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Dear Mr. Delcueillerie,

### **Breaches of Croatian Law in Zagreb Incinerator Approval**

We are writing to draw your attention to alleged legal violations during the approval of the 3<sup>rd</sup> version of the Environmental Impact Assessment for the planned 385 000 tonne per year Zagreb municipal solid waste incinerator and to ask you to raise these issues with the Croatian government.

The issue also has wider significance because the incinerator is the centrepiece of the City of Zagreb's Waste Management Plan, which was passed with no public consultation and envisages only EUR 4.5 million to be spent on recycling by 2025, compared to EUR 161.4 million for incineration. Since Zagreb is home to nearly a quarter of Croatia's population we believe that the plan will severely restrict Croatia's ability to increase its recycling and waste prevention during the coming years.

Green Action is considering initiating legal proceedings against the Ministry of Environmental Protection, Spatial Planning and Construction in relation to two pieces of Croatian legislation concerning this case:

#### **i) Regulation on Environmental Impact Assessment (Official Gazette 59/00)**

#### **ii) Freedom of Information Act (Official Gazette No. 172/03)**

The Croatian Regulation on Environmental Impact Assessment (Official Gazette 59/00) does not correspond to EU Directive 85/337/EEC amended by 97/11/EC:

- There is no screening or notification process and usually no scoping process
- The process effectively begins when a study is presented to the Ministry of Environmental Protection, Spatial Planning and Construction, as the contents of the EIA are included in the regulation rather than being agreed by stakeholders in the scoping process.
- Since it is a regulation it can be changed overnight by the Minister of Environmental Protection, Spatial Planning and Construction, without any parliamentary discussion.

However, in this case the issue at stake is public participation, which is guaranteed in the Croatian EIA Regulation in the form of a public inspection period of 14-21 days (Articles 18 and 19, Official Gazette 59/00). **The 3<sup>rd</sup> version of the EIA has been approved without a new public consultation period**, which we believe violates the Regulation on EIA, and is also inconsistent with EU Directive 85/337/EEC amended by 97/11/EC.

After the rejection of the 1<sup>st</sup> and 2<sup>nd</sup> versions of the EIA, in April 2006 the Ministry of Environmental Protection, Spatial Planning and Construction formed a new review commission to assess the 3<sup>rd</sup> version of the EIA. Due to the lack of screening and notification process, it was only by accident that Green Action found out unofficially that a new EIA was ready for review in June 2006.

Repeated attempts were made to find out when the legally stipulated public consultation period would take place, through telephone calls to the City Council and the Ministry of the Environment. When these failed to produce a satisfactory answer an official information request was sent to the Ministry on 26<sup>th</sup> July, which was left unanswered for over a month, thus **breaking the Freedom of Information Act (Official Gazette No. 172/03)** requiring an answer within 15 working days.

On 29<sup>th</sup> August a media report stated that the EIA had been approved, and Green Action telephoned the Ministry of the Environment to find out whether it was true. The Ministry finally replied to the information request on 5<sup>th</sup> September, saying that the EIA had been approved, with no information on when or whether there had been a public consultation.

On 13th September Green Action sent a request for the approval document for the EIA to the Ministry. **The Ministry again broke the Freedom of Information Act** by failing to provide the information within 15 working days, and only provided it after an official complaint had been made. The document revealed that:

- The 3<sup>rd</sup> version of the EIA was completed in April 2006 and amended in July 2006
- In April 2006 a new EIA review commission was formed
- The EIA was approved on 21<sup>st</sup> July 2006
- **The public consultation cited in the approval was that from 2005, even though the rest of the EIA process, including the selection of a review commission, was started from the beginning in 2006.**
- Many of the points outlined in the approval conditions show that key concerns regarding the plant have not been adequately dealt with, particularly regarding the ash resulting from the incinerator. Indeed **several of the grounds for rejecting the 2005 EIA have not been addressed**, yet it has not been explained they are no longer grounds for rejection.
- Public meetings about the incinerator, as well as other 'information' activities, are merely added into the approval as activities that must be done before the incinerator begins its operations. **These have no value as a public consultation whatsoever** as there is no mechanism by which opinions expressed during this period could be taken into account.
- **The approval document stated that any appeals against the approval must be made within 30 days. However the first media report which we have been able to find was not published until 29<sup>th</sup> August, and there was no press release at all relating to the matter on the Ministry of the Environment's website.** This would appear to indicate that the Ministry purposefully withheld the information with the aim of hindering appeals.

