

**Supreme Court
Latvia**

*Case study combining aspects of project planning and
European environmental law*

National report

Riga, 2005

1. Administrative consent procedure

Please give a short outline (no specific details) of the administrative consent procedure applying to project in your national legal order (procedural steps), timelimits, competent authorities, involvement of lobby groups and technical experts.

Planning a new motorway.

According to the law “On Environmental Impact Assessment”¹ Article 3 environmental impact assessment shall be required for proposed development which are related to the objects referred to in Annex 1 of this Law. Annex 1 „Objects Requiring Impact Assessment” include: construction of motorways and express roads.

Law “On Environmental Impact Assessment” sets environmental impact assessment procedure and clarify, that the decision-taking time periods specified in the regulatory enactments regulating administrative processes shall not apply to a decision which has been taken on the basis of the initial assessment result of the impact of a proposed development, as well as shall not apply to an opinion regarding a statement and an opinion regarding a final statement. The time period for the taking of each decision, as well as for the acceptance of each opinion *shall not exceed 60 days*.

Environmental impact assessment consist of several stages:

- 1) proposal of a proposed development to the Competent Authority (Environment State Bureau);
- 2) procedures for the performance of an impact assessment-acknowledgement of the necessity of an impact assessment;
- 3) initial public discussion of the impact assessment of a proposed development;
- 4) draft environmental impact statement, the elaboration and public discussion thereof;
- 5) acceptance of a proposed development, information regarding a decision taken;
- 6) proposed development which may have a transboundary impact;
- 7) liability and review of decisions.

¹Law “On Environmental Impact Assessment”, internet home page of the Ministry of the Environment - http://www.vidm.gov.lv/ivnvb/ivnvb/likumd/Eivn_lik.htm

Competent authority is Environment State Bureau, but also regional environmental boards, technical experts are involved in different stages of the procedure of environmental impact assessment. Also public and different lobby groups are involved in the procedure of environmental impact assessment.

2) Public involvement

a) is there any public involvement and/or hearing of individually affected parties during the administrative consent procedure?

Yes, there is public involvement and hearing of individually affected parties during environmental impact assessment procedure.

b) If yes, at which stage of the procedure and in which form?

Public is involved in several stages:

A proposed development – construction of motorway shall be proposed in the competent authority- Environment State Bureau by submitting a written submission in which at least two different solutions regarding the location of the intended activity or the types of technologies to be used are indicated.

If prior to the examination of a received submission, the competent authority- Environment State Bureau takes a decision that an impact assessment of the proposed development is required, it shall inform in writing the proponent and the concerned State authorities and local governments regarding the initiation of the impact assessment.

Decision of the competent authority may be appealed to a court in accordance with the procedures specified by regulatory enactments.

If the competent authority decides that an impact assessment of a proposed development is not required, it shall announce its decision in writing to the proponent, the relevant regional environment board and local government in the territory of which the proposed development shall take place, as well as publish the announcement regarding the non-application of the impact assessment.

Initial public discussion of the impact assessment of a proposed development

If a decision of the competent authority has been received that an impact assessment of a proposed development is required, the proponent shall

publish an announcement regarding the proposed development and the possibility of the public to submit written proposals regarding the possible impact of such activity on the environment in the newspaper “*Latvijas Vēstnesis*” [the official Gazette of the Government of Latvia] and at least one local newspaper, as well as shall inform individually the owners (possessors) of immovable properties which are located next to the territory of the proposed development.

Upon a written request of the competent authority, a regional environment board, a deputy of the relevant local government or at least 10 interested parties, a proponent shall ensure an initial public discussion of the impact assessment of a proposed development. Any interested parties are entitled to participate in such discussion and to make his or her proposals.

The competent authority shall participate in each initial public discussion of the impact assessment of a proposed development, which takes place in accordance with law “On Environmental Impact Assessment”.

Draft environmental impact statement, the elaboration and public discussion thereof

On the basis of a programme (from Environment State Bureau), a proponent shall formulate and submit a draft environmental impact statement (hereinafter – statement) to the competent authority. Upon the instruction of the competent authority, the proponent shall also submit the statement for evaluation to a regional environmental board, the administration of specially protected nature territory and the local government in the territory of which the activity is intended and to other authorities.

