Impact Assessments – Preventive Measures against Significant Environmental Impacts in the 21st Century

Report on Hungary

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Legal Framework

1. How is the EIA Directive (Directive 2011/92/EU) transposed in your country? Please provide a list of your national pieces of legislation transposing the EIA Directive.

The EIA Directive has been implemented with the following main legal acts in Hungary:
- Act LIII of 1995 on the General Rules of Environmental Protection (Act)
- Government Decree No. 314/2005. (XII. 25.) on environmental impact assessment and the uniform environmental use permits (Gov. Decree) [1]

2. Are the EIA Directive and the IPPC Directive[2] transposed in your country through the same legislation?

In Hungary EIA and IPPC procedures are regulated in the same legal act and the proceedings are quite similar to each other.

3. What procedure is set up to determine whether a project (listed in Annex II) shall be made subject to an assessment, case by case examination, thresholds or criteria or a combination of these procedures?

In Hungary there are thresholds or criteria set by the legislation (Annex 3 of the Gov. Decree) for the projects listed in Annex II of the Directive.

In case of several Annex II projects of the EIA Directive the EIA is mandatory according to the Hungarian regulation. (E.g. deforestation from 30 ha, thermal power plants from 20 MW electric output, hydropower plants on nature protection area of national significance, wind power plants from

[1] According to the Commission's national implementing measure database (MNE database) a longer list exists that contains the acts that modify these main legal acts and other general rules and specific ones - for example about the relevant authorities:
Source:MNEdatabase:http://old.eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:72011L0092:EN:NOT#FIELD_HU

[2] The former Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control repealed by Art 81 of the DIRECTIVE 2010/75/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (Text with EEA relevance) with effect from 7 January 2014, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law and application of the Directives set out in 2010/75/EU Annex IX, Part B.

10 MW total production on nature protection area of national significance, landfills of non-hazardous waste with a capacity of 200 t/day or more or with a total receiving capacity of 500 000 tonnes, production of cement from 500 t/day capacity.) These projects are included into the Annex 1 of the Gov. Decree where the projects requiring mandatory EIA are listed.

Other Annex II projects are involved into the Annex 3 of the Gov. Decree. In that Annex for certain projects thresholds while in other cases other criteria, such as the sensitivity of the location site or the type of the technology are applied.

In addition to that since 2011 in case of likeliness to have significant effects on the environment, the project categories listed in Annex 3 Gov. Decree - however under the thresholds or criteria set by the legislation – are made subject to a requirement for development consent and an assessment with regard to their effects. However, to simplify the procedure in these cases assessment is done directly as part of the permitting procedure without the preliminary assessment.

EIA Procedural Provisions

4. Is the environmental impact assessment procedure considered in a separate administrative procedure (e.g. - different from the development consent procedure) by the competent authority? If yes, please provide a short description of the applicable arrangements for the implementation of the Directive (including what administrative act is considered a development consent).

The Hungarian EIA is an independent environmental permitting procedure prior to the development consent procedure. It is a procedural requirement; if it is missing it makes the final decision (the development consent) invalid.

It consists of two phases; a preliminary environmental study phase and - depending on the type of effect - the activities concerned likely to have a significant effect on the environment may consist of an additional impact analysis procedure or an IPPC procedure; or their combination or linkage.

Phase 1. is a screening or scoping phase, that is a preliminary impact assessment for estimating the possible effects of the project. Based on the results of this phase, the authorities determine the exact requirements for Phase 2., the impact assessment procedure itself.

Development consent: there is no word by word transposition of the definition in the Hungarian legislation. However the EIA procedure can result in a development consent (according to the Hungarian terminology: environmental permit or integrated environmental usage permit when IPPC applies as well). It is debated whether the EIA permit shall be considered as a development consent or the installation (operating) permit of the activity.

5. Is the EIA process part of a permitting procedure in your legal system? How are the results of the consultations with environmental authorities and the public and environmental information taken into consideration in the development consent procedure? To what extent does an EIA influence the final decision, i.e. its approval or refusal and attached conditions?

The Hungarian EIA is an independent environmental permitting procedure prior to the development consent procedure.

According to the general administrative procedure law - that is applicable in the case of EIA as well – the points made by the involved authorities and the public are compulsory elements of the decision.

The evaluation of comments made by the public or by another state with regard to the EIA is compulsory and it shall be summarized in the resolution by the environmental inspectorate with the involvement of the specialized authorities including the information about the public participation

procedure. In order to make this evaluation substantial, legislation prescribes an analysis of factual and also legal aspects of the comments. (based on 10 §Gov. decree)

The EIA is a procedural requirement; if it is missing, it makes the final decision (the development consent) invalid. If the result of the EIA-based environmental permitting process is negative, it practically means a veto for the construction itself. In addition to that the development consent (or the installation (operating) permit of the activity) cannot differ from the EIA or the IPPC permit. (Act 66 §(5)).

