

The Austrian Environmental Compatibility Inspection Law

Umweltverträglichkeitsprüfungsgesetz UVP-G - The Austrian Environmental Compatibility Inspection Law

The Environmental Compatibility Inspection Law (Federal Law Gazette 697/1993), referred to hereinafter as UVP-G, came into general effect on 1.7.1994, with its most important provisions coming into force on 1.1.1995. By implementation of EC Directive 85/337/EEC, it makes provision, for certain specific installations, for an environmental compatibility inspection - referred to hereinafter as the UVP - which is to be carried out in the form of a concentrated approval procedure, and a citizens' participation procedure for other projects which are not subject to a mandatory UVP inspection. These two main areas of attention of the Law represent a fundamental innovation in Austrian administrative law, since in one part area, namely the UVP sector, the former individual procedures under construction law, industrial and trade law, water law, etc. have been done away with, replaced by a uniform procedure; as a result, for the first time a uniform environmental protection law has been created, and the right to citizens' participation within the approval procedure for virtually the whole sector of law relating to plant and equipment. Therefore, this law had to be preceded by a significant constitutional change.

In detail, these innovations may be presented as follows:

1. In its first half, the UVP-G (Section 2) sets out the provisions for the UVP procedure in the form of an independent approval procedure, including special public participation.

- 1.1 In the event of a project being mandatory subject to a UVP inspection by virtue of its definition under Appendix 1 of the Law (see enclosure), the approval procedure is to be carried out with the procedure under the UVP-G alone replacing the approval procedures which would otherwise be required. Subject to mandatory UVP inspection are, inter alia, larger waste treatment plants, larger thermal power stations, certain "atomic" plants, certain transport and pipeline projects, larger mining projects, larger animal husbandry projects, and certain industrial production facilities. For these projects, the UVP-G dispositions prevail over the factual circumstances which are otherwise determinant for the granting of approval. In addition to this, certain specific modifications to already existing installations are subject to mandatory UVP inspection, in particular if, due to the modification, the threshold values according to Appendix 1 are exceeded for the first time, and the extension of the capacity of the installation amounts to at least 50 %. In this context, modifications which extend the capacity carried out within the last five years are to be calculated as a whole, so that the UVP inspection obligations cannot be circumvented by repeated minor capacity expansions. Measures which are the subject of adaptation or adjustment proceedings under administrative law are not subject to the UVP-G.

- 1.2 The Provincial Government is the authority responsible for the implementation of the UVP. The party planning to implement the project is obliged to issue notification of this 6 months prior to the planned submission of the application to the Provincial Government, setting out the basic features and presenting an overall concept for an environmental compatibility declaration (see also 1.3 below). In these "preliminary proceedings" the authority is to conduct a provisional inspection so as to determine which administrative provisions will require approvals to be issued, which technical expert assessors should be considered for involvement in the proceedings, and whether the concept presented shows any evident deficiencies with regard to the environmental compatibility declaration. At this provisional inspection, the Environmental Counselor, the local municipality, and the municipalities immediately adjacent, are to be given a hearing; the involvement of other authorities is not mandatory prescribed. The comments and project documents are to be publicized in

the manner which is customary locally, and the costs for this are to be borne by the party planning to carry out the project.

1.3 The actual UVP procedure begins with the application for approval to the Provincial Government. This application is to contain all the applications, information, and documents required for the approval of the project according to the administrative regulations (this means the individual laws), classified according to the individual administrative provisions, and the environmental compatibility declaration in the numbers required. In this context, project documents which contain items which, in the opinion of the project planner, constitute business or operational secrets, are to be separately identified. The environmental compatibility declaration is to include, inter alia, the following information:

- A description of the project, according to location, nature, and scope, including in particular the most important features of the production or processing procedures;
- The nature, quantity, and quality of any waste residues and emissions which may arise from the realization and operation of the project;
- Increases in emissions deriving from the project;
- The energy requirement;
- An overview of the most important of the other possible solutions investigated by the project planner, and details of the main reasons for the choice made, with regard to the environmental effects;
- A description of the environment which may be affected by the project, and of the effects to be anticipated on the environment, including the reciprocal relationship between the individual effects;
- A description of the measures by means of which any substantially disadvantageous effects of the project on the environment can be avoided, restricted, or compensated for;
- Measures for avoiding or containing accidents, and for providing protection for workers.

