



Date: Zagreb, 3rd of July 2008

Subject: Zagreb incinerator project meeting follow up

Dear Mr Delcuellerie,

We would like to thank you for the very fruitful meeting that took place in Brussels on 4th of June 2008 on the topic of Zagreb incinerator project development and our concerns regarding the non-compliance of the project with several aspects of the EU EIA Directive (85/337/EEC as amended by 97/11/EC and 2003/35/EC). In this letter we also respond to some aspects of the letter to the European Commission from Mr Nikola Ruzinski of 28.01.2008 as we believe the letter attempts to downplay the problems with the project process in a highly misleading manner. In particular the assertion that the 2005 EIA process was abandoned as the result of a request from the developer is false, and we lay out below our understanding of what happened.

We found out from a report prepared at the request of Zagreb City Council on 28.09.2006¹ that:

- After the resolution rejecting the EIA, the City of Zagreb submitted a complaint to the Administrative Court of the Republic of Croatia on 25.10.2005 requesting the cancellation of the resolution of 6th September 2005.
- In the meantime representatives of the City Office of the Economy and Elektroprojekt consultancy the project promoters, held several meetings with representatives of the Ministry of Environmental Protection, Spatial Planning and Construction in order to resolve the problems and undertake the necessary work to remove the deficiencies in the EIA. As a result, the City of Zagreb withdrew the complaint to the Administrative Court, which it did on 15.02.2006.
- As a consequence of these meetings, joint minutes between the Ministry, City of Zagreb, and Elektroprojekt were signed on 21.03.2006 with the conclusions on the changes needed to the Environmental Impact Assessment.

The above clearly shows that the EIA was rejected, and not withdrawn at the request of the developer.

The Ministry's claim that "*the Environmental Impact Study was revised in accordance with the comments expressed during public consultations as well as in accordance with the comments made by the Commission, the Ministry of Environmental Protection, Physical Planning and Construction*" is simply untrue.

After the rejection of the study by the EIA Commission in 2005, a new Commission was appointed to review the 2006 version of the EIA.

However, the only revisions agreed in the abovementioned minutes from the meeting between the Ministry, the City of Zagreb and Elektroprojekt on 21.03.2006 were:

¹ Unknown author: Izvješće o dosad poduzetim radnjama na realizaciji projekta gradnje PTOO u Gradu Zagrebu (requested by Zagreb City council 28.09.2006)

- 1) To add that the location for the incinerator had been incorporated in the General Urban Plan
- 2) That the ash would be disposed of at Jakusevac landfill in Zagreb until Zagreb County constructs another landfill
- 3) That the toxic ash would be exported
- 4) That the waste data would be copied from the city waste management programme
- 5) That information on the current state of the incinerator location would be included
- 6) That the incinerator may be expanded in a second phase for the waste coming from Zagreb County.

These barely address any of the concerns raised during the 2005 process. We have only had a brief opportunity to inspect the latest EIA in the offices of the Ministry, and therefore rely on these minutes to outline the changes made. To make ministries approach look even worse, the summary of approved EIA has not even been published on the ministries web pages – instead of the new one – the summary of the 2005 study is still online.²

We are now in the position where the City of Zagreb has to make a new waste management plan according the Croatian National Waste Management Plan. The City's waste management plan has to be consulted with the public as a result of the new Law on Environmental Protection and Croatia's ratification of the Aarhus Convention. However, we are concerned that unless the approval for the Environmental Impact Assessment of the incinerator is cancelled, the consultation will be almost meaningless, as the City has already decided on a huge investment that would dictate its waste management policy for at least the next twenty years.

We would ask you to underline to the Croatian authorities the non-acceptability of the EIA process for the incinerator and the need for meaningful public participation during the development of Zagreb's waste management plan, as well as in the development of other plans, projects, programmes and laws. We would also ask you to underline to the Croatian government that its expectation that it can simply rely on exporting the toxic ash from this project is not acceptable.

We would also ask you or your colleagues to raise our concerns with the European Investment Bank as we believe that such a poorly developed project must not be financed with public money. Concerning the question that arose during the meeting on the involvement of the EIB, although the bank has not officially acknowledged its involvement in the project, it has expressed its interest at: <http://www.eib.org/projects/regions/enlargement/croatia/index.htm>. We will continue to share our concerns with the EIB.

Thank you once again for your time. We look forward to continued fruitful communication on this topic.