In the Hungarian administrative system once a planned activity cannot meet the positive legal requirements listed in the relevant laws it cannot be permitted. The inspectorates and the administrative courts interpret the Hungarian EIA laws in harmony with that approach. In addition to that there are certain negative conditions specified in the Gov. Decree that prevent the permitting of any activities. If a planned activity would hinder the achievement of the targets in the National Environmental Program or any environmental protection or nature protection responsibilities the Hungarian Republic has undertaken in an international treaty, the request for the EIA permit shall be refused (Gov. Decree 10. § (7)).

6. In case of a multi-stage development consent procedure (e.g. combination of several distinct decisions), at what stage does the environmental impact assessment procedure take place during the development consent procedure in your country?

Prior to the commencement of activities those have or may have a significant impact on the environment; an environmental impact assessment shall be carried out. (Act 68 (1)).
It is possible to lead parallel procedures, but the EIA permit shall be in force before the final decision of the project.

7. What kind of authority (local, regional, central) is responsible for making decisions on EIA and/or to grant/refuse development consent?

Designated competent authorities are in the EIA procedures at the first instance the regional inspectorates for environmental protection and nature conservation and at the second instance the National Inspectorate for Environment and Nature.

It shall be also noted, that these authorities are the main decision-making bodies. However the authorization procedures are rather complex in Hungary with a main decision-making authority and special authorities having a co-decisional role on their special field. Depending on the exact details of the given project, there are several (1-9) specialized authorities also participating in the decision making procedures.

8. Is the decision resulting from the environmental impact assessment a pre-condition to grant development consent? In case of a multi-stage development consent procedure, at what stage are the results of the consultations with environmental authorities and the public and environmental information taken into consideration?

Yes, the Hungarian EIA is an independent environmental permitting procedure prior to the development consent procedure. It is a procedural requirement - if it is missing, it makes the final decision (the development consent) invalid.

It consists of two phases; a preliminary environmental study phase and - depending on the type of effect the activities concerned are likely to have on the environment - may consist of an additional impact analysis procedure or an IPPC procedure; or their combination or linkage.

Public participation takes part both in the preliminary assessment and in the EIA procedure as well. The evaluation of comments made by the public or by another state relating on the EIA is compulsory

and it shall be summarized in the resolution by the environmental inspectorate with the involvement of the specialized authorities including the information about the public participation procedure.

9. In case of projects for which the obligation to carry out environmental impact assessment arises simultaneously from the EIA Directive and other Union legislation, does your country ensure a coordinated or joint (e.g. single) procedure ("one stop shop")? If yes, please provide a list of the Directives covered.

The Hungarian Gov. Decree ensures the implementation of the following Union legislation requirements in addition to the EIA Directive:

- *2010/75/EU IPPC Directive*[3]
- *2000/60/EC Art 4.para (7-9)*
- *2009/31/EC Art. 31. 37*
- *1992/43/EEC*

(30. § Gov. decree)

Besides the above mentioned legal connections the Gov. Decree creates two concrete legal links between the EIA and other specific fields of the European environmental legislation: with Nature and Water legislation.

The Gov. Decree (1§ (6)) creates a link between the Natura 2000 assessment (Directive 92/43/EEC) and the EIA assessment. According to the provision the EIA and the IPPC procedure shall be made by taking into account the special impact assessment rules determined by the national implementing act transposing the Directive 92/43/EEC.

If the development under the scope of the Gov. Decree concerns Natura 2000 territories, the EIA procedure provides the full-fledged evaluation of the relevant Natura 2000 issues.

One of the screening criteria in the preliminary examination is the possible effect on a Natura 2000 site. The inspectorate, which is the competent authority during the preliminary examination that makes the screening/scoping decision, has the nature conservation responsibility as well. In that capacity it has to take into consideration the possible effects on the Natura 2000 sites and - in case of significant effect - to require EIA and to determine specific assessment requirements.

The inspectorate, as the competent authority in the EIA procedure, makes the decision on the environmental permit. As authority being responsible for the nature conservation as well in its decision it has to take into consideration the provisions of the relevant nature conservation law transposing the Habitats Directive, especially the Governmental Decree No. 275/2004. (X. 8.).

In case due to the project new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater can occur, the conditions set in the 10-11. § of the 221/2004. (VII. 21.) Gov. Decree shall be met in the EIA procedures. (Gov. Decree (1§(6a)). These specific provisions about water management implement the 2000/60/EC Directive Art 4.para (7-9).

