

## **AVOSETTA RIGA MEETING**

**27. – 28. May 2016**

### **Permit procedures for industrial installations and infrastructure projects: Assessing integration and speeding up**

**AUSTRIA**

*Professor Dr. Verena Madner*

Vienna University of Economics and Business (WU Wien)

#### **A. Baseline information**

##### **I. Industrial Installations**

##### **1. Forms and scope of permits**

*In broad terms, what are the forms and scope of permits necessary to construct and operate an industrial installation (e.g. an industrial installation in the sense of Annexes I or II of Directive 2011/92/EU)?*

- 2. planning permission and/or building permit*
- 3. special environmental decision*
- 4. construction and operating permit,*
- 5. stepwise permitting,*
- 6. other types of permit (nature, water extraction...)*

Depending on the size and nature of the proposed industrial installation, i.e. whether certain threshold values are met, different regimes and thus different permit procedures apply. For the purpose of this report, I want to provide a quick overview of the two most important regulatory regimes.

### **1.1 Installations subject to the EIA regime (*installations in the sense of Annexes I or II of Directive 2011/92/EU*)**

The situation with regard to industrial installations requiring an EIA, can be summarised as follows: **If an EIA is required, the EIA authority is responsible for the environmental impact assessment procedure and at the same time issues a single permit (development consent) covering all permit conditions relevant for the installation at stake**<sup>1</sup>

The authority applies all relevant laws<sup>2</sup> (federal and provincial) and verifies whether the proposed installation fulfils the requirements. No other permits regarding construction and operation are required. The authority also applies the relevant IPPC-legislation and issues a permit that covers all IPPC-matters. Consequently, in this single permit procedure, all potentially affected environmental media are assessed (including nature, water extraction) thus ensuring consistent and coherent environmental protection.

Stepwise permitting is possible under the EIA-Act. Upon the request of the project applicant, the authority may initially deal with all matters relevant for evaluating the basic admissibility of the project (*Grundsatzgenehmigung*). In such a case, only the documents required for assessing basic admissibility need to be submitted. The basic development consent shall also identify the areas that shall remain subject to detailed development consents (*Detailgenehmigungen*). On the basis of a basic development consent granted, the authority shall decide on the detailed development consents following submission of the required additional documents.

The competent authority in EIA-matters at first instance is the government of the respective province (*Landesregierung*); the authority is required to reach a decision within nine months, six months respectively for smaller-sized industrial installations.<sup>3</sup> Authorities that are competent planning and environmental authorities outside the scope of the EIA Act and would have been competent if the project were not subject to an EIA will be heard during the procedure (*mitwirkende Behörden*).

---

<sup>1</sup> EIA Act 2000 (UVP-G), Federal Law Gazette 697/1993, last amended by Federal Law Gazette I 4/2016(UVP-G), § 3(3) EIA Act

<sup>2</sup> The EIA-authority therefore also applies the relevant IPPC-legislation and issues a permit that covers all IPPC-matters.

<sup>3</sup> § 7(2), (3) EIA Act.

The legal remedy against the EIA authority's decision is an appeal to the Federal Court of Administration (*Bundesverwaltungsgericht*). The court exercises a reformatory function, thus, when reviewing the EIA permit decision, it can render a decision on the merits of the case. A decision of this court is subject to further judicial review by the Highest Courts (Administrative Court, Constitutional Court).

## **1.2 Installations subject to the IPPC directive that not within the scope of the EIA directive or below EIA-thresholds**

Initiatives to implement the IPPC-directive as part of an overall reform of the regulatory framework for industrial permitting failed, Austria went on to implement the IPPC-directive by amending the sectoral laws, trying to implement an effective integrated concept and to establish the “one-stop-shop-principle” as far as possible:

In terms of Federal Law these relevant sectoral acts were:

- The Trade Act - the central and most comprehensive framework for plants permits (Gewerbeordnung – GewO 1994)
- The Waste Management Act (Abfallwirtschaftsgesetz – AWG 2002) and the
- Mineral Raw Materials Act (Mineralrohstoffgesetz – MinRoG)

For IPPC-installations within the scope of these Acts no separate or additional plant permits under federal law are required (“procedural concentration”). The permit requirements of other relevant federal Acts – for example – several provisions of the Water Act (Wasserrechtsgesetz – WRG) must be applied in the permit procedure. However, contrary to installations that are within the scope of the EIA-directive, separate permits under provincial law may be required (eg. Nature and Countryside preservation legislation, Natur- und Landschaftsschutzgesetze).