1.4 In the procedure, all the administrative regulations are to be applied according to which an application for the project is to be made, provided that the UVP-G makes no other provision. Joint oral negotiations are to be held for all the administrative regulations which are to be applied; these may be divided into sections according to content criteria. These are to be publicized by way of a public notice posted at the local town hall and in the municipalities immediately adjacent, as well as in the newspapers designated for official notifications for the Province, in a regional local newspaper, and, if applicable, in other appropriate ways.

1.5 The authority is required, after the hearing involving the authorities concerned and the project applicant, to draw up a time schedule for the course of the proceedings, in which deadlines will be set for the individual stages of the procedure, taking into account the surveys and investigations which are required by the nature, scale, and location of the project. The deadline for the decision for the authorities is 18 months. If the procedure is not publicized in the manner provided for under 1.2, then the deadline for the decision for an approval application will be extended to 2 years.

1.6 The documents submitted, the provisional list of expert assessors drawn up by the authorities, with the outline framework for the investigation, and any comments

already received are to be made available for public inspection for at least 6 weeks. Any person shall be entitled to make copies or have copies made of these on the spot. In addition to this, the authorities are required to publicize the project in the same manner as the oral negotiations. Any person shall be entitled to submit written comments to the authorities within a period of grace of 6 weeks from the start of the official proceedings. If the project was not publicized prior to the application, the period of grace for inspection and the submission of comments will be extended accordingly.

In the case of environmental effects which may be felt across international frontiers, the authorities have an obligation to provide information to the authorities of the state which will (possibly) be affected.

1.7 The next procedural step is to obtain the expert opinions from the expert assessors for the specialist areas concerned. These partial assessments and the environmental compatibility declaration, form the basis for the environmental compatibility assessment, which is to be produced by all the expert assessors who have produced partial assessments, on the basis of detailed regulations which cannot be described in greater detail at this juncture.

The environmental compatibility assessment is in turn to be made available for public inspection; any person shall be entitled to copy it or have copies prepared.

1.8 The next step is to conduct a public examination of the environmental compatibility assessment. In this context, any person shall have the opportunity to express an opinion and raise questions regarding the project and the expert assessment. A report is to be prepared regarding the outcome of the public examination, which is to be made available for public inspection; the period of grace for this inspection shall be at least 4 weeks.

1.9 Following this, the Provincial Government shall reach a decision on the application. In this context, it shall discuss jointly all the approvals applied for. The preconditions for the approval are those referred to in the administrative regulations concerned, as well as those newly enumerated in the UVP-G, which relate in particular to contaminant emissions, emission burdens, and waste recycling and avoidance.

In the case of projects which, as a result of their scale, cannot be overseen in all their details at the outset, the authorities shall be entitled, at the application of the project planner, to issue a basic approval, and reserve judgement on specific approvals, determinations, and prescribed provisions.

1.10 Participation in the UVP procedure is granted to the parties provided for in the administrative regulations which are to be applied, but shall in any event include those domestic and foreign neighbors who may be set at risk or subjected to a burden by the creation, existence, or operation of the project, or whose property or other rights may be set at risk, and who have raised objections against the project in writing or at the oral negotiations. In addition to this, the Environmental Counselor and the local municipalities and the Austrian municipalities immediately adjacent shall likewise be entitled to take part, as well as being availed of the right to raise objections before the Austrian Administrative High Court or the Austrian Constitutional High Court.

