



Integrated Pollution Prevention and Control Case Study Collection 2007





Hungarian IPPC Case Study



Title of case:

IPPC permit for the discarded car battery recycling factory in villages of Vekerd and Zsáka

Matter of case:

The developer agreed with the municipality of Vekerd that they ensure the location for the factory and also agreed with local NGOs that they would make an agreement for their support of the project. The developer failed to agree with the surrounding municipalities.

Some were much more concerned with the development plan than Vekerd, especially Zsáka, whose municipal area was much closer to the planned factory than Vekerd).

The developer also failed to clarify basic environmental facts and possibilities especially in connection with the Natura 2000 protection of the project.

Country:

Hungary

Location:

The project is in South-East Hungary, near the Romanian and the Ukrainian borders.

Since the Hungarian market is already served, the developer expects to transport discarded car batteries for its facility from Romania and Ukraine. Environmental consequences were totally overlooked by the developer.

Geographic dimension:

Local, regional, national, EU and international dimensions all play a role in the case:

- the complicated relationship of the local municipalities and NGOs
- the role of regional NGOs, regional nature protection viewpoints
- the national pilot nature of the case in various aspects

- the trans-boundary aspects with another EU member state, Romania
- the international legal dimension because of the Espoo Convention

Initiator of case:

The mayor of the Zsáka municipality

Authorities involved (lead authority and consulting authorities)

- Trans-Tisza Environmental Nature Protection and Water Management Inspectorate
- National Environmental Nature Protection and Water Management Chief Inspectorate
- Hajdú-Bihar County Institute of the State Public Health and Sanitary Service
- Hajdú-Bihar County Plant and Soil Protection Institute
- Hungarian Geology Service, East Hungary Regional Office
- District Land Register Office of Berettyóújfalu
- Cultural Heritage Protection Office, supervision directorate, Debrecen Regional Office
- Hajdú-Bihar County Catastrophe Prevention Directorate
- The clerk of the Komádi City Municipality (the regional construction authority)
- Debrecen County Court
- Supreme Court of Hungary

Participants involved

- Developer
- Municipalities of Vekerd and Zsáka

Other interested parties and/or stakeholders:

- Concurrent developer (planning another car battery recycling factory a couple of kilometers away from the factory in this case)
- Local branch of the National Birdwatch Association (IbNBA) and the local NGO of Trans-Tisza River Environmental Protection Society (TTREPS)
- National and regional environmental NGOs
- Public interest environmental lawyers

Applicable EC and/or international laws:

- 337/85/EEC Directive (EIA)
- 96/61/EC Directive (IPPC)
- 79/409/EEC Directive (Birds)
- 92/43/EC Directive (Habitats)
- Espoo Convention

Applicable national laws:

- Act LIII of 1995 on the general rules of environmental protection (Environmental Code)
- Governmental Decree 314/2005. (XII. 25.) Korm. on EIA and IPPC (EIA-IPPC Decree)
- Governmental Decree 275/2004. (X. 8.) Korm. on the nature protection sites of European significance

Type of procedure

Spatial planning procedure:

- Local Physical Plan of the Municipality of Vekerd (accepted by a municipality ordinance)

Administrative level procedures:

- EIA-IPPC first and second level and
- after annulling the first decision a repeated first and second level EIA-IPPC procedure
- construction permitting procedure (first, second)
- after annulling the first decision a repeated first and second level construction permitting procedure (first, second again)

Judicial level procedures:

- first (and last) instance administrative court procedure
- Supreme Court decision (as an extraordinary remedy)

Administrative procedural history/timeline:

2003 Jul	referendum in Vekerd: the majority supports the plan of the recycling factory
2003 Dec	a preliminary impact assessment and a request is issued to the first instant environmental authority
2003 Dec	the inspectorate informs the concerned municipality clerks about the case, the Zsáka clerk signs that Zsáka is interested and complains about the lack of proper air protecting zones in the plan
2004 Mar	the inspectorate calls the proponent to issue additional supporting materials
2004 Apr	the clerk of Zsáka issues a negative consultative authority (ca.) opinion
2004 Apr	the inspectorate denies the request because of the negative ca. opinion
2004 May	the developer issues a new request for EIA-IPPC permit
2004 Jul	this time the inspectorate decides to include the nearby Komádi city clerk as a consultative authority instead of the Zsáka clerk
2004 Jul	the inspectorate issues the EIA-IPPC permit to the applicant
2004 Aug	the second instance inspectorate annuls the permit because of nature protection, noise and underground water protection reasons
2004 Aug	the Zsáka mayor writes a lobbying letter to the other concerned municipalities about the threatened eco-tourism and bio-agriculture
2004 Aug	108 protest letter arrives at the inspectorate

2004 Sep	the competing developer complains about Natura 2000 and protecting zone issues
2004 Nov	the inspectorate prescribes detailed EIS and IPPC documentation to the developer
2005 May	the developer issues the prescribed documents
2005 Oct	two local NGOs issue supporting letter to the inspectorate
2005 Oct	new first instance permit with only the routine monitoring conditions (noise, underground water and air) and regular reporting requirements
2006 Mar	second instance permit, additional conditions are: an administrative contract with local expert NGOs and the Nature Park Directorate (originally offered by the developer)
2006 Apr	administrative court procedures (4 trials, focusing on the legal issues such as the extent of litigation rights of the plaintiffs, the effect of Natura 2000 protection rules, revision responsibilities of the second instance inspectorate etc.)
2007 Mar	court decision: approving the administrative decisions
2007 Dec	Supreme Court decision: repealing the court decision and the administrative decisions on the bases of grievous procedural faults and because of overlooking the Natura 2000 viewpoints.

Background facts:

Interestingly enough, although the concerned municipality, Zsáka raised the BAT issues, alleging that the semi-open handling of the batteries (crushing and sorting out). Also, some of the environmental protection devices (e.g. dust filtering) seem not to respond to BAT requirements and the authorities and courts simply overlooked this approach.

The main issue in this case was implementation of certain EIA rules, especially the alternatives, the cumulative effects (with another; only planned; similar investment) as well as the social-economic effects of the development.

Natura 2000 issues also got a highlighted role in this case, namely the protection of bustard (*otis tarda*) and the Pannonic grasslands which are the subject of priority protection. As such, the Supreme Court has pointed out, the siting of the facility would have been lawful only if there had been no other alternative. Even in this case, the authorities should have asked the opinion of the EU Commission.

Public participation efforts

Public participation has shown two faces in this case. First, the developer succeeded in concluding an agreement contract with IbNBA and TTREPS, within which these NGOs could have received a considerable amount of money to organize regular monitoring of the life conditions of bustards. Therefore they full-heartedly supported the investment. The Birdwatch Association issued positive expert opinions and the other local organization went so far as to accompany the Defendant in the administrative court procedure.

On the other hand, some national NGOs like Nimfea Nature Protection Association, continued to provide professional advice and evidence to the Plaintiff side. A regional environmental association of biology teachers went to the scene and took photos as evidence of the destruction of protected nature by the “preparatory work” of the developer.

The main engine of public participation, however, was the municipality of Zsáka with the help of a public interest environmental law association of the country (EMLA).

Was the IPPC procedure integrated with EIA or, if not, what was the relationship between the two procedures (in time, content etc.)

The two procedures were fully integrated and, as we have pointed out, the EIA aspects of the case seemed to completely overwhelm the IPPC viewpoints.

Content of the decision

See under the case history heading.

Way BAT issues were handled in the case

See under the background information heading.

Outcome of the public actions:

See under the case history heading.

Remedies taken:

See under the case history heading.

Judicial procedural history/timeline:

See under the case history heading.

Outcome of the actions:

See under the case history heading.