In terms of provincial law, several federal provinces issued IPPC-Acts to implement the directive within their field of legislation (primarily intensive livestock farming). In some provinces the directive has been implemented by amendments of sectoral regulations.

As regards IPPC-installations, the Trade Act (GewO) has the most comprehensive scope of application. In answering this questionnaire the Trade Act (GewO) was therefore chosen as a main reference.

For all IPPC installations within the scope of the Industrial Code (GewO), the Industrial Code provides a partly concentrated procedure. The district administration authority (*Bezirksverwaltungsbehörde*) is the competent authority for the concentrated procedure. In the permit procedure governed by the Industrial Code (GewO) as the central piece of legislation

for industrial installations, the authority applies all relevant federal laws (e.g. the Federal Forestry Act, the Immission Control Act – Air etc) but not provincial laws, thus establishing a partly concentrated procedure. Therefore, despite the far-reaching scope of the Industrial Code (GewO), operators may have to obtain separate permits under provincial laws, which is particularly relevant for environmental aspects of the installation: Separate permits may be required under the zoning and building law rules (Bau- und Raumordnungsrecht) or the Nature and Countryside preservation legislation (Natur- und Landschaftsschutzgesetze). In these cases the permit procedure under the rules of the Industrial Code (GewO) and the procedures under the other relevant (provincial) laws have to be coordinated by the competent authorities (§ 356b(2) GewO). In order to enable effective coordination, provincial legislation in several provinces obliges the applicant to a building permit to apply simultaneously for (IPPC-)Industrial Code-permits.

For IPPC-waste management facilities a fully concentrated procedure with only one competent authority issuing permits under various federal and provincial laws is established by the Federal Waste Management Act (§ 38 AWG). The competent authority for waste management installations is the Governor of the respective *Land* (*Landeshauptmann*).

The right to appeal against an IPPC-permit decision, both for IPPC-waste management facilities and for all other IPPC installations, is granted to parties of the initial permit procedure. In Austria, in addition to the operator of the installation, parties mainly include neighbours and environmental NGOs who may thus appeal against the permit decision to one of the nine Administrative Courts of the provinces (*Landesverwaltungsgericht*). In addition to these parties, the right to appeal against an IPPC-permit decision is also granted for example to the *Land* Governor in respect of water management issues as the water management planning body (*Landeshauptmann als wasserwirtschaftliches Planungsorgan*).

A decision of these courts is subject to judicial review by one of Austria's Highest Courts, the Administrative Court (*Verwaltungsgerichtshof*).

## **2. Procedures**

According to Austrian law, the construction and operation of a waste disposal installation for the incineration of non-hazardous waste with a minimum-capacity of 100 tonnes per day requires an EIA permit (§ 3(1) EIA Act in conjunction with Annex 1 No 2 lit c EIA Act).

### **2.1. EIA permit procedure for waste management facilities**

*Short case study: Can you present a simple flowchart of a permitting procedure for the following installation, indicating the (estimated) time frames of the various steps, key authorities involved, including EIA, and the total time needed to go through the whole procedure in case of administrative appeal ?*

The EIA permit procedure is designed as a concentrated procedure insofar as the competent authority, the *Land* Government (*Landesregierung*), applies all relevant permit conditions established by federal or provincial laws in this one procedure (§ 39(1) EIA Act). Please find a simplified flow chart of the procedure below:

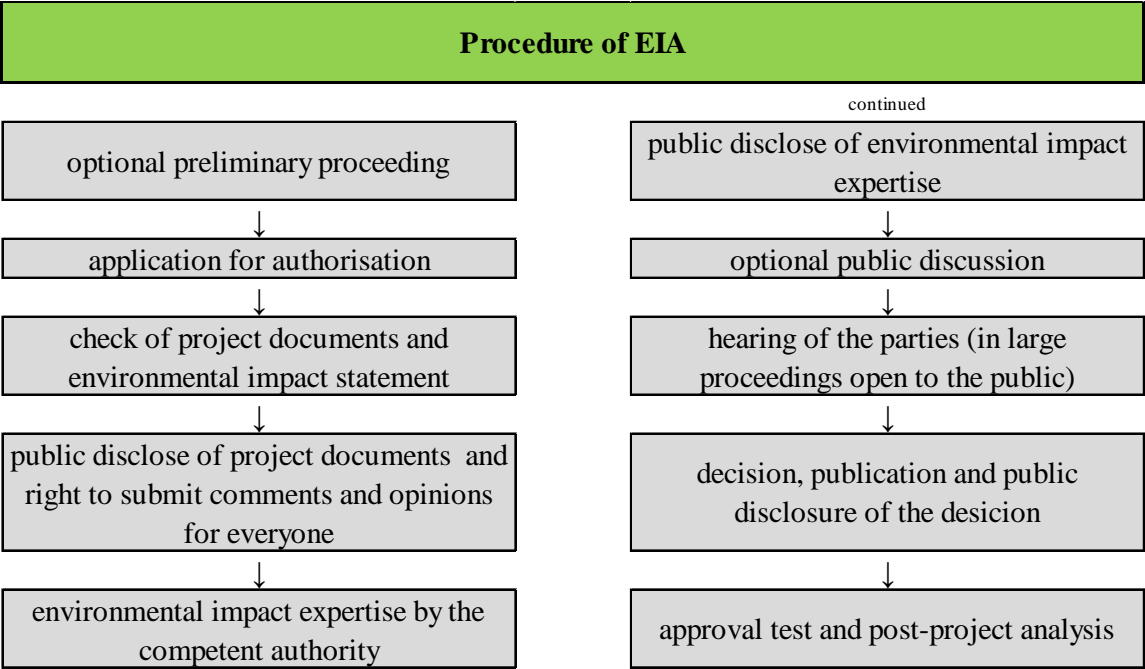


Figure 1: flow-chart of the EIA procedural steps

The EIA authority is required to reach a decision within nine months, six months respectively for smaller-sized installations (§ 7(2), (3) EIA Act). There are no separate time limits for the individual steps of the procedure prescribed in the EIA Act. However, the authority is obliged to prepare a schedule at the very beginning of the procedure, in which the timeline for these individual steps must be identified (§ 7(1) EIA Act). Excessive delays with regard to this set timeline require justification in the final EIA permit decision.

In 2015, the average duration of an EIA procedure from application to the EIA authority’s decision was 13 months. However, this duration includes time the authority was waiting for completion of the application by the applicant. Thus, recalculating the duration starting with the complete application, the average duration of an EIA procedure was generally 6.8 months.<sup>4</sup> The duration of an appeal procedure has halved since 2014, taking on average 3.6 months in 2015.<sup>5</sup>

**2.2 Main characteristics of the applicable permit procedure(s)**

*What are the main characteristics of the applicable permit procedure or procedures?*

<sup>4</sup> Cf. Annual EIA Report 2015 (UVP-Bericht) p. 30, available in German at [https://www.bmlfuw.gv.at/umwelt/betriebl\\_umweltschutz\\_uvp/uvp/materialien/berichte\\_rundschr.html](https://www.bmlfuw.gv.at/umwelt/betriebl_umweltschutz_uvp/uvp/materialien/berichte_rundschr.html).

<sup>5</sup> Cf. Annual EIA Report 2015 (UVP-Bericht) p. 40, available in German at [https://www.bmlfuw.gv.at/umwelt/betriebl\\_umweltschutz\\_uvp/uvp/materialien/berichte\\_rundschr.html](https://www.bmlfuw.gv.at/umwelt/betriebl_umweltschutz_uvp/uvp/materialien/berichte_rundschr.html).