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[3] Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) Text with EEA relevance
Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy
Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006 (Text with EEA relevance)
Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora

10. Is it possible to carry out joint or coordinated environmental assessments, fulfilling the requirements of the EIA Directive, and Directive 92/32/EEC and/or Directive 2009/147/EC? Is there a legal basis for carrying out such assessments?

According to the Act and the Gov. Decree and the MNE database there is no legal link in the Hungarian legislation between the EIA procedure and the 92/32/EEC and the 2009/147/EC Directives.

11. What arrangements are established with neighbouring Member States for exchange of information and consultation?

Hungary is Party to the Espoo Convention since 1997. In addition to that from the Accession of Hungary the EIA Directive also determines transboundary provisions for the EU Member states. There is no formal bilateral agreement between Hungary and other Member States in this context.

The coordinator of the Espoo procedure is the Hungarian Ministry of Rural Development in close co-operation with the regional environmental authority which is responsible for the EIA procedure. The notification is initiated by the competent inspectorates for environmental protection. If a notification took place during the preliminary assessment the entire documentation is translated and provided to the affected country (since 2006). Comments of the affected country are considered when deciding on the scope – actual content – of the EIA documentation. The time-frame of the entire EIA procedure takes into account the time need of the Espoo procedure. The Ministry organises the necessary exchange of information and consultations between the interested parties. (Gov. Decree 12-16§).

EIA Content

12. Is the developer obliged by national legislation to consider specified alternatives to the proposed project?

No, there is no such an obligation stipulated by the national legislation.

Article 5(2) b) of the Gov. Decree only stipulates, that at the end of the preliminary assessment, in its decision the inspectorate shall "if the preliminary assessment documentation contained variations, indicate those variation or variations in connection to which it finds the establishment possible under appropriate conditions".

According to Annex IV. Point 1. b) of the Gov. Decree, in the case of the activities listed in Annex I[4] *or Annex III*[5] *of the Gov. Decree, the application for the preliminary impact assessment procedure shall contain the baseline data of the planned activity, furthermore, if there are other reasonable installation, technological or other variations (variations taken into account), their basic data.*

Consequently, according to the national legislation the investor is not obliged to elaborate variations to the proposed project. However if the application contains variations, the environmental authority shall consider these and indicate the one / those in connection to which it finds the establishment possible.

13. Is scoping (e.g. scope of information to be provided by the developer) a mandatory step in the EIA procedure?

Yes, it is. A two-phase process is prescribed for the environmental impact assessment (EIA). Phase 1 is a screening or scoping phase, that is a preliminary impact assessment for estimating the possible effects of the project. Based on the results of it, the authorities determine the exact requirements for

[4] Activities subject to an EIA procedure.
[5] Activities subject to an EIA procedure based on the decision of the Environmental Authority.

Phase 2, that is a detailed impact assessment procedure. If the result of the EIA based environmental permitting process is negative, it practically means a veto for the construction itself.

14. Are there any provisions to ensure the quality of the EIA report prepared by the developer?

Yes, there are.

In those cases, where a preliminary impact assessment study or environmental impact assessment study has to be prepared and is required by law it is prepared by the relevant investor. Developers might prepare this documentation by themselves, or - this happens in most of the cases - they commission an environmental expert or company to prepare this documention.

Based on the Hungarian EIA legislation there are detailed requirements relating to the qualification and practical experience of those, who are qualified to prepare such EIA documentations.

It is the task of the relevant environmental authorities to check the validity of the documentation, however the workload of the administrative authorities is very high and the financial resources of the authorities are very limited (e.g. to get external expertise to supervise the content of the EIA documentation). This results in some cases the impairment of the credibility and validity of the final decision.

15. How is the cumulation with other existing and/or approved/already proposed projects considered? Please illustrate your answer by referring to examples of national case law!

The national legislation stipulates the definition of 'associated facilities' and the definition of 'related activities'. According to Article 2(3) d) of the Gov. Decree 'associated facilities' are those works which contribute, supplement or support the activity on the place of installation.

Based on Article 2(3) e) of the Gov. Decree 'related activities' are those which fall under the scope of Annex I of the Gov. Decree and which are planned by the operator on the same or on the neighbouring property of the planned activity under the scope of Annex I or Annex III of the Gov. Decree with the purpose of a joint investment. Related activities shall fall below the related thresholds specified by Annex III of the Gov. Decree, but considering related activities together with the planned activity the related threshold of Annex III shall be met.