Current status of case:

The first instance environmental inspectorate will restart the whole procedure if the developer wishes. The freedom of interpretation of the relevant EIA-IPPC laws in such repeated cases is strongly limited by the instructions given by the Supreme Court in the reasoning part of its decision.

Follow-up actions planned and their timeline:

The next task in the case is to interfere in the construction permitting case by raising the matter of the missing EIA-IPPC permit. Such permit with legal force is an indispensable attachment of the construction permit request, therefore no construction permitting case should start until the EIA-IPPC matter is finally settled.

Analysis of legal problems, conclusions:

This case has raised a line of important legal problems in connection with the EIA-IPPC procedure:

- The majority of developers interpret the legal requirement to analyze social-economic effects as a platform from which to boast about the economic development its investment will bring to the region and how many new jobs it creates. Actually, the correct interpretation is that under this heading the studies made by the developer's experts should gauge the social-economic effects of the environmental pollution the facility entails, such as effects on bio-agriculture and eco-tourism;
- The cumulative effects of two environmentally significant investments shall be examined even if both of them are only in their planning phase;
- If an environmentally significant investment seemingly targets the market of a neighboring Espoo country, the trans-boundary environmental impacts shall be examined. For example, the effect of transport of the masses of discarded car batteries in this very case. At least this concern should be raised with the Affected Party;
- Finally, if the local communities wish to reach the best possible results in such cases, they should realize that the possibility of public participation ensured in the EIA-IPPC procedures are bolstered with other tools of participation. This is clearly shown by the fact that the concerned public applied a serial of alternative approaches such as local referendum, lobbying at the neighboring municipalities with circulars, letters and collected mass signatures.

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Czech IPPC Case Study

Title of case:

LG. Philips

Matter of case:

The illegal integrated permit

Country:

Czech Republic

Location:

Olomouc Region, city of Hranice

Geographic dimension:

Regional, but the political dimension is national. It was the largest "greenfield" investment in the Czech Republic as of the turn of the millennium.

Initiator of case:

Ekologický právní servis (Environmental Law Service) - EPS, Czech Republic, Brno, 602 00, Dvořákova 13

Authorities involved (lead authority and consulting authorities)

- Regional authority of Olomouc Region (first instance in the administrative procedure of IPPC)
- Ministry of Environment (appellate instance in the administrative procedure of IPPC)
- Integrated Prevention Agency ("Agentura integrované prevence") – Authorized person in the sense of the IPPC Act



Participants involved:

- Hnutí DUHA (Rainbow movement), Czech Republic, Brno, 602 00, Brtaislavská 31 – participants only in the first instance of the administrative procedure
- EPS

Other interested parties and/or stakeholders:

None

Applicable EC and/or international laws:

Directive 96/61/ES on integrated prevention and restriction of pollution (hereinafter referred to as the “IPPC Directive”)

Applicable national laws:

Act no. 76/2002 Coll., on Integrated prevention (hereinafter referred to as the “IPPC Act”)

Type of procedure:

Administrative and judicial procedure (judicial revision of the administrative decision)

Administrative procedural history/timeline:

2001, September	plant producing large-surface television screens of the company LG. Philips Displays Czech Republic, s.r.o. started in city of Hranice a trial operation
2003, March	LG. Philips applied for the IPPC permit
2003, June	EPS applied for participation in the administrative proceeding
2003, September	the Regional authority of Olomouc Region issued the IPPC permit
2003, October	EPS appealed against the IPPC permit
2004, March	Ministry of Environment (appellate instance) changed the IPPC permit
2004, May	EPS filed the motion to the Municipal Court in Prague to cancel the changed IPPC permit
2005, April	the Municipal Court in Prague cancelled the changed IPPC permit
2005, June	LG. Philips filed the cassation motion against the decision of the Municipal Court to the Supreme Administrative Court (it had not the effect of suspending the enforcement of judgment, October 2006 – the motion was rejected by the Supreme Administrative Court)
2005, July	Ministry of Environment cancelled the IPPC permit and returned to the Regional authority of Olomouc Region (first instance) the case
2005, November	the Regional authority of Olomouc Region issued the IPPC permit
2005, December	EPS appealed against the IPPC permit
2006, February	Ministry of Environment (appellate instance) changed the IPPC permit
2006, April	EPS filed the motion to the Municipal Court in Prague to cancel the changed IPPC permit

Background facts:

Public participation efforts

In this case there were no other public participations than EPS and Hnutí Duha (Rainbow Movement). Hnutí Duha took part only in the administrative proceeding in the first instance.