*The questions are about the different permits if more than one permit is needed for an 'intended activity'*

- *Who is (are) the competent authority (authorities)?*
- *Is EIA integrated in the permitting procedure or is it an autonomous procedure that precedes the introduction of an application for a permit (or for the various permits)? In the latter case, can EIA be carried out once more at the next stage of the development process (e.g. in the building or environmental permit procedure)?*
- *Is there a differentiation between large, intermediate and smaller installations? Is a notification to the relevant public authority in some cases sufficient? Is there a possibility to exclude certain installations even from the notification requirement?*
- *Are competent planning and environmental authorities consulted during the decision-making procedure or procedures, if more than one permit is needed? Within what time limit have they to give their opinion? Are these opinions binding or not? Do they have some weight in practice?*
- *Is there public participation in every case? At which stage of the development? Is it broadly announced and used? What time frames apply? Is the public participation on the application or on the draft decision?*
- *What time frame applies from the introduction of the application to the decision in first administrative instance (i.e. when a developer receives final decision allowing to start development, however, before possible appeal to a higher authority)?*
- *Is there an administrative appeal against a decision on a permit or the various needed permits? What is the competent authority (or authorities) to whom an appeal can be lodged? Who can lodge the appeal (only parties of the proceeding, NGO, everybody), within what time? What time frame applies to reach a decision on appeal? What if the time frames are not respected?*

Provided a waste disposal installation meets the threshold values established by the EIA Act, the procedure is designed as a concentrated, cross-cutting, single-permit procedure governed by the EIA Act. Only one authority acts within this procedure, the competent *Land* Government (*Landesregierung*). However authorities that are competent planning and environmental authorities outside the scope of the EIA Act, ie authorities that would have been competent if the project were not subject to an EIA will be heard during the procedure (*mitwirkende Behörden*).

Public participation is a guiding principle of the EIA and thus clearly integrated into the national EIA procedure. The applicant is obliged to provide information on whether and how the public was informed about the proposed installation already in the EIA application. In

case a mediation procedure took place, the results must be provided to the EIA authority.<sup>6</sup> A copy of the environmental impact statement must be provided to the Ombudsman for the Environment (*Umweltanwalt*), the host municipality and the Federal Minister of Agriculture and Forestry, Environment and Water Management (BMLFUW), who all have the right to make a statement.<sup>7</sup>

In the EIA procedure itself, the general public can participate in several ways: First, the general public has a right to obtain certain pieces of information such as the application and the environmental impact statement. Second, the general public has a right to make a statement with regard to the proposed installation. The public is not required to prove a certain legal interest to exercise these rights.<sup>8</sup> Third, if 200 citizens who are eligible voters from the host municipality and/or the directly adjoining (Austrian) municipalities support a statement, this group of persons (citizens' group, *Bürgerinitiative*) has locus standi in the development consent procedure for the project. Citizens' groups are entitled to claim the observance of environmental provisions as a subjective right in the procedure.

Additionally, and to facilitate exercising these rights, one copy of the application and the environmental impact statement are available for public inspection at the authority and in the municipality for at least six weeks.<sup>9</sup> "Anybody" has a right to make a statement with regard to these documents within those six weeks.<sup>10</sup>

Once the environmental impact expertise (UV-GA) is completed, it is made available for public inspection at the authority and in the municipality for at least four weeks. After this period, the EIA authority is required to hold an oral hearing,<sup>11</sup> which is open only to parties and participants as defined in the EIA Act. In large-scale proceedings, i.e. proceedings with more than 100 expected participants,<sup>12</sup> the oral hearing is open to the general public, however this does not confer any further rights.

The assessment of environmental impacts is conducted across media, and includes interactions between media as well. A positive decision (EIA permit) is issued, if the installation complies with all permit requirements as set out in federal and provincial laws. Additionally, the EIA Act itself contains further requirements with regard to effective precautions to protect the environment,<sup>13</sup> e.g. emissions of polluting substances shall be controlled in accordance with the state of the art.

---

<sup>6</sup> § 24a Abs 1 EIA Act 2000.

<sup>7</sup> § 24a Abs 4 EIA Act 2000.

<sup>8</sup> *Ennöckl/Raschauer/Bergthaler*, § 9 Rz 3.

<sup>9</sup> Special requirements apply to the announcement of the project. In addition to print media, the authority shall also announce the project on the Internet, § 9(3), (4) EIA Act 2000.