Yours sincerely,

Mr Marijan Galovic

² Studije na javnom uvidu / ARHIVA / ARHIVA 2005. - <http://kenny2.globalnet.hr/www.mzopu-puo.hr/default.aspx?id=411>

Appendix: Explanation of procedure breaches during the project development

In 2005, after the EIA commission for the project had already rejected a first version of the EIA and had asked for amendments, a second version of the EIA was made available for public consultation. The 2005 process was formally conducted according to Croatian legal requirements, and included a period for written comments and a public hearing, although it was insufficiently advertised as people in the vicinity of the planned incinerator had no idea that the public consultation was happening.

Green Action submitted oral and written comments on the EIA, and the Ministry of Environmental Protection, Spatial Planning and Construction issued a Resolution on 6th September 2005 (ref. 531-08-3-STZ-05-10), which rejected the study because *“The EIA for the “Thermal Waste Treatment Plant of the City of Zagreb” project does not satisfy, either formally or satisfactorily, the requirements of Article 7. of the Regulation on Environmental Impact Assessment (Official Gazette 59/00) under the framework of which it was initiated and carried out.”*³

The Resolution gave several reasons for rejecting the study, which partly echoed Green Action’s concerns and are laid out below.

For almost nine months, Green Action heard no more about any new developments with the project, except for the approval in March 2006 of a waste management programme for the City of Zagreb which we considered extremely insufficient and which appeared to be aimed solely at justifying the incinerator investment rather than thoroughly examining waste prevention and management options for Zagreb. Since Croatia had not yet ratified the Aarhus Convention, there was no public consultation for this document, which allocated EUR 161.4 million for incineration and only EUR 4.5 for recycling.

Concerning EU legislation, the 2006 EIA fails to satisfy the requirements of Annex IV of Directive 85/337/EEC as amended by 97/11/EC and 2003/35/EC as follows:

1. Description of the project, including in particular:

- *a description of the main characteristics of the production processes, for instance, nature and quantity of the materials used*

The EIA fails to give predictions for the amount of waste to be dealt with in Zagreb during the next two decades, and no real justification is given for the capacity chosen for the incinerator. The Zagreb waste management programme approved in 2006 aimed to do so, but relies on outdated waste data that over-estimates both the total quantity of waste and its calorific value. The data were gathered before the implementation of the ordinance on collecting recyclable beverage packaging, and do not take account of the recent increase in recycling that has taken place nor the decrease in plastic in municipal waste. **The plan predicts an extraordinary increase of just below 80 percent in the quantity of waste generated between 2005 and 2020.** However, the European Environment Agency predicts an increase of 25 per cent for the EU-25,⁴ and Eurostat data shows that between 1995 and 2005 the amount of municipal waste generated per capita in the new member states generally stabilised⁵, so there is no reason to expect that waste growth in Croatia would exceed the EU average so dramatically. We are concerned that the planned incinerator is either oversized, or that there will be enough waste to fill the plant but that much of it will be recyclable waste that should not be incinerated.

The incinerator EIA does not specify which technology will be used, and gives three variants, stating only that the final option will be chosen on the basis of ‘commercial criteria’. Since the three

³ Our translation

⁴ European Environment Agency: The Road from Landfilling to Recycling: Common Destination, Different Routes, EEA, 2007, p.7

⁵ Eurostat: Municipal waste generated, <http://ec.europa.eu/eurostat>

variants have different implications in terms of quantity of toxic fly ash and filter residues resulting from the process, this is a matter of concern.

2. An outline of the main alternatives studied by the developer and an indication of the main reasons for this choice, taking into account the environmental effects.

This was covered in just a few lines of text in the EIA, which seemed to aim more at dismissing other waste management methods than to really explore the issue. The EIA commission criticized the poor quality of the cost-benefit analysis and the lack of exploration of different scenarios of waste growth and recycling levels.

5. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.

An important problem with the project is the failure to properly address the issue of how to deal with the potentially toxic bottom ash, and the toxic fly ash and filter residues generated by the incinerator. Both the 2005 and 2006 EIAs are clear that the toxic filter residues would be exported, which we find irresponsible, as well as being expensive. The 2005 EIA stated that the toxic fly ash would be set in concrete and put on the municipal landfill site in Zagreb until its closure, but it is not known whether the 2006 version also stated this or opted for export. In any case, neither is an acceptable solution for hazardous waste. The bottom ash is planned to go into the municipal landfill until it closes and another landfill is constructed in Zagreb County. However none of the districts in the County have come forward to host the landfill, and the process is effectively blocked.

