

Implementation of the SEA Directive in Croatia

Case Study

SEA

Justice and Environment 2012

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1. Introduction

SEA procedure in Croatia is regulated in following regulations:

- 1. Environmental protection Act (O.G. No. 110/07)**
- 2. Regulation on strategic environmental assessment of plans and programmes (O.G. No. 64/08)**
- 3. Ordinance on the committee for strategic assessment (O.G. No. 70/08)**
- 4. Regulation on information and participation of the public and public concerned in environmental matters (O.G. No. 64/08)**
- 5. Ordinance on the committee for strategic assessment (O.G. No. 70/08)**
- 6. 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 (O.G. No. 126/09, 65/12)**

Through the aforementioned regulations the procedure has been aligned with the provisions of the Directive 2001/42/EC on environmental assessment of plans and programmes and the Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention).

Art. 56. of the Environmental Protection Act determines that strategic environmental assessment has to be carried out for plans and programmes adopted at the national and local (regional) level in the field of agriculture, forestry, fisheries, energy, industry, mining, transport, telecommunications, tourism, waste management and water management and for spatial plans of counties and the Physical plan of the City of Zagreb (excluding its amendments). However, in case of amendments to plans and programmes subject to strategic assessment a procedure has to be carried out in which a decision is made about the necessity of implementing the strategic assessment. The evaluation of the need for strategic assessment of amendments to plans or programmes at the national level is carried out by the bodies competent for the implementation of strategic assessment, in cooperation with the Ministry when the evaluation is not under the competence of the Ministry. The evaluation of the need for strategic assessment of amendments to plans or programmes at the county level is carried out by the body competent for the implementation of strategic assessment.

Strategic assessment at the national level is carried out by the Ministry or the ministry competent for the sector for which the plan or programme is being adopted. At the regional level the procedure is carried out by the competent administrative body in the county or the City of Zagreb, in cooperation with the competent administrative department in the county or the City of Zagreb, depending on the area for which the plan or programme is being adopted.

Although, the transposition of the SEA Directive was done properly, the situation with implementation of the procedure is not so good. Apparently, although the SEA procedure is envisaged in Croatian legislation since (2007) not one procedure is not finished yet. According to the information from the Ministry of Environment Protection and Nature, there are 12 ongoing procedures, 6 full SEA procedures and 6 evaluation of the need for strategic assessment. Additionally, only one procedure is at the very end of the whole process, meaning that only final decision is still missing. The Ministry indicates that there are few problems with this procedure: lack of administrative capacity for this process, lack of cooperation between different administrative bodies, lack of knowledge of competent authorities and lack of interest from the public (including NGOs) for SEA procedure.

2. Methods for SEA

Strategic assessment is carried out during the development of the draft proposal of the plan or programme, prior to the establishment of the final proposal and its submission into the adoption procedure. Strategic impact study is prepared in the procedure of strategic assessment. Strategic assessment is carried out on the basis of the results set out in the strategic impact study. The strategic impact study must contain the chapters and contents as prescribed in Annex I of Regulation on strategic environmental assessment of plans and programmes (O.G. No. 64/08). When the opinion of the body competent for nature protection establishes that the plan and programme may have significant effects on the ecological network, the content of the strategic impact study must also include a chapter identifying the effects of the plan or programme on the ecological network, pursuant to special regulations governing nature protection. In the procedure of determining the content of the strategic impact study, the competent body must obtain the opinion of the bodies and/or persons designated by special regulations on the content and scope of information that has to be covered by the strategic impact study, relating to the area under the competence of that body and/or persons.

The strategic impact study defines, describes and assesses expected significant effects on the environment which may be caused by the implementation of a plan or programme, and its reasonable alternatives related to environmental protection that take into account the objectives and scope of the plan or programme in question. The body competent for the implementation of strategic assessment must submit the strategic impact study and the draft proposal of plan and programme for an opinion by the bodies and/or persons designated by special regulations.