In the case of the activities falling under the scope of Annex I or Annex III of the Gov. Decree, the application for a preliminary impact assessment procedure shall contain[6] the statement of the operator, if following the implementation of the activity it plans the realization of a new activity which falls under the term of 'associated facilities', and if the activity pursued on the installation site or on the neighbouring property combined to an activity of the same nature reaches the thresholds specified by Annex I or Annex III of the Gov. Decree.

By making its decision on the necessity to carry out the EIA procedure the Environmental Authority shall also consider the cumulation of the impacts of the planned activity with 'other activities'.

In theory this means that the national legal background ensures that the impacts of projects already existing and in the planning phase are to be taken into account. However examples from the practice show that there are still gaps in the Hungarian legislation which should to be filled.

In the environmental authorisation procedure of a cement factory one of the main question was to decide which works within the given investment can be regarded as associated works.[7]

[6] According to Annex IV (1) bm) of the Gov. Decree.
[7] http://www.justiceandenvironment.org/publications?category=2&docType=&year=14

There was a cement factory planned, together with a 11 km long conveyor belt (connecting the factory to the limestone and marl mines), and it was necessary to extend the capacity of the limestone and marl-pits to four times bigger then before the investment. Based on the opinion of the operator the extension of the capacity of the mines was a totally separate investment from the construction of the cement factory and these could not be regarded as associated works. Similarly, the environmental effects of the extension of the mines were considered separately from the effects of the planned factory and from the impacts of the conveyor belt.

Based on the Note[8] of the European Commission in this regard the argumention of the opponents was, that different parts of the investment (cement factory, conveyor belt, extension of the exploitation capacity of the mines) should have been regarded as associated works and all of the possible effects of these should have been considered together and in regard to each other.

Based on the opinion of the developer only the cement factory and its potential effects on the environment should be taken into account. Similarly, the conveyor belt should not been regarded as part of the investment, because due to the national EIA legislation only cement factories above a certain production limit require an EIA, conveyor belts doesn't. Additionally, the extension of the production capacity of the mines falls under a separate EIA procedure, and the impacts of the mines and the planned cement factory shall considered separately from each other, as these are realized neither on the same nor on the neighbouring properties.

This argumentation is interesting if we also take the fact into consideration, that the EIA documentation of the cement factory and also the preliminary impact assessment documentation (screening) of the extension of the mines (which procedure started years later following the EIA procedure of the cement factory) lists all of these parts of the investment and activities as connecting activities. These became however in the argumentation of the developer and even in the decision of the Environmental Authority as totally independent activities from each other and also the court in the revision procedure of the EIA permit accepted this reasoning.

As mentioned above, according to the Gov. Decree only those facilities can be regarded as connecting facilities which all are realized on the installation site and only those works can be regarded as associated works, which (inter alia) are all realized on the same or neighbouring properties.

Based on the practice, this definition excludes all of those activities and facilities which are planned to be realized in the framework of the same investment, but are not planned on the same property or on the neighbouring properties. However facilities which are optionally kilometers from each other could also be regarded as associated activities as well (certainly based on the given circumstances) where, based on a centre of gravity test, the associated works are inextricably linked to the main works. Certainly this question needs in the practice a case-by case evaluation.

16. How is it ensured that the purpose of the EIA Directive is not circumvented by splitting of projects – e.g. 'salami slicing' of projects (i.e. the assessment and permitting of large-scale, usually linear infrastructure projects by pieces)? Please illustrate your answer by referring to examples of national case law!

Please see the detailed answer at Point 15.

17. Can the screening decision be appealed? If yes, who can lodge an appeal?

Yes, according the Gov. Decree the screening and the scoping decisions can equally be appealed.

[8] http://ec.europa.eu/environment/eia/pdf/Note%20-%20Interpretation%20of%20Directive%2085-337-EEC.pdf Interpretation line suggested by the Commission as regards the application of the Directive 85/337/EEC to associated/ancillary works.

Remedies can be sought by any person who is affected by the decision of the environmental authority (referred to as the 'client'). According to Article 15(1) of the Admin. Act[9], 'client' means any natural or legal person and any association lacking the legal status of a legal person whose rights or lawful interests are affected by the case.

In the administrative appeal procedure, a request is made to the National Inspectorate for Environment and Nature to annul or modify the decision which is complained about.

The right to appeal is not linked to any specific ground - an appeal may be made for any reason that the person affected deems unjust. Both substantive and procedural legality of the decisions can be complained about.

Judicial review is only available if either of the persons entitled to appeal has exhausted the right of appeal or no appeal is allowed against the decision concerned. The court shall abolish any administrative decision it finds unlawful- with the exception of any violation of a procedural rule that does not effect the merits of the case - and, if necessary, shall order the body having adopted the administrative decision in question to reopen the case. The judgement of the court is final and enforceable.