A proponent shall publish an announcement regarding the possibility of the public to become acquainted with a statement, to submit proposal in writing and to participate in a public discussion of a statement in the newspaper “*Latvijas Vēstnesis*” and at least one local newspaper.

A proponent has a duty to ascertain the opinion of the public, ensuring the participation of a representative part of the population who may be influenced by an intended activity in a public discussion or to poll this part of the population.

Opinion regarding a statement

Taking into account the opinions of concerned State authorities and local governments and the written proposals submitted by the public and the results of a public discussion, the competent authority shall evaluate the conformity of a statement to the requirements of a programme and

prepare an opinion (inviting an expert, if necessary) which shall be sent to the proponent. The amendments to be made to the statement may be indicated in the opinion.

Final environmental impact statement

Taking into account the opinion of the competent authority regarding a work report, a proponent shall prepare a final environmental impact statement (hereinafter – final statement) and submit it to the competent authority also in electronic form. The final statement shall include a report regarding the public discussion of the statement.

The competent authority and a proponent shall display a final statement on their Internet home page. The competent authority, the proponent, a regional environmental board and local government shall ensure the availability of the final statement to the public. The public has the right to evaluate the final statement and to submit their comments, and such comments shall be evaluated by the competent authority when preparing an opinion regarding the final report.

Opinion regarding a final statement

The competent authority shall provide an opinion regarding a final statement, using as the basic criterion the conformity of a proposed development to the requirements of laws and other regulatory enactments. If the final statement does not correspond with the programme or the opinion of the competent authority regarding the statement has not been taken into account, or *the informing of the public has not been performed and a public discussion has not taken place in accordance with the procedures specified by the Cabinet of Ministers* (hereinafter- Cabinet), the competent authority shall send the final statement to the proponent for revision, indicating the deficiencies to be eliminated, or shall assign the proponent to ensure the informing of the public and a public discussion.

Acceptance of a proposed development

In order to receive permission to initiate a proposed development, the initiator shall submit a final statement, and a statement of the competent authority regarding the final statement to the relevant State authority or local government together with the documents specified in other regulatory enactments.

After the comprehensive evaluation of a final statement and a statement of the competent authority regarding the final statement, as well as taking into account the opinion of the concerned State administrative authorities,

local governments and the public, the relevant State authority or local government shall take a decision to accept or not accept a proposed development in accordance with the procedures specified by regulatory enactments.

If a proposed development has transboundary impact, the relevant State authority or local government shall take into account the opinion of the affected authorities and the public of the affected state, as well as the results of consultations in taking a decision to accept or not accept the intended activity.

Provision of information regarding a decision taken

The relevant State authority or local government shall send a decision taken to a proponent and the competent authority.

The relevant State authority or local government shall display a decision taken in the building of the local government and other public places not later than two weeks after the taking of the decision, as well as shall publish it in at least one local newspaper and shall post it on its Internet home page (if such exists). The publication shall indicate the State authority or the local government in which the interested parties may become acquainted with:

- 1) the content of the decision;
- 2) the basis for the decision, the informing of the public;
- 3) the activities which shall be performed in order to prevent or reduce the negative effect on the environment.

The relevant State authority or local government shall inform each state with which it has consulted during the process of environmental impact assessment, and shall send thereto the information regarding a decision.

Procedures for the review of decisions

Each person, also the associations and organisations of persons, has the right to appeal any decision taken in accordance with law “On Environmental Impact Assessment”, also any activity or inactivity, if with this decision the rights of the public to information specified in regulatory enactments or participation in the process of environmental impact assessment have been violated or ignored.

In the such cases a person may submit a submission:

- 1) regarding the actions of a proponent during the entire process of environmental impact assessment until such time when the competent authority has provided an opinion regarding a final statement– to the competent authority; and

2) regarding a decision or actions of the competent authority, examining the submission in a time period of one month from the day of the coming into effect of the decision – to the Ministry of Environment. A submission which appeals the acceptance of a proposed development, if the rights of the public to information specified in regulatory enactments or participation in the process of environmental impact assessment have been violated or ignored, may be submitted to a higher institution or official within one month after the provision of the acceptance, but if such institution or official does not exist – in court. A decision of a higher institution or official may be appealed to a court in accordance with the procedures specified by regulatory enactments. It is possible, that new motorway – the projected traffic routing adversely affected neighbouring state (transboundary pollution). Law “On Environmental Impact Assessment” clarify:

Intended activities which may have a transboundary impact

If the competent authority indicates in a decision regarding the necessity of an impact assessment that a proposed development may have a substantial transboundary impact, it shall notify the proponent, the Ministry of Environment and the Ministry of Foreign Affairs, as well as the concerned State authorities and local governments in writing regarding this.