Prior to defining the draft proposal of the plan or programme to be submitted for public debate, including public inspection and public display, the draft plan and programme must be reviewed and the results of the strategic assessment study evaluated by the advisory expert committee (hereinafter: the strategic assessment committee) which issues an opinion thereupon. The Committee for strategic assessment of each plan or programme is appointed by the head of the body competent for carrying out strategic environmental assessment. The composition and number of members of the strategic assessment committee is determined depending on the scope and other features of the plan or programme for which a strategic assessment is carried out. The members of the committee are appointed from the list of persons selected by the Minister from among scientific and expert employees, representatives of regional and local self-government, representatives of state

administration bodies, representatives of legal persons with public authorities and representatives of the Ministry. It is determined that, prior to submission into the adoption procedure, when defining the final proposal of the plan or programme, it is mandatory to take into account the results of strategic assessment, opinions of bodies and/or persons designated by special regulations and to review the objections, proposals and opinions of the public as well as the results of any transboundary consultations if mandatory under the Environmental protection Act (O.G. No. 110/07) , which have been made with regard to the draft proposal plan or programme, and the opinion of the Ministry. The strategic assessment procedure is concluded by the report of the body competent for the implementation of strategic assessment. It must contain information on the manner in which environmental protection issues have been integrated in the plan or programme, the results of that procedure and the environmental protection measures and method of monitoring the implementation of measures which are included in the content of the plan or programme as well as the method of monitoring the significant environmental impacts of the adopted plan or programme.

3. Public information

The obligation to inform the public and to ensure public participation in procedures of strategic environmental assessment of plans and programmes is determined by Article 137, 1 of the Environmental Protection Act. Pursuant to paragraph 2 of the same Article, it is defined that the period of time determined for informing the public shall not be shorter than 30 days.

The manner of informing the public and the public concerned in the aforementioned procedures is determined in detail by the Regulation on information and participation of the public and public concerned in environmental matters (Official Gazette 64/08). Pursuant to this Regulation, the public shall be informed on the aforementioned procedures in the following manner:

As a rule, the competent body provides and publishes the information on its web pages. The competent body, given the complexity and nature of the subject matter on which it is obliged to provide information in accordance with the Act and Regulation, except by means of its web page, may also provide such information through other means of informing that are more appropriate in a specific case given the local community or individual citizen, specifically: public notices in the press, public notices in the official journal of a local or regional self-government unit, public notices on the notice board at a particular location, notices in other means of public information - electronic media, etc.

When the information procedures regulated pursuant to the Act and this Regulation are used to inform the public concerned, the competent body must publish the information by displaying it on the notice board at a particular location, as well as in the local or regional press.

In the procedure of strategic environmental assessment of plans and programmes the public must be informed of:

1. the decision on initiating the strategic assessment and developing the strategic impact study,
2. the decision on determining the content of the strategic impact study,
3. the decision on submitting the strategic impact study and the draft proposal of the plan or programme for public debate,
4. the procedure relating to potential transboundary effects of a plan or programme and the procedure of participation in the strategic assessment in another country,
5. the report of the competent body concerning the performed strategic assessment and the adopted plan or programme.

In the evaluation of the need for strategic assessment, the public shall be informed of the decision issued in that procedure.

As a rule, the information on the above acts such as: decisions, assessments and reports are made available by publishing those acts on the web page. If the nature of the act – because it contains technical and cartographic representations – does not permit its publication in its entirety, the summary of the act without technical and cartographic representations shall be published. The summary shall contain the relevant statement and explanation of the act, if contained in the act.

Notice on conducting of a public hearing must be published on the official website of the Authority and coordinator of the public debate in the newspapers for at least eight days before the public hearing.

Following the publication of notice on the public debate, the subject of the public debate is put on public insight for a minimum of 30 days. During the public insight the Authority organizes public presentation.

4. Public participation

In accordance with the provisions of the Environmental Protect Act, 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 must be appropriately, timely and efficiently informed of their right to participate in the procedure of strategic environmental impact assessment.

In the procedure of strategic assessment of plans and programmes, the public can participate in:

1. the development of the strategic impact study – determining the content; by written opinions and proposals to the competent body within the period set in accordance with the Regulation,
2. the public debate on the strategic impact study and the draft proposal of the plan or programme; in accordance with the provisions of the Act and Regulation that regulate the manner of conducting the public debate, except in the case of the strategic environmental assessment of a physical plan, when public participation is regulated in accordance with the provisions of the law governing physical planning.

In a public debate, the public and other participants in the public debate such as bodies and/or persons designated by special regulations, local and regional self-government units and other bodies (hereinafter: public debate participants) can submit opinions, proposals and objections in relation to the subject of public debate within the period and in the manner prescribed by Regulation.