In environmental cases (IPPC and EIA procedures fit into this category), courts review both the procedural and the substantive legality of decisions, i.e. not only whether the content of a decision is in line with the regulation, but also whether the decision was made in the proper way prescribed by law. Courts also look "beyond" the administrative decisions and check if the supporting materials serving as a substantiation of a decision were carried out in a proper way. The most prominent example of this are IPPC and EIA cases where courts do review whether the IPPC documentation or the environmental impact statements were done in a scientifically verifiable manner, and involve external experts into its adjudication.

18. Is there a time limit for the validity of the EIA-decision and the development consent? Is the permit holder obliged to apply for a new permit after a certain period of time?

Yes, the validity of the EIA decision is limited in time.

According to Act the Environmental Authority shall withdraw the EIA permit in the following cases:

- *if the activity or the preliminary construction work necessary therefore has not been started within five years of the date on which the permit becomes definitive, or*
- *if the holder of the authorization makes a statement to the effect that it does not wish to make use of the environmental license, or*
- *if the conditions existing at the time of licensing have substantially changed.*

The legislation does not define how the last condition ' if the conditions existing at the time of licensing have substantially changed' shall be interpreted, therefore it remains the task of the Environmental Authorities as well as the courts to interpret this provision.

Access to Information Provisions

19. How is the public informed about the project and the EIA? When is the public informed about a project requiring an EIA and about a pertaining administrative procedure? Where can the information be accessed? What does the information contain? Who gets access to this information?

Information of the public about the EIA procedure takes place as early as the start of the screening process. After having received the application for a permit and the screening documentation, the Environmental Authority publishes a notice both in its office and online. The notice contains information – inter alia – on the list of affected municipalities by delineating the boundaries of the impact zone, on the way the printed documentation can be accessed either at the Environmental Authority or at the municipality clerks affected by the planned development, and on the link where the information published online can be accessed. It also calls the public concerned to make comments on

[9] Act Number CXL of 2004 on the general rules of administrative proceedings and services. Original title: 2004. évi CXL. törvény a közigazgatási hatósági eljárás és szolgáltatás általános szabályairól. Entry into force: 01 November 2005. Official Journal: Magyar Közlöny Number 203, 28 December, 2004. (Admin. Act)

the information published within 21 days from the date of publication. Parallel to this, the Environmental Authority sends the notice, the application for permit and the screening documentation to the municipality clerk of siting, whereas the other affected municipalities only receive the notice. All such municipalities' clerks are obliged to inform the local public at public spaces and in the locally customary way about the project within 5 days, and inform the Environmental Agency about its procedure within another 5 days. Ultimately, these municipality clerks are entrusted with ensuring access for the local public to the relevant information. Access to the application, the screening documentation and the opinions of the competent authorities and the expert opinions is ensured for the public concerned within 8 days by the Environmental Agency. The latter also publishes online the minutes and the records of a possible public hearing.

Once the screening decision is made, the Environmental Authority sends this to the foregoing municipality clerks who publish it locally.

The same rules apply in case the project developer initiates a preliminary consultation process at the Environmental Agency, except that in addition to the aforementioned steps, the Environmental Authority also publishes its opinion in the consultation process on its own website.

Once the actual EIA process starts, the Environmental Authority again published a notice containing information on – inter alia – the way public comments can be made during the procedure, how public information will be ensured, where electronically available information can be accessed, and that the printed copies of the Environmental Impact Study will be accessible either at the Environmental Authority or at the clerk of the municipality of siting.

After having received the relevant documents, the Environmental Authority sends the foregoing notice, the application for permit and the Environmental Impact Study to the municipality clerk of siting, whereas the other affected municipalities only receive the notice. All such municipalities' clerks are obliged to inform the local public at public spaces and in the locally customary way about the project within 5 days, and inform the Environmental Agency about its procedure within another 5 days. Such local publication must last for at least 30 days. Ultimately, these municipality clerks are entrusted again with ensuring access for the local public to the relevant information. Access to the application, the screening documentation and the opinions of the competent authorities and the expert opinions is ensured for the public concerned within 8 days by the Environmental Agency.

There is a general obligation in this phase of the process that all environmental information relevant for decision-making must be made accessible for the public concerned during the procedure.

Holding a public hearing is obligatory. The Environmental Authority publishes a notice as well as sends this notice to the affected municipality clerks on the upcoming public hearing. The latter are obliged to publish it locally for at least 30 days and inform the Environmental Authority on the publication respectively. The Environmental Authority publishes online the minutes and the records of the public hearing.