After co-ordination with the Ministry of Environment and the Ministry of Foreign Affairs, the competent authority shall send a written notification regarding an intended activity which may have transboundary impact to the state upon which the intended activity may have an impact, before the proponent informs the Latvian public regarding the proposed development.

A notification shall provide the following information:

- 1) the application of the proposed development;
- 2) any information available regarding the proposed development which may have transboundary impact;
- 3) information regarding the opinion of State authorities or local governments regarding the proposed development; and
- 4) the time period and location where the State may provide an answer, indicating if it has intended to participate in the impact assessment.

When the competent authority has received a written request from any state in which a proposed development may have a substantial impact, it shall send the notification to this state, before the proponent informs the Latvian public regarding the proposed development.

If a state which has received the announcement provides an answer that it has decided to participate in an impact assessment, the competent authority shall send it the programme, statement and information regarding the procedures for the impact assessment.

In co-operation with the competent authority of the state which has decided to participate in an impact assessment, the competent authority shall ensure the procedures in accordance with which the concerned authorities and the public of the affected state may become acquainted with the information and submit proposals to the competent authority before it provides an opinion regarding the final statement.

The competent authority shall consult with the competent authority of the state which has decided to participate in an impact assessment regarding the possible transboundary impact of a proposed development, regarding the activities for preventing or reducing the negative impact, as well as regarding the time period necessary for consultations.

c) Do affected parties lose their right to challenge the planning decision before the courts if they do not make use of this form of public involvement?

No, affected parties do not lose their right to challenge the planning decision before the courts if they do not make use of this form of public involvement.

Law “On Environmental Impact Assessment” describes that each person, also the associations and organisations of persons, has the right to appeal any decision taken in accordance with law “On Environmental Impact Assessment”, also any activity or inactivity, if with this decision the rights of the public to information specified in regulatory enactments or participation in the process of environmental impact assessment have been violated or ignored.

3) Judicial process

Please give a short outline (no specific details) of the judicial process applying to project planning decisions (pre-trial proceedings, time limits, competent courts, appeal, interlocutory injunctions).

Pre-trial proceedings, administrative proceedings in institutions

According to the Administrative procedure law² an administrative matter

²Administrative procedure law, internet home page of the State Agency “Translation and Terminology Centre”, <http://www.ttc.lv/>

shall be adjudicated by an institution in accordance with the competence conferred on it by regulatory enactment.

Time periods regarding issuing of administrative acts

If an administrative matter is initiated on the basis of a submission, an institution shall take a decision regarding the issue of an administrative act or termination of the matter within a month from the day the submission is submitted, provided that a shorter term is not prescribed in a regulatory enactment.

If due to objective reasons it is not possible to comply with the one month time period, the institution may extend it for a period not exceeding four months from the day the submission is submitted, notifying the submitter thereof. If a lengthy determination of facts is necessary, the time period for taking a decision may be extended for up to one year pursuant to a reasoned decision of the State secretary of the ministry or the head of the local government administration, but if the institution is not subordinated to the Cabinet, the head of the institution, notifying the submitter thereof. The decision regarding extension of the time period may be disputed and appealed. The decision of a court may not be appealed.

In urgent cases, the submitter may apply to the institution with a substantiated submission and request that time period for the issue of the administrative act be abbreviated. The institution shall examine such submission without delay and take a decision in writing. In the event of refusal, the decision shall be notified to the submitter without delay. Such decision may be disputed and appealed. The decision of a court may not be appealed.