The subject of public debate may be the strategic impact study with the draft proposal of the plan or programme.

The public debate, including public inspection and public display in the procedure of strategic assessment shall be coordinated and performed by the competent body.

The public shall participate in the public debate in a way as to:

- have the right of access to public inspection of the subject of public debate,
- ask questions during the public display on the proposed solutions, which are answered by the persons referred to in Article 19 of the Regulation on strategic environmental assessment of plans and programmes (O.G. No. 64/08), orally or in writing according to the request of the public debate participants,
- have the right to enter proposals and objections into the book of comments which shall be placed next to the subject case on which the public debate is performed,
- submit proposals and objections into the minutes during the public display,
- submit written proposals and objections to the competent body within the period set in the notification on the public debate.

The competent body shall prepare a report on the performed public debate.

In the case that, based on the accepted opinions, proposals and objections submitted in the public debate, the subject of public debate is changed in such extent that the new solutions are not in conformity with the significant determinants of the subject of public debate on the basis of which it was developed, a repeated public debate shall be performed.

If the repeated public debate refers to the changes proposed in the first public debate, the period of public inspection may be shorter than the prescribed period in the Regulation on strategic environmental assessment of plans and programmes (O.G. No. 64/08), but not shorter than eight days. The notification on the repeated public debate shall be published in the manner prescribed by the provision of Article 16 of the Regulation. New proposals and objections relating to the amended part of the subject of public debate may be submitted only in reference to the changes resulting from the accepted proposals submitted in the first public debate. Repeated public debate may be performed no more than two times, after which the decision on new preparation of the subject of public debate shall be issued.

- I. **Title: Case study: SEA for (Draft proposal of the) Waste Management Plan for City of Zagreb – until 2015.**
- II. **Description of the developer - who is the developer, relevant experience in the same type of projects, financial capabilities, known attitude towards environmental protection, etc.**

Developer is the City of Zagreb, which as the capital of Croatia, according to the Constitution, has special status. As such, Zagreb performs self-governing public affairs of both city and county. The city administration bodies are the city assembly as the representative body and mayor and the city government as the executive body. The current mayor of Zagreb is Milan Bandić (elected with the support of Social Democratic Party, but has since become an independent, losing membership in his party).

In 2006 Mayor announced the refurbishment of the Flower Square in Zagreb. The project included the construction of commercial and residential centre, and the demolition of two historic buildings on the Flower Market, as well as shortening the pedestrian zone in the street in order to build a garage for purpose of the shopping mall. The project was opposed by civil associations and intellectuals, architects, art historians, actors and a large number of prominent cultural workers in Zagreb. Zelena akcija with city initiative Right to the City organized a protest and gathered 55,000 signatures against the project, arguing that the ability to destroy the lower city, ie .historic core of the city and its cultural heritage. Because of Bandic pressure on the city's public services, Master Plan of the city of Zagreb was revised in order to be able to perform such a large project in the city center. In August 2009 the historic buildings were demolished (house Granitz and the house of the poet Vladimir Vidrića). The construction of a shopping mall was finished in April 2012.

Moreover, in August 2012 the Ministry of Environmental Protection and Nature has submitted criminal report against the Mayor of Zagreb as responsible person for not providing the conditions and implementation of prescribed measures for waste management (determined by provisions of Article 15 of the Waste Act).

- III. **Subject of the case: description of the plan/programme, if it is national, local, transborder, etc.**

The SEA for (Draft proposal of the) Waste Management Plan for City of Zagreb – until 2015 is of local character, all new facilities for waste management will be constructed on Zagreb City area. However, the waste incinerator is not planned just for needs of City of Zagreb but for whole Croatia (maybe even bordering countries), so it is actually very hard to indicate significance of the Plan.

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

Zagreb is the largest city in Croatia. It is located in the northwest of the country, along the [Sava](#) river, at the southern slopes of the [Medvednica](#) mountain.

The main issue in the Waste Management Plan for City of Zagreb – until 2015 is that the City plans to construct the waste incinerator and the location for it is area of Resnik which is round 8 km from the very centre of City of Zagreb. It is the east side of the City and there is already DIOKI-organic petrochemical company. The incinerator is planned to be constructed near the existing wastewater treatment plant

V. Interested public involved

In September/October 2009 public was invited to comment the Waste Management Plan of the City of Zagreb. However, this Plan was never submitted to the City Assembly which should adopt it.