After EPS appealed against the IPPC permit (2003, October) the appellate authority should be the Ministry of Environment's office in the city of Olomouc. The officials of this department were willing to cancel the IPPC permit as a whole. For some mysterious reason the case must have been sent to the Ministry of Environment's central office in Prague, to continue in the appellate procedure.

Was the IPPC procedure integrated with EIA or, if not, what was the relationship between the two procedures (in time, content etc.)

LG. Philips is an existing installation in the sense of IPPC Directive (Art. 2.4.). The provision § 43 (a) of IPPC Act lays down that operator of an installation which (s)he brought into operation between 30 October 2000 and 1 January 2003 (LG. Philips started the trial operation in September 2001) has a duty to apply for an IPPC permit till 31 March 2003. The IPPC permit has to contain also the conditions from EIA.

Content of the decision:

the installation of LG. Philips falls into the category 6.7 Annex I IPPC Directive and IPPC Act (literal transposition) – “Installations for the surface treatment of substances, objects or products using organic solvents, in particular for dressing, printing, coating, degreasing, waterproofing, sizing, painting, cleaning or impregnating, with a consumption capacity of more than 150 kg per hour or more than 200 tons per year”. The IPPC permit contained lots of conditions.

Way BAT issues were handled in the case:

BAT was backed up by the fact, that the LG. Philips plan was a new installation at that time, that it was in harmony with the Considerations in Annex 3 of IPPC Act (Annex IV of IPPC Directive).

BREF does not exist for this type of installation as yet.

Outcome of the public actions:

The appeal caused the change of the IPPC permit.

Remedies taken:

The Ministry of Environment by the review of the IPPC permit found further mistakes, which were rectified by setting further conditions protecting the environment.

Judicial procedural history/timeline:

2001, September	plant producing color TV set of the company LG. Philips Displays Czech Republic, s.r.o. started in city of Hranice a trial operation
2003, March	LG. Philips applied for the IPPC permit
2003, June	EPS applied for participation in the administrative proceeding
2003, September	the Regional authority of Olomouc Region issued the IPPC permit
2003, October	EPS appealed against the IPPC permit
2004, March	Ministry of Environment (appellate instance) changed the IPPC permit
2004, May	EPS filed the motion to the Municipal Court in Prague to cancel the changed IPPC permit
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2005, June	LG. Philips filed the cassation motion against the decision of the Municipal Court to the Supreme Administrative Court (it had not the effect of suspending the enforcement of judgment, October 2006 – the motion was rejected by the Supreme Administrative Court)
2005, July	Ministry of Environment cancelled the IPPC permit and returned the case to the Regional authority of Olomouc Region (first instance)
2005, November	the Regional authority of Olomouc Region issued the IPPC permit
2005, December	EPS appealed against the IPPC permit
2006, February	Ministry of Environment (appellate instance) changed the IPPC permit
2006, April	EPS filed the motion to the Municipal Court in Prague to cancel the changed IPPC permit

Outcome of the actions:

LG. Philips went bankrupt. The production was cancelled in one hall. The installation was bought by another investor.

Current status of case:

The court procedure against IPPC permit is still pending.

Follow-up actions planned and their timeline:

Already by the beginning of trial, the operation of the LG. Philips plant, in September of 2001, incurred one fundamental problem.

That is: the Act on prevention of serious accidents (No. 353/1999 Coll., replaced by Act No. 59/2006 Coll. since June 2006) states that no facility in which dangerous chemical substances are sited (in the LG. Philips case, this means e.g. toluene, acetone, isopropanol, hydrofluoric acid, and nitric acid) may begin being utilized without an already approved program for prevention of serious accidents.