<sup>10</sup> § 9(5) EIA Act 2000.

<sup>11</sup> *Baumgartner/Petek*, 158 f. Regarding the possibility not to hold an oral hearing see § 24(7) in conjunction with § 16 EIA Act 2000.

<sup>12</sup> §§ 44a et seqq. General Administrative Procedure Act 1991 (AVG).

<sup>13</sup> § 17(2) EIA Act 2000.

Neighbours, eNGOs, the Ombudsman for the Environment (*Umweltanwalt*) and – with regard to some large-scale activities only – also ad-hoc citizens' groups (*Bürgerinitiative*) may participate as parties in the proceedings and appeal the decision with the Federal Court of Administration (*Bundesverwaltungsgericht*). Against the decision of the court, a complaint can be filed with the Administrative Court (*Verwaltungsgerichtshof*) and/or the Constitutional Court (*Verfassungsgerichtshof*).

Standing of individual neighbours is limited to parties who have a legal right or legal interest, i.e. citizens who have a subjective right that may be affected by the decision. The subjective rights to be protected in EIA procedures include protection against health risks and intolerable nuisance as well as protection of property against detrimental influence, whereas overall compliance with environmental legislation is outside the scope of protection as well as BAT standards and air quality standards.

The Ombudsmen for the Environment (*Umweltanwälte*) can claim compliance of the EIA permit with the relevant permit provisions and are entitled to appeal against the administrative decision and file a complaint with the Administrative Court (*Verwaltungsgerichtshof*).

As the EIA permit is issued in a consolidated procedure covering all permit conditions pertinent to the issue at stake, standing rights include federal and state law aiming at the direct or indirect protection of the environment.<sup>14</sup>

## **II. Infrastructural Projects**

*1. Is there a need to draw up a plan or to review a plan in the sense of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment?*

*If yes, can you in a concise way give an overview of what this means in terms of procedure, including SEA, public participation, administrative appeal (if any), and time frames?*

*2. Would there be a need to obtain one or more permits to construct and operate the highway mentioned under point II? Is an EIA necessary? Is there a coordination mechanism integrating the substance and procedure of the permits? If appropriate and available, a flow chart could be attached. What are the characteristics of the procedures?*

A separate section of the EIA Act (section 3) deals with certain (large-scale) projects relating to federal roads and high-speeds railroads. The construction and operation of a highway of the type indicated in Annex I, No 7 lit b of the EIA Directive constitutes such a federal road in the sense of section 3 of the EIA Act. According to § 23a EIA Act 2000, such a project requires an EIA.

---

<sup>14</sup> There is no public participation in EIA screening decisions. Apart from the applicant, only the Ombudsman for the Environment (*Umweltanwalt*) and the host municipality have legal standing and the right to appeal the screening decision. ENGOS and neighbours have a "right to review" (*Beschwerderecht*) and can challenge the screening decision.



## Introduction

Both (state-dominated) private actors as well as federal/state actors are involved in the process of infrastructure planning and permitting. The state-dominated private actors (e.g. ASFINAG for highways, ÖBB for railways) are mainly responsible for taking up the planning initiative and technical planning. Federal and state authorities are responsible for issuing the relevant permits pursuant to the SEA- and EIA-Act and with regard to provisions of specific sectoral laws in the fields of e.g. road infrastructure, railway infrastructure, water management and nature conservation laws.

Public participation is formally established with regard to EIA- and SEA-permit procedures including participation rights for environmental NGOs (eNGOs), citizen`s initiatives and the Ombudsman for the Environment (*Umweltanwalt*). With regard to strategic planning, public consultation is sometimes formally established (e.g. grid expansion plan, “Netzausbauplan”) but mostly – prior to administrative permitting – participation is dealt with informally, aiming at providing information about the project.

### 1. SEA

The construction of a new highway (federal road) requires the insertion of the planned highway section into the official federal road register (BStG). With this insertion, the highway section is now roughly determined.<sup>15</sup>

This planned insertion into the federal road register triggers the obligation to conduct a SEA. The relevant federal law on infrastructure SEAs (SP-V-Gesetz) calls for a SEA for changes to the federal road network requiring a legislative proposal, which leads to an insertion, deletion or amendment of the federal road register.<sup>16</sup> The competent federal minister (BMVIT) is required to conduct this SEA before drawing up the legislative proposal.