Our concerns are all the more justified because for seven years the Ministry of Environmental Protection, Spatial Planning and Construction has failed to deal with the hazardous ashes at the site of the former hazardous waste incinerator, PUTO, which burnt out in 2002 as the result of a fire in a storage area. The Ministry has made repeated promises that the ash would be removed, but at the time of writing it is still at the site, completely unprotected and exposed to the elements.

Summarising the reasons for the rejection of the 2005 EIA,⁶ very few improvements are noticeable in the 2006 version:

1. Need for cumulative impact assessment of the wastewater treatment plant and incinerator - *unaddressed*.
2. The capacity of the incinerator was set without analysis of the existing and expected quantity of waste being produced - *inadequately addressed because the waste composition changed in 2006 with the introduction of the Waste Packaging Ordinance*.
3. Current low level of recycling in Zagreb and need for scenarios of different waste growth and recycling levels - *inadequately addressed - only EUR 4.5 million dedicated to recycling in Zagreb for the period until 2025 and only 9 recycling yards planned*.
4. Lack of plan on where to dispose of the approximately 100 000 t tonnes of ashes produced annually by the incinerator. - *unaddressed - an agreement with the County does not mean that any landfill is guaranteed, because none of the County's districts are agreeing to host it*.
5. No information is given on where to dispose of the approx. 16 000 tonnes annually of hazardous waste from the plant. - *unaddressed - 'exporting' it was already in the 2005 EIA, and does not really tell us anything about where it will go*.
6. Three different technological options are mentioned, each with different impacts, but it is left open which one would be chosen and the only criteria for choosing are undefined 'commercial criteria'. - *unaddressed*
7. No examination has been carried out of the current situation at the site - instead it is said that this would be done after the confirmation of the location in spatial plans. - *unknown whether this is in the new EIA*

⁶ Resolution issued on 6th September 2005 rejecting the EIA for the incinerator (ref. 531-08-3-STZ-05-10)

8. The cost benefit analysis is not carried out in a sufficient amount of depth and different scenarios for the future growth of the city and its surroundings are not explored. - *unaddressed*
9. Strategic social commitments on waste management and the waste management hierarchy are not considered or evaluated in the study. - *unaddressed*

In spite of these deficiencies the EIA was approved in July 2006 without any further public consultation.

The lack of public consultation after the final amendments to the EIA violates Article 6 of Directive 85/337/EEC as amended by 97/11/EC and 2003/35/EC, on public consultation, in particular Article 6, paragraph 4: *“The public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures referred to in Article 2(2) and shall, for that purpose, be entitled to express comments and opinions when all options are open to the competent authority or authorities before the decision on the request for development consent is taken.”*

As there was no consultation on the final version of the EIA, Article 8 of the same Directive was also breached: *“The results of consultations and the information gathered pursuant to Articles 5, 6 and 7 must be taken into consideration in the development consent procedure.”*

As stated by Mr Ruzinski in his letter, the EIA approval Resolution included several conditions, including a requirement for the developer to carry out ‘public information’ activities. **We are concerned that this reflects a basic failure to understand the difference between public consultation and public information.** ‘Public information’ after the approval of the EIA cannot be a substitute for public consultation at a stage when it is still possible to influence the proceedings, and the Croatian Ordinance on EIA, although still not aligned with EU legislation, clearly lays out the need for public consultation to take place.

Green Action therefore commenced legal action with the aim of cancelling the approval. However the approval of the EIA was made public only at the end of August 2006, when a business newspaper published an article about it, and Green Action’s complaint did not therefore fall within the stated deadline for appeals. We find it suspicious the first news of the approval came shortly after the appeal period had ended and believe that this violated Article 10a of Directive 85/337/EEC as amended by 97/11/EC and 2003/35/EC, on the right to appeal decisions: *“In order to further the effectiveness of the provision of this article, Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.”*

More than two and a half years has passed since Green Action submitted its complaint to the Administrative Court, with no news on whether the case is even admissible. This year a procedure was initiated to try to speed up the case, but we were told that this could not be done. We know that the EC is already aware of the issues concerning Croatia’s judiciary, and this case comes as another unfortunate example. In this case Article 10a of Directive 85/337/EEC as amended by 97/11/EC and 2003/35/EC is clearly not being adequately implemented: *“Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned [...] have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive. [...] Any such procedure shall be fair, equitable, timely and not prohibitively expensive.”*

Mr Marijan Galovic