Such a program is essential in order to commence the factory operation, because of the fact that within it there must be a thorough evaluation of the risks involved of serious accident and its possible consequences for the factory surroundings. However, the regional authority granted approval for Philips's program in January 2004 (i.e. two and half years after deadline).

LG. Philips lacked the insurance required by law for damages caused as a result of a serious accident during the trial operation. The law requires that LG. Philips acquire such insurance before commencing even test operations at its factory.

There was leak of almost one hundred liters of lacquer with high toluene content into the Bečva River in October 2003. The Regional authority refused to issue fines, stating that since Philips had been breaking the law for two years, the deadline passed for national authorities to issue the fine.

EPS supplied criminal information to the Police concerning involved officials not obeying the Act on prevention of serious accidents and the Building Act. The officials were accused by the Police and suspended. With the change of the Act on the officials of municipality (No. 312/2002 Coll.) in June 2006 the officials returned to their positions.

Analysis of legal problems, conclusions:

EPS challenged the IPPC permit because the IPPC procedure assessed only part of the installation. Subject of the IPPC procedure was solely the sewerage plant and the paint plant, but not another 13 air pollution sources. The non-conformity of Czech legal definition of "installation" with IPPC Directive till May 2006 (see IPPC analysis) was reason why the LG. Philips installation was not subject as a whole in the IPPC procedure. Bold parts of below quoted definitions of "installation" represent the main problematic difference.

The non-conform Czech definition of installation till May 2006 was *"an installation means a technical and technological unit referred to in Annex No. 1 of this Act or a **set of related technical and technological units located in a single operation**, if at least one such unit is referred to in Annex No.1 and if this is not a unit employed for research, development and testing of new products and processes; an installation shall also include other technical and technological units or a their set not listed in Annex No.1 to this Act, if the operator of the installation applies for granting an integrated permit thereof."*

The definition of installation in IPPC Directive and in Czech law since May 2006 is: *"installation` shall mean a stationary technical unit where one or more activities listed in Annex 1 are carried out, and **any other directly associated activities which have a technical connection with the activities carried out on that site and which could have an effect on emissions and pollution**"*

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Austrian IPPC Case Study



Title of case:

Paper Mill Pitten

Matter of case:

Reconsideration and updating of permit conditions for the paper mill in Pitten/Lower Austria.

Country:

Austria

Location:

In the town of Pitten/Lower Austria, approx. 80 km south of Vienna

Geographic dimension:

Local/Regional

Initiator of case:

- W. Hamburger, Limited Liability Company: Operator

Authorities involved:

Lead Authorities:

- Provincial Government of Lower Austria: Department for regional planning, environment and transport
- Regional administrative authority Neunkirchen

Consulting Authorities:

- Official technical experts

Participants involved:

- Operator
- Lawyer of Operator
- Federal Government of Lower Austria: Department for regional planning, environment and transport
- Regional administrative authority Neunkirchen

Other interested parties and/or stakeholders:

- Municipality of Pitten
- Municipality of Seebenstein

Applicable EC and/or international laws:

- Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control
- Recommendation 2001/331/EC of the European Parliament and of the Council of 4 April 2001 providing for minimum criteria for environmental inspections in the Member States

Applicable national laws:

- Pollution Prevention from Steam Boilers Act (EG-K)
- Waste Management Act (AWG 2002)
- Order on the incineration of waste (AVV)

Type of procedure:

The reconsideration and updating of permit conditions for the paper mill was dealt with in an **administrative procedure**. In case of applicability of the Pollution Prevention from Steam Boilers Act the regional administrative authority would be competent at first instance. Due to the fact that waste is burnt in the steam boilers in this specific case, the Waste management Act became applicable and therefore the **provincial government is now authority of first instance**.

