by the Committee members. Shortcomings in the procedure, and breaches of deadlines were assessed as irrelevant for the outcome. In the time of writing this study (October 2011) construction of the Golf Course Brkac did not start. Also, according to the available information, request for construction permit was not submitted to the authorities.

Contact information:

name: Željka Leljak Gracin, Enes Cerimagić
organization: J&E
address: p.p. 952, Frankopanska 1, Zagreb, 10000
tel/fax: 01/4813096 / 01/4813096
e-mail: info@justiceandenvironment.org
web: www.justiceandenvironment.org

The Work Plan of J&E has received funding from the European Union through its LIFE+ funding scheme. The sole responsibility for the present document lies with the author and the European Commission is not responsible for any use that may be made of the information contained therein.