The decision of the Environmental Authority is published the same way as its screening decision, i.e. the Environmental Authority sends this to the foregoing municipality clerks who publish it locally.

20. How does the authority ensure public access to environmental information in the procedures based on the EIA Directive? To what extent is this provision of information user-friendly (easy to find, free of charge, searchable, online, downloadable, etc.)?

There are two ways how the Environmental Authority ensures access to information during the procedure: by publishing it online on its own website and by sending the relevant information to the clerks of the affected municipalities who then are required to make sure the public concerned has access to information. This method of public information is on the one hand user friendly, especially the online accessibility of information, however, there are still problems: information is downloadable

from the online surfaces free of charge, but the searchable feature is not always ensured, given that all the regional Environmental Authorities have their own websites, with no single model layout and content, but with their own design, content and functions. On the other hand, access to printed information is limited to a few places, i.e. the Environmental Authority office and the local clerk of the siting, and copying is not even free of charge, unlike simple review of the documents on the spot.

Public Participation Provisions

21. What are the criteria for taking part in an environmental impact assessment procedure, besides the project developer and the competent authority? What rights can people living in the neighborhood, NGOs, authorities invoke in the procedure? What legal rights do participants of the proceeding have? What happens if the competent authority denies someone's legal standing? Please illustrate your answer by referring to examples of national case law!

Participation in an EIA procedure depends on the forum where such participation takes place. While anyone (not only those living in the area of the affected municipalities) can have access to information, as well as anyone can participate at a public hearing, legal standing is reserved only for those who are affected, i.e. those having a property or an in rem right in the impact zone as defined by the Environmental Authority. That is why the delineation of the impact zone is crucial in the process, since it defines ultimately those who will have legal standing.

Simple participants in the procedure can only have access to information, can make comments and observations, either in writing or orally at a public hearing. Those who have legal standing can in addition exercise legal remedies, i.e. a regular appeal against the procedural or substantive decisions and filing a lawsuit at the court against the final decision in the case.

NGOs fulfilling certain criteria can also have full legal standing. These NGOs have to pursue environmental goals, must be active in the impact zone (the latter two conditions have to be defined in their bylaws) and must be registered at the competent court, however, they cannot be political parties or trade unions. In the EIA process, NGOs have to submit their bylaws and their court registration as a proof.

In case the Environmental Authority denies legal standing that gives rise to a legal dispute. The respective procedural decision of the authority can be appealed to the superior authority, whose decision then can be taken to the court that will decide in the matter in a one-instance process without holding a hearing, based on documents only.

The following examples illustrate the practical implementation of the law:

- *an NGO – together with other plaintiffs – appealed a decision of an Environmental Authority granting permit to a cement factory, then filed a lawsuit at the court against the decision of the superior environmental agency, and has been party to the court procedure during its entire duration;*
- *again an NGO appealed a decision of an Environmental Agency granting permit to a landfill, and has taken the final decision to court, again being an active party throughout the entire process;*
- *in all such cases the only proof necessary was the presentation of the bylaws and the court registration of the respective NGOs.*

Administrative and Judicial Review & Enforcement Provisions

22. Can the decisions of the authority (local, regional, central) responsible for making decisions on EIA be appealed? Who is the superior authority deciding over the appeal?

The decisions of the Environmental Authority can be appealed according to the general rules of administrative procedure. The superior authority in such cases is the National Inspectorate for Environment and Nature.

23. Is there a judicial review against decisions made in EIA procedures? If yes, what matters can be challenged and what decisions can the court take?

There is a judicial review available against substantive decisions made in EIA procedures, including the screening decision and the decision on the merits of the case (granting or refusing the permit).

EIA screening decisions can be reviewed by courts just as regular administrative decisions. Standing in such cases is provided to the project developer, the entity preparing the EIA, any individual whose rights and legitimate interests are affected (having a real estate or a registered right relating to a real estate in the impact area of the planned development) and any registered environmental NGO active in the impact area. In such cases, the regular courts deciding in administrative cases adjudicate, with no specific procedural rules, and can only quash the screening decision.

EIA scoping decisions are not made in the form of a separate substantive administrative decision; therefore there is no possibility for a court review thereof. Any concern about the correctness of issues assessed in an EIA process, or the lack of issues examined during the EIA have to be raised in an appeal against the substantive EIA decision granting or refusing an environmental permit before the development consent is issues.

