

PUBLIC PARTICIPATION IN CROATIAN ENVIRONMENTAL IMPACT ASSESSMENT PROCEDURES

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This case study is designed to inform citizens about Croatia's accession to the EU in the area of the environment, in an easy-to-understand way. It serves both as educational and lobbying tool aimed at informing citizens on the latest developments in environmental law and implementation, as well as influencing policy and decision makers in Croatia. The case study is part of a Zelena Akcija project to lobby for better waste management and Environmental Impact Assessment procedures in Croatia. The Project brings together experts from Hnutí DUHA, the largest environmental organisation in the Czech Republic, with Zelena Akcija to propose solutions for some of Croatia's most pressing environmental problems. The project is funded by the European Commission but does not necessarily represent the views of the EC.

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Environmental Impact Assessment (EIA) is the evaluation of the effects likely to arise from a major project (or other action) significantly affecting the natural and man-made environment. EIA is a systematic and integrative process whose integral parts are consultation and participation. However, in Croatia, similar to other Eastern European and countries in transition, there are some serious contextual problems that affect the EIA procedures. **Institutional structures are weak, there is a lack of political will to consider environmental issues where the focus is very clearly on economic development at almost any cost, and decision-making may be closed. EIA reports may be confidential or difficult to access, and public participation is often very weak or non-existent.**

EIA Legislative requirements in the EU and Croatia

EIA procedures in the EU are regulated by the EC Directive 85/337/EC, revised by 97/11/EC, which requires (Article 6) notification of and consultation with the public and all authorities likely to have an interest in the request for development. Both Directives were focused on consultation rather than participation and are amended by the latest Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment. In Croatia, the first legal requirement for EIA was established in the 1980 Law on Physical

Planning and Spatial Arrangement and the first detailed regulations on the preparation of EIAs were issued in 1984. An EIA Rulebook was passed in 2000 and amended in 2004 (NN 59/00; NN136/04). It defines all necessary steps in the EIA process, legal requirements for the content of the EIA study and lists the projects which are subject to EIA and smaller projects for which an EIA may not be necessary but are still subject to an environmental assessment on a case-by-case basis. EIA in Croatia has come out of the physical planning system and in order to obtain consent for a development, the project proponent has to show that the proposal is in line with relevant physical plans. In addition to this, there are many other aspects in which the Croatian EIA Rulebook does not comply with EU directives 85/337/EC and 97/11/EC: the content of the EIA study is prescribed instead of being subject to a scoping procedure, the list of projects subject to EIA is different compared to Annex I and Annex II of the EC Directive, and the **screening and scoping**, the first two steps in the EIA procedure, **are not formally required** in the current Croatian system. It means that the affected public, both in Croatia and in any affected neighbouring state, are not able to participate in the screening and scoping activity. Whereas, according to EU directives, consultation with the public should happen at any stage of EIA process and influence it, in Croatia the public consultation occurs too late in the process and the EIA procedure starts only when the developer submits the environmental report to Competent Authority. Only two weeks are allowed for the public to make written comments on the proposal, which is far from sufficient time to get hold of and consolidate all necessary information, and a public hearing is optional. Since the EIA starts late in the process, it leads to a

high failure rate and bears significant costs for the developer. Moreover the activities subject to EIA in the Croatian Rulebook are more general and do not correspond to the Annex II of the Directive, where activities listed are more specific and concrete. In comparison with EU Annex I and II, the Croatian lists do not provide any detailed information on chemicals, industrial production installations, production of plastic materials, infrastructure projects or tourist complexes, which existed in 2000 Rulebook but were excluded from the list in the 2004 amendments.

The major deficiency of current EIA regulation in Croatia, when it comes to the provision of public participation in EIA, is that the Rulebook is passed and amended solely by the Minister of the Environment, who can change it overnight with no discussion in the Parliament or opportunity for NGOs and other interested parties to comment on its content. The table below shows a comparison between EU, Czech and Croatian EIA legislation and proves the necessity of improving Croatian legislation in this area, especially in the stages of screening and scoping. For example, Czech environmental legislation (Act No. 114/1992 Coll.), unlike in Croatia, requires environmental NGOs to be informed of planned interventions in the environment and of the related administrative procedure. After receiving such information, Czech NGOs may apply for legal standing in the administrative procedures, which allows NGOs to submit comments and proposals. The competent authorities may either accept such comments and proposals or reject them. If the administrative procedures result in permission for the intervention, NGOs may appeal against the permission, and if their appeal is rejected, NGOs can apply for a judicial review of the permission.