In addition to this, citizens' initiatives shall also be availed of the right to participate and to be provided with legal advice, provided that they comprise at least 200 people and have submitted a comment on the application for approval. If these two preconditions are fulfilled, they shall have a subjective right to the project applicant respecting the environmental protection regulations, and to the planned installation also meeting these regulations. In this case, then, the requirement for proof of the prejudice to subjective rights, required for the participation of the neighbor parties,

shall be waived. Citizens' initiatives shall also be entitled to raise objections before the Austrian Administrative High Court or the Austrian Constitutional High Court.

1.11 The completion of the project is to be notified to the Provincial Government prior to commissioning. The authorities shall be obliged to check whether the installation corresponds to the approvals; in addition, they are also required to issue a decision, and to apply the provisions contained in the individual administrative laws regarding operational approvals, approvals for use, examinations and approvals by inspectorates, etc. In this context, the acceptance decision shall in turn replace the decisions provided for in each case by these administrative regulations. A follow-up inspection by the authorities is to be conducted at the earliest three years after notification of completion, and at the latest six years thereafter.

1.12 Appeals against decisions in the UVP procedure are to be submitted to the Environmental Senate established at the Federal Ministry for the Environmental, Young People, and the Family. This body shall consist of 20 members, five of whom must be judges. The Environmental Senate is a collegiate authority of the Federal Government, independent and free of directives. The procedure and the organization are governed in greater detail in the Environmental Senate Law-Umweltsenatsgesetz (USG), Federal Law Gazette 98/1993.

2. For the procedures referred to in Appendix 2 of the UVP-G (see enclosure), a citizens' participation procedure must be carried out within the procedures referred to in that same Appendix. Even modifications to an existing installation as described in Appendix 2 are subject to a mandatory citizens' participation procedure, if the threshold values are exceeded for the first time as a result of the modification, and an increase in the capacity of the plant of at least 50 % is incurred, in which context the modifications which bring about the increase in capacity within the past five years are added together. The following special features are to be taken into account in this situation:

2.1 By contrast with the UVP procedure, the individual approvals will remain in place. These are to be applied as hitherto; in other words, there is no provision made for concentration of approvals. Appendix 2 refers to a "initiatory procedure"; this means that a citizens' participation process is only to be carried out if the project is subject to mandatory approval in accordance with the administrative law referred to. An approval obligation according to laws other than those specified as laws shall not have any consequences on the citizens' participation; in other words, a citizens' participation procedure will not come into consideration in these other proceedings. The UVP-G does not in any case make provision for any new authorization obligations; this applies both to the UVP itself as well as to the citizens' participation.

2.2 The special feature of the citizens' participation rests in the fact that, as is already the case with the environmental compatibility inspection procedure, a public notification is to be effected by way of a notice displayed at the town hall of the municipality, and in a newspaper, that any person has the right to submit comments, and that citizens' initiatives, if supported by at least 200 people, will be recognized as legal persons. A public hearing will follow the notification, the outcome of which will in turn be made available for public inspection. The results of the citizens' participation are to be taken into account in making the decision, on the basis of the administrative regulations which are to be applied.

2.3 An important point is that the citizens' initiatives, the local municipalities, the municipalities immediately adjacent, and the Environmental Counselor do not become parties to the procedure. This means, in particular, that these parties do not have any right of appeal in law against the decisions by the public authorities. They have the sole right to take part in oral negotiations and to participate in the determination of the factual situation; beyond that, the UVP-G grants them the right solely to inspect the files.

3. The UVP-G contains additional special provisions relating to the inspection of environmental compatibility of Federal highways and high-speed railway lines. It also makes provision for the establishment of an Environmental Counselor and of the preparation of UVP documentation.

3.1 The Environmental Council is established at the Federal Ministry for the Environment, Young People, and the Family, and, inter alia, is entrusted with the task of observing the effects of the enforcement of the UVP-G, and also has the task of submitting proposals for the possible improvement of the environmental protection to the legislative and executive bodies, as well as providing advice with regard to questions of fundamental significance for environmental protection.

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