Until this stage, public participation, if at all, is happening at an informal level due to the lack of legal obligations. It is in the context of the SEA that the public is involved in the planning process for the first time. Public participation takes place through publication obligations and the public`s right to make a statement.

The heart of the ex-ante assessment and consultation procedure is the environmental report, which identifies, describes and assesses the potentially adverse environmental effects of the proposed highway section, and reasonable alternatives. The initiator finances, and in accordance with the competent authority (BMVIT), prepares the environmental report. Other initiators affected by the proposed highway section, the environmental departments of the *Länder* and the Federal Minister of Agriculture and Forestry, Environment and Water

---

<sup>15</sup> *Mayrhofer*, 327.

<sup>16</sup> § 3(1)(3) Infrastructure SEA Act.

Management (BMLFUW) are to be consulted during the preparation of the environmental report; they have the right to make a statement within four weeks.<sup>17</sup>

The proposed highway section and the finalised environmental report is published on the website of the competent minister (BMVIT); a reference to this is included in the required announcement in two daily newspapers. Within six weeks, “anyone” can make a statement with regard to the proposed highway section.<sup>18</sup> Consequently, the public is informed about the project for the first time at a stage of the planning process where a fair amount of details is already determined. Critics argue that thus the current system does not provide for an early and effective opportunity to express their opinion as required by the SEA-Directive.<sup>19</sup>

Legal remedies are not provided for at this stage of the planning process. The relevant Infrastructure SEA Act does not establish a maximum time limit for a SEA to be carried out and/or completed.

Planning procedure of a federal highway		
		continued
Transport Masterplan (Gesamtverkehrsplan, BMVIT)		Project elaboration (Vor- und Einreichprojekt, ASFINAG)
↓		↓
Construction Programm (Bauprogramm, ASFINAG)		Declaration of planning area (Bundesstraßenplanungsgebiet, BMVIT)
↓		↓
preliminary examination (Voruntersuchung, ASFINAG)		Application for authorisation (proposal submission including determination of the route, ASFINAG)
↓		↓
Strategic Environmental Assessment (SEA) of draft act on inclusion in street directory (BMVIT)		Permission as a part of Environmental Impact Assessment (BMVIT)
↓		
Inclusion in street directory of BStG (Federal State legislator)		

Figure 2: flow-chart of the SEA procedural steps<sup>20</sup>

**2. EIA**

For projects concerning high-level federal roads and high-speed railway lines (§ 23a EIA Act 2000) different rules to those outlined in the first section of this report, apply as section 3 of the EIA Act establishes a separate procedure for these projects: The particularities concern primarily the definition of the competent authority and the performance of the environmental

<sup>17</sup> § 4 Infrastructure SEA Act.  
<sup>18</sup> § 8 Abs 1 Infrastructure SEA Act.  
<sup>19</sup> Cf. *Alge/Kroiss*, 393.  
<sup>20</sup> Adapted from *Mayrhofer*, 325.

impact assessment. Different to projects included in Annex I of the EIA Act (see description above, I.), the EIA procedure for high-level federal roads and high-speed railway lines is designed as a partly concentrated procedure, carried out by the Minister for Transport, Innovation and Technology (BMVIT) and the *Land* Government (*Landesregierung*).

In this procedure, the competent authority (BMVIT) applies all relevant permit conditions as set out in federal law. The *Land* Government (*Landesregierung*), taking into account the results of the procedure conducted by the BMVIT, then conducts a permit procedure applying all relevant laws for which the provinces have administrative powers, e.g. nature protection legislation etc.<sup>21</sup> The extent of and the procedure applying to public participation are mainly the same as outlined above, at I.2.1.