Procedure for the adaptation of existing installations (relevant for specific case)

According to § 22 Pollution Prevention from Steam Boilers Act (EG-K) existing installations (installations with a permit older than 31 October 1999 or put into operation before 31 October 2001) have to meet the requirements concerning integrated pollution prevention contained in § 5 (licensing requirements) and §8 par. 3 (content of the ruling) EG-K before 31 October 2007.

In order to be able to comply with this term, the operator of such a facility has to inform the authority latest **12 months before the deadline** about the measures he has or will be taking in

order to meet his obligation. The authority then must issue a decision either determining the sufficiency of the measures or calling for appropriate ones.

The same time limits apply to facilities used for the handling of waste. According to § 78 par. 5 AWG 2002 (**Waste Management Act**) installations used for the handling of waste have to fulfill the special criteria for IPPC installations laid down in § 43 par. 3 AWG 2002 and § 47 par. 3 AWG 2002 until 31 October 2007.

If in such a facility waste is incinerated in the steam boilers, the **AWG 2002 will still be applicable** if the permit was requested after the entry into force of the AWG 2002 (§37 par. 1 and §77 par. 2 AWG 2002).

It is possible that a different legal basis exists for a single installation if some parts of the installation are used for a different purpose than others (see below under analysis of legal problems).

Administrative procedural history/timeline:

Permit procedure

1985, 1990, 1992, 1993	Issuing of original permits for different parts of the installation and different combustibles
2002	Entry into force of AWG 2002, transfer of competence from the regional administrative authority to the provincial government
30 October 2006	Operator informs authority of planned measures according to §22 EG-K
19 December 2006	Operator informs authority of planned measures according to the Order on the incineration of waste (AVV) and demands exemption certificate (see below)
1 March 2007	Decision taken by the Department for regional planning, environment and transport of the Provincial Government of Lower Austria

Public Participation

(see also below)	
25 May 2007	Inquiry concerning environmental information
13 June 2007	Incomplete reply to the query
18 June 2007	Request renewed

Public participation efforts

During the actual permit procedure concerning the adaptation of the installation there was no public participation. The public was not informed about the procedure and therefore had no opportunity to issue statements. Article 15 par. 1 of Directive 96/61/EC allows for public participation only regarding “*applications for permits for new installations or for substantial changes*”.

In the case at hand the authority determined, that the **changes to the installation were not significant**, therefore the **public could be excluded**. From unofficial sources it is known that in the mid 1990s a major restructuring of the facility took place. Concerning these proceedings surrounding municipalities and individual neighbors tried to participate.

According to § 37 par. 1 AWG 2002 significant changes to an installation require a permit issued by the administrative authority. § 2 par. 8 no. 3 defines “**significant change**” as being a change which can possibly have **considerable negative impact on humans and the**

environment. For IPPC installations an expansion of capacity of over 100% will in any case be a significant change.

A public participation issue came up later, after the permit had been issued. Two representatives of municipalities close to the installation **demanded environmental information** (the permit decision, expected effects on the environment, how the measures stipulated by the authority were to improve environmental quality, schedule for amelioration) from the competent department in the Federal Government of Lower Austria. They **based their request on the Environmental Information Act** (UIG, BGBl No. 495/1993). This act is the legal basis for the transposition of Directive 2003/4/EC of 28 January 2003 on public access to environmental information.

The reply by the competent authority was **short and incomplete**. The request for the permit decision was refused on the basis that the specific procedural documents are not covered by the definition of “environmental information” contained in § 2 Environmental Information Act. A second query response indicated that the decision as well as the expert’s report were released on a **goodwill basis**.

Was the IPPC procedure integrated with EIA or, if not, what was the relationship between the two procedures (in time, content etc.)

No. At the time the permits for the installation were issued, there was no legislation on EIA in Austria.

Content of the decision

The Department for regional planning, environment and transport of the Provincial Government of Lower Austria had to make a decision concerning notification by the operator that he was planning to take certain measures in order to adapt his installation to the state of the art.