Substantive EIA decisions take the form of an authorization called environmental permit. These can be appealed in the first instance and the second instance decision can be reviewed by the court (from 1 January 2013 by the administrative and labor court). Standing in such cases is provided to the project developer, the entity preparing the EIA, any individual whose rights and legitimate interests are affected (having a real estate or a registered right relating to a real estate in the impact area of the planned development) and any registered environmental NGO active in the impact area. There is no obligation but a practical need to involve external experts into the court procedure, because the judge is not able to decide in such complicated matters as the correctness of EIA findings. The courts review both the procedural and the substantive legality of the environmental permit, i.e. if the sectoral environmental laws as well as the administrative procedural law were respected during the administrative (EIA) procedure. Courts also look beyond the EIA decision and verify material and technical findings and calculations of the Environmental Impact Study.

It is not necessary to participate in the EIA proceeding in order to have legal standing before the court in EIA cases, however, it is necessary to meet the requirements of standing and to exhaust administrative remedies before filing a lawsuit. However, it is not necessary that the entity filing the lawsuit be the same who exhausted the administrative remedies; the only condition is that only second instance EIA decisions can be taken to court.

24. What are the criteria of legal standing against decisions based on EIA? Who (individuals, NGOs, others) is entitled to challenge the EIA decision at the court? Do individuals need to be affected? If yes, in what way do individuals need to be affected by the decisions in order to have standing?

See answer No. 23 above.

25. Does an administrative appeal or an application for judicial review have suspensive effect on the decision? Under which conditions can the EIA decision be suspended by the court?

In case an administrative decision is appealed, the appeal has automatic suspensive effect and the rights granted by the decision cannot be exercised. The first instance decision-making organ, however, can declare its decision immediately enforceable if it is needed to prevent or remedy a life threatening or highly damaging situation, if national security, national defence and public order so requires, or a further law makes it possible for – inter alia – environmental, nature conservation, public health, historic monument protection or soil protection, etc. reason.

A lawsuit filed against a final administrative decision has no automatic suspensive effect, however, in the motion or afterwards during the court case a request can be submitted to the court to suspend the enforceability of the disputed administrative decision. After receiving the request the court has to make a decision on the suspension within 8 days. Criteria to be taken into account during decision-making are: can the original situation be restored, will the omission of suspension cause more harm than the suspension would?

A request for injunction cannot be submitted before the main request but only together with it or subsequently. Injunction can be granted if it is needed for preventing a directly threatening harm, the preservation of a situation giving rise to a legal dispute, the protection of rights of the claimant, and the harm caused by the measure does not exceed the advantages reached by the injunction. The court can make the injunction conditional upon a cross-undertaking in damages. The court has to decide in an expedited procedure on the injunction. The court's decision on the injunction can be appealed.

26. Does the court have the competence to change/amend an EIA decision? Can it decide on a new condition or change the conditions of the EIA decision?

Formally, the court has only a cassatory power i.e. it can quash a final administrative decision but it cannot alter its provisions or conditions in an EIA case (and in most of the administrative judicial review cases). Parallel to this, the courts can order that the administrative procedure be redone, either on the first or on the second instance. However, the courts can give instructions for such administrative procedures by setting conditions, suggesting solutions or even setting mandatory conditions for the procedure or the decision to be made. In case the decision made in this new administrative procedure is against the conditions defined by the court in the judgment, that is a clear reason to file a lawsuit again and most probably only this single fact will give rise to the quashing of the new administrative decision again.

27. In general, is it required to include monitoring of environmental impacts in the EIA? How is compliance with the monitoring conditions being checked? Is the public informed about the results of monitoring and if yes, how?

According to the provisions of the Gov. Decree[10] in its decision on the issuance of the EIA permit 'regular environmental and conservation checks, including the establishment of a measuring, observing and monitoring system' may be required among the conditions of the EIA permit by the Environmental Authority.

Consequently, in the case of EIA procedures monitoring is an optional but not an obligational part of the EIA permit.

In those cases, where the Environmental Authority includes the monitoring requirement into the EIA permit, the public will not be informed automatically about the results of the monitoring. However because this kind of information falls under the general requirements of 'environmental information'[11] on a special request of anybody also monitoring information shall be made available either by the operator or by the Environmental Authority.

28. Who controls compliance with EIA decisions in your country? Are there specialized inspectorates checking compliance? How often do inspections take place? What enforcement policy

[10] Article 10 (4) ba).

[11] Article 12 (2) of the Act stipulates, that 'everyone has the right to have access to environmental information considered data of public interest in accordance with specific other legislation.' According to Article 12 (5) of the Env. Prot. Act 'access to information on emissions into the environment may not be refused on the grounds that it is personal data, business secret, tax secret, or that it pertains to natural habitat of wild fauna and flora under special protection, the location of depleted natural resources, or to the location of geological conservation of nature preservation areas.'

do the authorities have (warnings, injunctions, sanctions and so on) in case of detected non-compliance? Has information on the results of inspections and related enforcement actions been disseminated to the wider public, and if yes, how?