Key stages in EIA under EU, Czech and Croatian laws - comparison

EU	Czech Republic	Croatia
Notification to Competent Authority (CA) Developer notifies CA of the project	Notification to Competent Authority (CA) Developer notifies CA of the project	NO ACTION
	Notification to environmental authorities and the public Note: environmental authorities must also be notified of every stage mentioned below	NO ACTION
Screening, scoping (public involvement)	Screening, scoping, alternatives CA decides whether EIA is required (screening). If the decision is positive, CA decides at the same time on the scope of environmental information to be submitted by the developer (scoping). The scoping decision may require the developer to prepare alternatives to the project.	NO ACTION There is no formal screening, instead a list of development projects to be subject to EIA is annexed to the Rulebook; there is no formal scoping until after the EIA report is submitted to CA
Submission of environmental report to CA	Submission of environmental report to CA	Submission of environmental report to CA - this is the first notification about the project, there is no public involvement, only CA is notified. EIA report must address topics identified in the Rulebook produced and defined by the MEPPPC, or more precisely the Minister alone.
Consulting environmental authorities and the public	Review of adequacy of the environmental information	Review of adequacy of the environmental information
	Public hearing - must take place if there was any dissenting opinion in the previous procedure	Public hearing - must take place if there was any dissenting opinion in the previous procedure
	Final opinion of the CA	Final opinion of the CA - The Minister decides whether to issue a formal approval for the project based on the specially appointed EIA Commission's judgement, but can also ignore proposed alternatives and Commission's recommendations
Consideration of the environmental information by CA	Governed by specific acts on development consent procedures (land planning procedure, mining permission procedure, etc.)	Governed by specific acts on development consent procedures (location permit, mining permission procedure, etc.)
Announcement of the Decision	Governed by specific acts on development consent procedures (land planning procedure, mining permission procedure, etc.)	NO ACTION
Judicial Review	Governed by the Act No.150/2002 Coll. On administrative judicial review	Administrative Procedure

Public participation in Croatian EIA: the case study of Druzba Adria

The lack of effective public participation in EIA is a major weakness in Croatia. It tends to occur late, if at all, and is often tokenistic and limited to minimum requirements. We hear much of “expert opinion” but often very little of “public opinion”. Yet the public have much to contribute: they may offer a superior knowledge of local conditions; they bring their own values as stakeholders; and they contribute a non-scientific discourse to a process which is often too scientific. Lack of effective public participation is not only inequitable and inefficient; it may also be very counter-productive, as frustrated and unequal participants resort to other means, including direct action.

An example of the public resorting to action due to the lack of public participation is the case study of the Druzba Adria oil pipeline project in Croatia. Croatia, or more precisely, the Croatian President, signed the cooperation agreement with Russia, Ukraine, Belarus, Slovakia and Hungary in 2002. The purpose of the project was to transport Russian oil to the Adriatic coast where it would then be loaded to tankers and further transported internationally. The environmental impact of ballast waters being discharged in the Adriatic from tankers in order to take up the oil and Croatia’s poor ability to deal with environmental accidents in case of major oil discharges or hazards on pipeline and tankers, caused a stir among experts, journalists and the general public, especially since the Adriatic coast and its natural beauty is the major asset of Croatia as a tourist destination. The public was informed about the project and its risks at the press conference only after the agreement had been signed. This caused a public outcry because there was no EIA procedure carried out for this project, neither there was a Parliamentary discussion before signing the agreement.