The decision first states **which measures are planned** by the operator in order to fulfill the criteria for an adaptation to the “state of the art” (this is the Austrian term for BAT). These measures are **complemented with a list of obligatory assignments** which can, apart from two points (new emission limit values were introduced for dust and SO₂), be considered as simple maintenance measures. The decision determines that these measures and assignments together cannot be considered as substantial changes to the installation.

One **exemption certificate** was also issued together with the permit: Following a request from the operator emission values for NO₂ are fixed at a high level (380 mg/cubic meter) for the time period until 31 December 2008. The AWG 2002 itself does not contain emission limit values but the Order on the incineration of waste determines that in cases like the one at hand the maximum emission of NO₂ shall not exceed allowable limits.

The decision does **not explicitly state** that the installation fulfills the criteria for IPPC installations it simply states which measures are planned and determines what other measures are to be taken. The reasoning consists of a short introduction and 12 pages of expert’s reports that were directly taken into the decision.

Way of BAT issues handled in the case

The whole decision is about the adaptation of an installation to the current state of the art (Austrian term for BAT). Nevertheless, apart from mentioning this fact and using the notion in the reasoning, the **state of the art is not defined anywhere** in the decision, no **reference is made** to any BREF document or similar.

Only the report of the **expert for noise** which is cited in the reasoning contains a reference to guidelines issued by the ÖAL (Österreichischer Arbeitsring für Lärmbekämpfung; Austrian working group on noise reduction).

Outcome of the public actions:

See above under “Public participation efforts”

Remedies taken:

No remedies taken

Judicial procedural history/timeline:

No judicial proceedings

Outcome of the actions:

No judicial proceedings

Current status of case:

No judicial proceedings

Follow-up actions planned and their timeline:

No judicial proceeding

Analysis of legal problems, conclusions:

A specific legal problem in this case concerns the **exemption certificate** issued following a request from the operator. Emission limit values for NO₂ are fixed at a high level until the end of the year 2008. This timeframe is, according to an experts report cited in the reasoning, the **maximum** that can be considered as **reasonable**.

Other legal problems in this case are closely linked to the **transposition problems** Austria had concerning Directive 96/61/EC:

First there is the **sectorial approach**. The IPPC directive was transposed in Austria by amending four different acts (Waste Management Act, Trade, Commerce and Industry Regulation Act, Mineral Raw Materials Act, Pollution Prevention from Steam Boilers Act) on the federal level, instead of creating one single Industrial Installations Environment Act. Apart from

this fragmentation on the federal level also the provinces have had to transpose the directive in their fields of jurisdiction.

This “disintegrated” approach also has its effects for installations where **different parts of the same installation** might receive a **permit on a different legal basis** depending on their intended use.

In the case at hand the permit proceedings only concern one steam boiler out of three. This means that different proceedings have to be carried out for the same facility. The concept of the integrative industrial installation, meaning one proceeding for one installation, which was traditionally applied in Austria, has been abandoned. It seems this has happened in order to satisfy only minimum conditions of the IPPC Directive.

Second, the **restrictive interpretation** of the Directive has led to a situation where only those parts of the installation are inspected which fall under the directive. In this sense there is **no concentration of the permit proceedings**. In practice the authorities will seldom initiate IPPC proceedings for existing installations, like in our case avoiding them by determining changes as insignificant. By avoiding an IPPC procedure (and therefore public participation) the authority is able to continue its work concerning the installation on the basis of the old permit decisions.

A solution to this gridlocked situation could be provided by the Regulation (EC) No 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing voluntary participation by organizations in a Community eco-management and audit scheme (**EMAS**), which is directly applicable in Austria. This regulation was supplemented with the Environmental Management Act (Umweltmanagementgesetz, UMG). Following the procedure of § 22 UMG the operator can, under certain conditions, demand a “**consolidated decision**” from the competent authority. This decision has to comprise all permits based on federal law related to the installation.

This approach can create transparency and therefore legal certainty for the operator.

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