Administrative acts as may be disputed:

An administrative act shall be in effect, but may be disputed if:

1) the legal duty imposed on the addressee (specific actions or prohibition of specific actions) or rights granted, approved or refused to him or her may not be unambiguously construed therefrom;

2) administrative procedure law or other provisions of law, which determine the procedure for issue of the relevant administrative act, have not been observed in the course of administrative procedure (procedural error); or

3) it is, in accordance with its substance, in conflict with the norms of law or the institution has incorrectly applied the norms of law (or has relied upon erroneous facts), or it has not observed the hierarchy of the

legal force of norms of law or has erred regarding considerations of usefulness (mistakes regarding substance).

If an administrative act as may be disputed is not disputed, it shall be in effect until it is set aside, is executed or may no longer be performed because of a change in the actual or legal circumstances.

Right to dispute administrative acts

An administrative act may be disputed by a submitter, an addressee, a third party, a legal entity, as well as by a private person whose rights or legal interests are restricted by the relevant administrative act and who has not been invited to participate in the administrative proceeding as a third party.

An administrative act may be disputed to a higher authority in accordance with procedures regarding subordination. The law or Cabinet regulations may determine another institution where the relevant administrative act may be disputed. If there is not such an institution or it is the Cabinet, the administrative act may be immediately appealed to a court.

The disputing of an administrative act is a continuation of the initial administrative matter. The provisions of Administrative Procedure Law apply thereto, except the procedures regarding disputation.

If an administrative act is not disputed within the time period stipulated in Administrative Procedure Law, it becomes non-disputable. The same institution, which examines a submission regarding the disputing of an administrative act, shall decide regarding a petition to renew a time period.

Time limits

Time periods for disputing administrative acts

An administrative act may be disputed within a one-month period from the day it comes into effect, but if there is not set out in an administrative act issued in writing a statement as to where and within what time period it may be disputed – within a one-year period from the day it comes into effect.

Private persons whose rights or legal interests are restricted by the relevant administrative act and who have not been invited to participate in the administrative proceedings as a third party, may dispute such administrative act within a one-month period from the day when the private person become informed of it, but not later than within a one-year period from the day the relevant administrative act comes into effect.

Competent courts

Administrative matters shall be adjudicated on the merits by a court of first instance, but pursuant to a complaint of participants in an administrative proceeding regarding a judgment of such court, also by a court of second instance in accordance with appeal procedures.

Participants in an administrative proceeding may appeal from a judgment of a court of second instance in accordance with cassation procedures.

Jurisdiction

A district administrative court shall adjudicate an administrative matter in the first instance. Natural or legal persons shall submit applications regarding administrative matters to the court according to the address of the institution whose action is being appealed, unless stipulated otherwise by law.

Time periods for submission of applications

An application regarding the issue, setting aside or validity of an administrative act may be submitted within one month from the day when the administrative act of a higher institution (decision regarding the disputed administrative act) comes into effect.

If there is not a higher institution or it is the Cabinet, the application may be submitted within a month from the day when the administrative act comes into effect.

An application regarding an actual action of an institution may be submitted within a year from the day when the applicant comes to know of the specific actual action of the institution, if a restriction regarding the time period is not prescribed by other laws or Cabinet regulations.

If an institution or a higher institution has failed to notify the applicant of the decision regarding his or her submission, the application may be submitted to a court within a year from the day when the person applied with his or her submission to the institution or the higher institution.

Right to submit an appellate complaint

Participants in administrative proceedings may submit an appellate complaint regarding a judgment, and regarding a supplementary judgment of a court of first instance.

A judgment of a district administrative court, which has not come into effect, may be appealed by way of appellate procedure to the relevant Administrative regional court.

An appellate complaint, which is addressed to a regional administrative court, shall be submitted to the court, which rendered the judgment.

If an appellate complaint is directly submitted to a regional administrative court within the prescribed time period, the time period shall be considered to have been complied with.

An appellate complaint may be submitted within twenty days from the day the judgment is pronounced.

If a court sets another time period for drawing up a full judgment, the time period for appeal shall be calculated from this day. If the full judgment is drawn up after the time period set, the time period for appeal shall be calculated from the day when the full judgment is drawn up.

An appellate complaint submitted after expiration of the time period shall not be accepted and shall be returned to the submitter.

Right to submit a cassation complaint

Participants in administrative proceedings may appeal, in accordance with cassation procedure, from judgments and supplementary judgments of courts of appellate instance if the court has breached the norms of substantive law or of procedural law or, in adjudicating the matter, has exceeded the limits of its competence.