## **B. Describing and evaluating integration and speed up legislation**

*Have there been initiatives in your legal order to introduce specific legislation to integrate and speed up decision making for infrastructure projects/industrial installations?*

In the past (esp in the 1990ies), several initiatives emerged pushing for (more) concentrated permit procedures and speed up legislation advocating for the introduction of a uniform Industrial Installation Act.<sup>22</sup> Two major driving forces were at work: the need to implement directives that called for integration (esp EIA, IPPC) on the one hand side and – quite contrary – concerns by business representatives that the regulatory framework in Austria was hostile to investors and thus unfavourable for Austria as a business location. However, of those initiatives taken on to standardise and centralize the regulatory framework for plant permits, none were put into effect comprehensively. The most important obstacle in this respect was the federal structures and the – resulting – division of competences on the one hand side and the concern that deregulation/integration was to be used as a pretext to lower environmental standards and limit standing rights on the other hand side.

A major success could be achieved however with the adoption of the concentrated permit procedure for installations subject to the EIA Act<sup>23</sup>. Another partial success is the concentrated procedure in the Industrial Code (GewO) as the main piece of law regulating industrial installations, where the integration of permit procedures was successful with regard to permit conditions laid down in federal law. In the year 2000 a reform of the EIA Act established a simplified procedure that is applicable for the majority of EIA-projects. This simplification mainly resulted in the abolition of standing rights for ad-hoc-citizens' groups

---

<sup>21</sup> § 24 EIA Act 2000.

<sup>22</sup> Cf the project „Umweltgesetzbuch für Betriebsanlagen (UG-BA)“ (1999), the initiatives for a law aiming to promote investment in Austria (Betriebsansiedlungserleichterungsgesetz (1994), Standortversicherungsgesetz (1995) or several proposals that have been presented in the context of a comprehensive discussion on a reform of the Austrian Constitution (*Verfassungskonvent*).

<sup>23</sup> Similarly, a partly concentrated procedure also applies to high-level federal roads and high-speed railway lines (EIA Act, third section).

(*Bürgerinitiativen*) and shorter time limits (6 instead of 9 months) for the procedure; moreover the environmental impact expertise can be delivered in a condensed form.

Recently speed up measures were also subject to discussions in the context of the recent implementation of the TEN-E regulation in Austria.<sup>24</sup> In the end, the legislator opted amongst others for a separate preliminary procedure, distinct time limits and a coordinating authority. Whether these measures are in fact capable of speeding up procedures remains to be seen.

*What is your own assessment of integration and speeding up measures?*

The integration that has been achieved in the EIA-Act (based on a special constitutional provision in order to overcome the division of competences between state and provinces) has been evaluated several times and has been qualified as a success story with regard to the environmental quality of the development consent. Concerns over lengthy procedures often result in attempts to reduce participatory rights. Studies (in the Austrian context) have shown however that the length of procedures is often due to incomplete applications and – on the side of authorities – due to a lack of resources, esp when it comes to experts. In general any initiative aiming at “speeding up” should be based on a thorough investigation of the reasons for delays in the permit procedure.

### **C. Locus standi for a local government within the permitting procedure**

*Under what conditions (and whether at all) a local government may file a complaint against an environmental permit for an installation or infrastructure project?*

The host municipality is party in the EIA permit procedure,<sup>25</sup> thus it can enforce the observance of legal provisions serving to protect the environment or public interests in their competence as a subjective right in the procedure. Additionally, the host municipality has the right to appeal to the Federal Court of Administration (*Bundesverwaltungsgericht*) and, explicitly, to the Administrative Court (*Verwaltungsgerichtshof*).<sup>26</sup>

Similarly, in permit procedure relating to IPPC-waste management facilities, the host municipality also participates as a party in the permit procedure. It has the right to appeal to – in this case – one of the nine Administrative Courts of the provinces (*Landesverwaltungsgericht*).

In permit procedures applying to all other IPPC installations, the host municipality does participate in the proceedings, but not as a party. According to the Industrial Code the host

---

<sup>24</sup> Cf. Federal Law Gazette I 4/2016.

<sup>25</sup> § 19(1) No 5 EIA Act 2000.

<sup>26</sup> § 19(3) EIA Act 2000.

municipality is to be heard in the permit procedure regarding issues that relate to the protection of public interests.<sup>27</sup>

---

<sup>27</sup> § 355(1) and § 74(2) No 2 to 5 Industrial Code.