Following an extensive advocacy campaign organised by Croatian environmental NGOs and rising public pressure, in 2003, the Croatian Ministry for Environmental Protection, Physical Planning and Construction (MEPPPC) required that the EIA procedure should be carried out. Environmental NGOs succeeded in involving a large proportion of the Croatian public in opposition to the project due to its enormous environmental impact and insignificant economic benefit compared to its environmental costs. Green Forum, a Croatian network consisting of 32 environmental NGOs collected more than 50 000 signatures for the petition against the project, it started a national campaign organising numerous demonstrations on the streets, petitions, and performances which attracted a number of other NGOs, church organisations, and celebrities to join the initiative. The initiative resulted in forming of the Committee for the Protection of Adriatic Sea in spring 2004, consisting of artists, scientists, journalists, and academics in support of the campaign. In August 2004, the Croatian network of environmental organisations also involved Italian environmentalists in the protest and required the ESPOO Convention procedures to be taken into consideration as well. The Italian press started to get interested in the topic and Italian and Croatian environmental NGOs organised a joint demonstration against the project in Rijeka and Omišalj, the terminal where the Russian oil was supposed to be loaded into tankers and transported across Adriatic Sea.

In July 2004 JANAF, the Croatian oil company and partner in Druzba Adria project, submitted the EIA study to the MEPPPC, who appointed a Review Commission to assess the study. In the meantime, the MEPPPC adopted Amendments to the EIA Rulebook in October 2004. The Croatian public call them “Janaf amendments” since they brought significant changes in favour of Janaf’s Druzba Adria project, which are illustrated by the following articles:

Article 2: The EIA procedure is not necessary for oil pipeline reconstruction
Article 7: Public viewing will not be allowed for documents proclaimed state or military secrets
Article 9: An EIA study produced following the EIA Rulebook 59/2000 can be utilized for the EIA procedure within maximum of

90 days from the adoption of the EIA Rulebook amendments.

The mounting public opposition to the project also influenced the Presidential elections in 2005 when candidates used this topic to ingratiate themselves with the Croatian people and opposed the project even though the EIA study Review Commission had still not released its final decision. The Review Commission had three sessions, from January to October 2005, due to two rejections of the study and requested amendments. Finally, on 25th October 2005 the Commission rejected the EIA study for the Druzba Adria project and the MEPPPC publicly announced that its opinion would be respected.

Druzba Adria example clearly indicates how ignoring the public and their opinion in the initial stages of an EIA study can backfire and influence decision-making in a way that can result in a negative outcome for both the developer and the public. Involving the public in the early stages of an EIA study (screening) in Croatia would not only save time and money to the developer and EIA expert Commission, but would also contribute to a more transparent and accountable process that would bring together different stakeholders, increase their knowledge of EIA and ensure their support throughout the process.

Recommendations to policy makers

Priority should be given to enhancing the screening and scoping stages in the EIA process in Croatia. So far there is neither public participation nor consultation during screening and scoping in Croatia, whereas the EU Directive 97/11/EC stipulates that the developer should contact the competent authority (CA) to confirm whether an EIA is necessary for the proposed project, and the public should be informed immediately (screening). In scoping, the developer can ask the CA what subjects should be studied as parts of the EIA. The decision is not binding but the CA gives directions to the developer what to take into consideration (eg. noise, air pollution). According to the EU directive, the public and statutory authorities are to be notified of the results of scoping, in order to enable them to give comments.

Therefore it is first necessary to transpose the relevant EU directive into Croatian legislation. Then screening and scoping should be carried out at the local (county) level in order to involve all relevant stakeholders who can make a significant contribution with their local environmental knowledge. The developer should be in charge of organising and paying for the public consultation in screening/scoping and allow at least two months for these EIA stages in order to ensure effective public participation. Consultees that could be included in scoping are: regional and local authorities, authorities responsible for pollution control, protection of nature, and spatial planning, local/national environmental NGOs, groups representing users of the environment (farmers, fishermen, tourists), research institutes, universities, local residents, and the general public. It is worth noting that two months allocated to effective screening and scoping, involving public participation, will not delay the entire EIA procedure but could only contribute to a more transparent and accountable process and the avoidance of possible future misinterpretations and misunderstandings with the public. The precondition for achieving efficient screening and scoping process is to ensure training of all actors involved in the EIA process: national and local government bodies, NGOs and consultancies.