In August 2012 it was announced that on the next session of the Committee for SEA for Waste management Plan for City of Zagreb it will be decided **if**, how and when the public insight will be organized. However, this decision is not made yet so it is unclear how the public will be included in this process. It is important to mention here that Zelena akcija was initiator of the SEA procedure for Waste Management Plan of the City of Zagreb since the City was trying to avoid the whole procedure by saying that the Plan was already adopted before SEA regulation came into force which was not the case since the City Assembly did not adopt the Plan. Moreover, the City Assembly did not even have it on its agenda.

Also, it is important to mention here the EIA procedure for waste incinerator which is the main project (construction) within Waste Management Plan of the City of Zagreb. Zelena akcija was the first group to become involved in the campaign against the waste incinerator in 2005 when it was discovered that the EBRD was considering financing the project and that an Environmental Impact Assessment (EIA) was almost ready. Shortly afterwards a public consultation for the second EIA was held (the first had been rejected before it was publicly released). Later in the year the first success in the campaign appeared when the Ministry of the Environment, Spatial Planning and Construction rejected the EIA. It argued that the project was not in the General Urban Plan, that there was a lack of recycling and waste prevention measures in Zagreb; that the city of Zagreb did not have a waste management strategy at that time and that there was an absence of facilities in Croatia for disposing of or storing the toxic ashes and filter residues from the incinerator.

In December 2005 Zagreb City Council and the County Prefect of Zagreb County signed an agreement obliging the County to find a site and construct a landfill for around 100 000 tonnes of ashes per year resulting from the incinerator, in return for the City of Zagreb burning the County's waste in the incinerator. Green Action protested against this, arguing that it was illogical for the County to accept 100 000 tonnes of partly hazardous waste every year when it produces around 85 000 tonnes of municipal waste annually. At that time it seemed that the landfill would be sited in the district of Rakovec and when informed of this the local citizens reacted angrily towards their District Councillor.

This was followed by a secretive approval of the third EIA for the incinerator, without any new public consultation, against which Green Action launched a court case in November 2006 at the Administrative Court in Zagreb. The case is currently at Constitutional Court because verdict of the Administrative Court was not favorable. Also in November 2006 Green Action held a meeting with EBRD representatives in Zagreb to outline its concerns

about the project and ask for updated information. At that stage the EBRD was awaiting approval from the city of Zagreb to proceed with the environmental due diligence.

In April 2007 citizens in Gradec discovered that the representatives of their district had agreed for exploratory work to take place for the landfill, and tried to find out more immediately. A group of young people researched the situation and registered an association to begin campaigning on the issue, and SOS Gradec District was formed. So far the association has discovered that the decision was taken illegally as the proper procedures were not followed, and is planning to campaign on the issue and take legal action.

VI. Estimated environmental impact of the project

The main issue in the Waste Management Plan for City of Zagreb is that the City plans to construct the waste incinerator. Actually, even since 2002, Zagreb City Council is planning to build a 385 000 tonnes-per-year waste-to-energy plant, for which the official cost estimate is EUR 161 400 000. The EBRD and EIB both considered financing the project. The plant would burn municipal waste and sewage sludge.

Zelena akcija, along with local residents' groups, believes that the incinerator plans are premature and dangerous and called on the EIB and EBRD not to finance the project. Eventually, both banks indicated that they were no longer interested in financing the project, and Zagreb city council admitted that the project was delayed because of lack of funding and because SEA had not been prepared for the Waste management plan.

The problem is that the incinerator would produce around 100 000 tonnes of ash and filter residue per year, much of which is hazardous, containing dioxins and heavy metals. However, Croatia has no facilities for safely storing, treating or disposing of hazardous waste, and it is estimated that around half of Croatia's hazardous waste is currently missing, so it is of great concern that plans are being developed to create more toxic waste with no proper solutions. In addition, the landfill where the less toxic bottom ash should be stored is due to be closed in 2011, with no replacement site confirmed. Recycling of municipal solid waste is currently at a low level in Zagreb, and much more should be done to prevent and recycle waste before investing in expensive disposal solutions.