This case is highly illustrative of the problems with the EIA process in Croatia, including:

- a poorly written regulation which concentrates on public consultation at a late stage rather than public participation at an early stage,
- poor access to information (The Croatian government has not yet ratified the Aarhus Convention)
- the patronizing and disdainful attitude of decision-makers towards the general public and civil society which prevents genuine dialogue from taking place

For your information we also enclose:

- 1) An examination of the Croatian Regulation on EIA
- 2) A copy of Green Action's objections regarding the planned incinerator
- 3) A copy of Green Action's comments on the Zagreb Waste Management Plan
- 4) A selected chronology of the incinerator case

We look forward to your response and hope that you will be able to take this matter up with the Croatian government, particularly the Ministry of the Environment.

Yours sincerely,

**Marijan Galovic**  
Bankwatch program coordinator  
Zelena akcija

## A (selected) chronology of the planned Zagreb Municipal Solid Waste Incinerator

### 2004:

The first version of the Environmental Impact Assessment was completed by Elektroprojekt d.d. and a commission was established to review it. They decided that it was insufficient to fulfil the legal requirements and asked for additions.

### 2005:

**25<sup>th</sup> April - 16<sup>th</sup> May 2005** A second version of the EIA was found to be suitably complete for public inspection and was put on display for comments. Green Action participated in this process and expressed several concerns about the study and the project itself.

**6<sup>th</sup> September 2005:** the EIA commission decided to reject the EIA for several reasons. There was no public announcement about this rejection.

**6<sup>th</sup> October 2005:** Green Action found about the rejection through an article in the Novi List newspaper and was able to obtain a copy of the commission's resolution from the journalist who wrote the article.

**20<sup>th</sup> October 2005:** Zagreb Mayor, Milan Bandic, announced that he would seek the Prime Minister's assistance in continuing the project (Novi List newspaper, 20.10.2005) and Green Action responded with a letter reminding the Mayor of his responsibility to listen to experts and the public.

**Late 2005/early 2006:** Green Action participated in the process of changing Zagreb's General Urban Plan and sent a formal objection to the inclusion of the incinerator location on the planned site. This was not reflected in the changes to the GUP.

Green Action also made repeated attempts to become involved in the development of Zagreb's new waste management strategy, through letters to the City Council and phone calls to the communal waste company ZGOS. ZGOS stated that they were unaware of any new waste management plan.

In December 2005 the Prefect of Zagreb County, Stjepan Kozic, and Zagreb Mayor, Milan Bandic, signed an agreement in which Zagreb County would be allowed to bring its waste to the incinerator for burning on the condition that it would construct a landfill for the ashes from the plant. Green Action was extremely concerned about this development as it was repeatedly claimed that the ashes would be inert, whereas incinerator fly ash is generally treated as hazardous waste, and residents of Zagreb County has no way to know about the decisions being taken on their behalf. Meetings were held with the Zagreb County Prefect and district councillors on this issue and a media action was organised to highlight the problem.

**16th March 2006:** a new Zagreb Waste Management Plan was approved by the City Council without any public discussion. The details of the plan were not publicised and Green Action sent an official information request to the City Council to obtain a copy. Its contents were of great concern:

- **No financing** was allocated for waste prevention at all
- Although a **recycling target of 50% by 2025** was set, **only EUR 4.5 million was allocated** for reaching this target.
- **The only activity** for reaching this 50% target is the opening of **15 new recycling yards**
- **The plan refused to examine a door-to-door recycling scheme**, dismissing it as 'expensive' without giving any evidence.
- **In comparison, EUR 161.4 million was allocated for the new incinerator.**

Green Action publicly demanded that the approval of the plan should be suspended until a public consultation had taken place but received no response from the City Council.

**June/July 2006:** Green Action learned unofficially that a new EIA was ready, and began to make enquiries about the public consultation period. Repeated telephone calls to Zagreb City Council

and the Ministry of Environmental Protection, Spatial Planning and Construction failed to yield satisfactory answers, and on 26<sup>th</sup> July 2006 an official information request was sent to the Ministry of Environmental Protection, Spatial Planning and Construction to ask about the consultation.

**21<sup>st</sup> July 2006:** The Ministry of the Environment approved the EIA, and allowed a 30 day period for appeals. However, it did not inform the public through its website, nor does it appear to have notified the media.

**29<sup>th</sup> August 2006:** An article appeared on the “Business Daily” (Poslovni Dnevnik) website stating that the EIA had been approved - more than a month after the approval had actually taken place.

**Early September 2006:** Green Action telephoned the Ministry of the Environment to establish whether this was true. The Ministry first claimed that they could not give such information by telephone and then when informed that a written information request had been sent more than a month previously, a reply was received by e-mail on 5<sup>th</sup> September 2006. The reply stated that the EIA had been approved but contained no information on when, or whether there had been a public consultation.

**13<sup>th</sup> September 2006:** Green Action sent an official information request to ask for a copy of the approval document.

**25<sup>th</sup> October 2006:** Green Action, after filing an official complaint because the Ministry took more than the allowed 15 working days to answer, received the approval document with a letter dated 17<sup>th</sup> October 2006.

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