Moreover, it is necessary to produce guidelines according to which actors involved in the EIA process would be able to implement the procedure in line with legislative requirements and best practice examples. Guidelines should be developed at several levels to include: procedural, sectoral (waste, water, air), thematic (biodiversity, geology) and approach-based (public participation) guidelines. In order for scoping to be effective, it is necessary to ensure many diverse means to facilitate the consultation process, such as: announcements about the scoping process in local and national newspapers, producing a leaflet or brochure about the project, describing the EIA process and the purpose of scoping, posting notices about the project at the site, distributing letters or questionnaires to local residents and potentially interested organisations requesting comments on the

proposal, organise meetings with key interest groups and individuals in the local community, organise exhibitions and workshops, establish an expert, community-based scoping group who will continue to oversee the environmental studies throughout the process and finally, publish a draft scoping report for review and comment before completing the process. Officials are often heard stating that they have tried to include the public but that they are not interested, but the steps they have taken are usually minimal. It is the responsibility of the authorities to increase their efforts to reach the general public by such methods as mentioned above.

Effective scoping should involve the competent authority and the developer in a dialogue about the project and the issues it raises. This should be supplemented by consultations with relevant statutory and non-statutory organisations and the general public, and a visit to the site where the project is to be carried out and its surroundings will always be invaluable. Therefore when scoping is carried out by a developer or an EIA team, either under a legally established system or as part of good practice in EIA, environmental authorities and other interested parties and the public should also be consulted. Needless to say, early consultation with interested parties can be very valuable in avoiding later delays if new issues emerge from consultation only after the Environmental Impact Statement (EIS) is submitted.

It is also important to note that the public in Croatia is not informed about the possible alternatives to an action or about the “no-action alternative”, that is, what would happen in case the developer did not proceed with the project at all, which greatly affects public decision making. Therefore developers and relevant authorities in Croatia often claim that the public and NGOs are always opposing development projects irrespective of the quality of EIA. Many jurisdictions, for example the Netherlands, insist that “no action alternative” be fully evaluated during the EIA process. The World Bank¹ has stated that evaluation of the no-action alternative should be routinely included in EIA

reports for projects in developing countries that it funds.

Conclusion

The current EIA system in Croatia has many deficiencies, however in this paper we focused mainly on the aspect of public participation. It is crucial to ensure public participation during screening and scoping and in that way provide positive input to other stages in the EIA process, such as decision-making. If the public is involved early in the process it will facilitate subsequent decision-making and make it more transparent and accountable. In order to improve EIA regulation and allow for more public participation it would also be necessary to introduce a Law on EIA and in that way allow for Parliamentary discussion on the Law draft and comments by NGOs and the public. Current and previous EIA Rulebooks were drafted and passed by the Minister of Environment, which gave the public no opportunity to influence these regulations. So far it seems insufficient to have location and building permits issued as development consents after the EIA's approval by the Commission, when environmental issues are not included in physical planning policies. Furthermore, the provisions of strategic impact assessment (SEA) that take into account the impacts of certain plans and programmes on the environment, should be included in physical planning to ensure that environmental issues are given due consideration when issuing location and construction permits. The importance of consultation at all stages in EIA has increased with the EU's signing the Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters. However, even though Croatia signed the Aarhus Convention (but has not ratified it yet), public participation is still poorly developed and largely reflects the top-down culture of previous eras. Although consultations with interested parties will help ensure that all the impacts, issues, concerns, alternatives and mitigation which interested parties believe should be considered in the EIA are addressed, in Croatia public participation is still at the bottom of the participation ladder, and often more closely resembles manipulation and minimal information provision.

¹ World Bank (1996) *Analysis of Alternatives in Environmental Assessment. Environmental Assessment Sourcebook Update no.17.* Washington, DC: World Bank

Zelena Akcija (eng. Green Action- GA) is a non-governmental, non-profit organisation registered in 1990 and located in Zagreb. GA is actively involved in environmental issues of local, national and international significance. GA is not affiliated with any political party and is based on the efforts of volunteers, supported by a professional team of around 10 persons. The goal of GA is to promote environmentally sound and sustainable development. Our key priority is to encourage and facilitate public participation in decision-making processes relevant to the environment and the improvement of quality of life in Croatia. GA catalyses change through projects, campaigns and non-violent direct actions. We also provide expertise, advice and information on a wide range of environmental issues to individuals, communities, schools, and other NGOs in Croatia and the region. GA is a member of the Friends of the Earth International, the biggest network of grassroots environmental NGOs in the world, and is partner of the WWF in Croatia."



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