In Hungary the Environmental Authorities are responsible for the contol of the compliance with EIA decisions.

There are ten regional 'inspectorates for the environment and nature' and two sub-offices as 'environmental authorities' at first instance, overseen by the National Inspectorate for the Environment and Nature which works mainly as an authority at second instance.

The National Inspectorate's jurisdiction covers the whole of Hungary. It is supervised by the Ministry of Agriculture. The National Inspectorate is a ministerial organisation under the supervision of the minister responsible for environment, and its budget is part of the central administration's budget.

As a first instance authority and as set down by legislation for environment and nature, the regional inspectorates issue permits for certain activities (including IPPC and EIA permits as well), give expert authority opinions, and impose fines and penalties. Based on appeals or as a supervisory body, the first instance decisions by the regional inspectorates related to environmental issues are reviewed by the National Inspectorate. The work performed by the regional inspectorates is coordinated and controlled by the National Inspectorate. Concerning transboundary environmental issues, the National Inspectorate coordinates international co-operation.

Ex officio inspections may be taken place at any time by the Environmental Authority. In the case of non-compliance the Environmental Authority may suspend, restrict or ban the activity.[12] At the same time as taking any of these measures in its decision the Environmental Authority shall also impose a fine. The amount of the fine depends on the nature and on the severity of the infringement.

The Environmental Authority may also require the user of the environment to fulfil the requirements of the permit and to prepare an action plan with a deadline of maximum 6 months, or, depending on the exact circumstance it may require the operator to carry out the environmental review of the activity.

Information on the results of the inspections are usually not disseminated automatically to the wider public. However the main decisions of the Environmental Authorities are usually published online on the website of the given inspectorate, and may be also requested by the members of the public according to the rules of 'environmental information'.

29. If EIA decisions are infringed, what types of sanctions can be imposed by whom? Are these sanctions administrative, criminal or civil in nature? What is the level of sanctions? Are those sanctions often applied and are they considered to be effective? Can those sanctions be applied on legal persons? Please illustrate your answer by referring to examples of national case law!

For information on the infringement of EIA decisions please see the answer at Point 28. The sanctions imposed by the Environmental Authority are of administrative nature.

According to Article 103(1),(2) of the Act, damage caused to other parties by virtue of activities or negligence entailing the utilization or loading of the environment shall qualify as damage caused by an activity endangering the environment, and the provisions of the Civil Code on activities entailing increased danger shall be applied.

If the injured party does not wish to enforce its claim for damages against the party causing the damage - on the basis of a statement pertaining to this made by the injured party within the period of

[12] Gov. Decree Article 26.

limitation - the Minister may enforce said claim to the credit of the environmental protection fund special appropriations chapter.

As regards criminal liability, according to Article 109 (1), (2) of the Act, public prosecutors shall act in accordance with the stipulations of the Code of Criminal Procedure in cases in which the environmental components are damaged in a manner prohibited in the Criminal Code. In the event of endangerment to the environment, the prosecutor is also entitled to file a lawsuit to impose a ban on the activity or to elicit compensation for the damage caused by the activity endangering the environment.

Administrative sanctions and legal consequences based on the civil law may be applied on legal persons as well. Criminal sanctions can be applied only on individuals.

In general, the sanctions and legal consequences available in environmental matters can be regarded as effective.

30. If a given activity falls under the provisions of the EIA legislation, but the developer started the activity without the required authorization, what kind of measures can be taken by the competent authority?

According to the rules of the Act[13], environmental audits (hereinafter referred to as "audit") shall be carried out in order to ascertain and study the environmental impact of certain activities as well as to determine whether the environmental protection requirements are being met.

In order to explore the environmental impact caused by the activities of an operator, the environmental protection authority shall order the operator to carry out a full-scale or partial review if the operator did not request a preliminary assessment where it would have been necessary, or if started or is engaged in the pursuit of activities for which an EIA or an IPPC authorization is required, without an environmental license or a single environmental authorization.

The detailed provisions of environmental audits are stipulated by the the Act and by KTM Decree Number 12 of 1996 (VII. 4.) of the Environmental Ministry defining the professional criteria and authorizations for environmental review and the substantive requirements for the review documents.

31. Are there any penalties applicable to infringements of the national provisions adopted pursuant to the EIA Directive?

Please see the answers to the questions at Point 28 and 29.

Please highlight the specific aspects of your legal system without going too much into detail. Please provide, if available, summaries of interesting cases that illustrate the answers to the questions above.

[13] Articles 73-75.