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

There are a lot of irregularities in this SEA procedure but also in process of adoption of the Plan. Draft Proposal of the Waste Management Plan for City of Zagreb until 2015 was prepared in May 2009. Prerequisite for its adoption was, along with public debate, conduction of the strategic environmental assessment, and these two documents should then undergo for adoption in the Assembly. For that purpose, in April 2010 Zagreb Mayor appointed an expert working group to coordinate activities on the development of the National Waste Waste Management in the City of Zagreb. However, this group of experts convened irregularly, so it is not could achieve the goals for which it was established. Public call for the SEA for the Plan was published at the beginning 2011, and the makers of the study have started to operate in March 2011. As the deadline for making of a study is 6 months, the study was supposed to be completed in September last year. However, the committee for SEA study was formed only in March 2012 and the competent institutions did

still not accepted strategic assessment, and therefore Waste Management Plan has still the status of a draft. As previously mentioned, the basic setting of the Draft Waste Management Plan is the construction of incinerators (thermal treatment plants, power plant waste) min. 400 000 t. Bearing in mind the fact that the construction of a thermal treatment of waste, which is in the Plan listed as a foundation for future waste management system, takes five to eight years, it is clear that the City of Zagreb will not be able to meet these obligations in accordance with the Plan.

The drafted Plan also provided that all activities related to management of collected waste will be implemented through the Centre for Waste Management. Therefore, the Plan should have defined the structure of WMC (waste management centres) and location for the performance of certain processing activities but this was not done.

Also, the drafted plan did not take into account the provisions of the EU Directive on Waste (2008/98/EC), which requires that by 2020 share of separately collected waste from household (paper, glass, metal, plastic) must be at least 50%.

The Plan or the Study for it do not explain or justify the construction of incinerator as a solution for the treatment of residual waste in Zagreb, but also the Plan or the study do not analyse any other method of waste treatment such as mechanical biological treatment. Moreover the Plan and the Study does not meet requirements of the EU Waste Framework Directive WFD which determines: "When applying the waste hierarchy referred to in paragraph 1, Member States shall take measures to encourage the options that deliver the best overall environmental outcome. This may require specific waste streams departing from the hierarchy where this is justified by life-cycle thinking on the overall impacts of the generation and management of such waste." In our case, this means that decisions on waste management should be based on the analysis of the waste stream life which means that the whole plan should not be based on incinerator and that all options must be considered and based on the actual data and not on oversized and untested data.

Additionally, although it is good to have representative from Zelena akcija in the committee for SEA for the Waste Management Plan of the City of Zagreb since , ZA (or any NGO) representative is not even eligible to be a member of SEA committee but the City was not aware of that. Additionally, the ZA representative pointed that out at first session of the committee but nothing happened. Also, since the Ministry of Environment and Nature Protection has its representative in the aforementioned committee it warned the City on what is needed for regular SEA procedure and that the City should start everything from the beginning and satisfy the regulations but the City has no intention to start the new procedure.

VIII. Actions of the public during the procedure

The public was invited by Zelena akcija to participate in public debate on (draft proposal) of the Waste Management Plan of the City of Zagreb since the City did not put much effort in informing the public on this issue. Apparently, the only info about the drafted Plan was available just on website of the City of Zagreb which has showed in the past as insufficient.

IX. Decision of the environmental authority

In September 2009 – the City issued the Decision on starting of the SEA procedure for (Draft Proposal) of the Waste management Plan for City of Zagreb until 2015.

In July 2010 the City issued the Decision on determining the content of the strategic impact study (Draft Proposal) of the Waste management Plan for City of Zagreb until 2015.

In March 2012 the City appointed the expert committee for SEA. Mr. Marijan Galovic, leader of the Waste management Programme in NGO was appointed in this committee although he is not 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).

X. Current status of the case

Currently, it is expected that soon a new session of the Committee for SEA for Waste management Plan for City of Zagreb will be held. Also, in August 2012 the Ministry of Environmental Protection and Nature has submitted criminal report against the Mayor of Zagreb as responsible person for not providing the conditions and implementation of prescribed measures for waste management (determined by provisions of Article 15 of the Waste Act). Aforementioned is in direct link with the fact that City of Zagreb did not adopted the Waste Management Plan which would solve a great number of problems in this issue such as problems with existing waste disposals.

There is no decision of the environmental authority made in the time of preparation of the SEA procedure (October 2012).

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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.