A cassation complaint may be submitted within thirty days from the day when judgment is pronounced.

If a court has set another time period for drawing up a full judgment, the time period for appeal shall be calculated from such day. If the full judgment is drawn up after the time period set, the time period for appeal shall be calculated from the day when the full judgment is drawn up.

A complaint which has been submitted after the expiration of such time period shall not be accepted and shall be returned to the submitter.

Interlocutory injunctions

The addressee of an administrative act shall execute the administrative act voluntarily.

Compulsory execution of an administrative act which has not been executed voluntarily shall be carried out in accordance with the procedures set out in Administrative Procedure Law if other procedures are not prescribed by the law on the basis of which the administrative act has been issued.

If an administrative act which is unfavourable to the addressee must be executed by the institution itself, it shall be executed after the time period for the disputing (appeal) of such administrative act has expired and it has not been disputed (appealed) or a court judgment has come into effect pursuant to which the application of the addressee has been dismissed. This provision shall not be applied in cases where the law allows the administrative act to be executed without delay.

Concurrently with notification of the administrative act to the addressee, the institution may take measures prescribed by law to secure the execution of the administrative act.

Executive institutions

Compulsory execution of an administrative act shall be carried out by an executive institution:

- 1) the institution, which has issued the administrative act;
- 2) another authority;
- 3) a bailiff; or
- 4) the police.

The executive institution as has jurisdiction shall be determined pursuant to regulatory enactments. If the execution of an administrative act is, in accordance with the law, within the jurisdiction of a bailiff, the provisions of the Civil Procedure Law are applicable to the execution.

If it is not prescribed which executive institution has jurisdiction, it shall be the institution that has issued the administrative act.

If the compulsory execution is directed against a public legal entity, the executive institution shall be the higher institution in respect of such public legal entity.

It is the duty of an institution to properly and in good time execute a judgment or other decision (adjudication) directed against it, rendered or taken by a court in an administrative matter.

The institution shall notify the applicant and the court of the execution of the court judgment.

If an institution does not execute a court adjudication voluntarily, compulsory execution shall be directed at the institution in accordance with the provisions of Administrative Procedure Law.

A court adjudication shall be executed on a compulsory basis if:

- 1) until the commencement of compulsory execution the court adjudication has not been executed voluntarily; and
- 2) not more than three years have elapsed since the court adjudication came into effect.

4) Standing:

do all of the above - listed plaintiffs have standing before your national courts?

Yes, all above - listed plaintiffs have standing before our national courts.

If not, which are the reasons for their exclusion.

5) Scope of claims:

Are the above - listed plaintiffs only allowed to claim infringements of their individual rights (e.g. illegal expropriation of farmland, pollution of their private property) or may they claim infringements of public interests (e.g. adverse effects on the environment) or the unlawfulness of the planning decision in general (e.g because of procedural deficiencies) as well?

All above - listed plaintiffs allowed to claim infringements of their individual rights (e.g. illegal expropriation of farmland, pollution of their private property). Law “On Environmental Protection” Article 15. prescribe, that inhabitants have the right to receive compensation from natural persons and legal persons for losses they have caused to the health, life, interests or property of the inhabitants by action or inaction harmful to the environment. Actions for compensation for losses caused shall be considered by a court in accordance with the procedures set out in the Latvian Civil Procedure Law. The actions referred to are exempted from State fees.

All above - listed plaintiffs allowed to claim infringements of public interests and the unlawfulness of the planning decision in general, including procedural deficiencies. According to the law “On Environmental Impact Assessment” each person, also the associations and organisations of persons, has the right to appeal any decision taken in accordance with law, also any activity or inactivity, if with this decision the rights of the public to information specified in regulatory enactments or participation in the process of environmental impact assessment or strategic assessment have been violated or ignored.

6) Scope of judicial review:

Do your courts review the lawfulness of a planning decision in every procedural and substantive respect or is the scope of judicial review

restricted (e.g. to procedural aspects or clear and serious infringements of national or Community law)?

Courts review the lawfulness of a planning decision in every procedural and substantive respect. According to the Administrative Procedure Law the substance of administrative procedure in court shall be court control of the legality and validity of administrative acts issued by institutions or actual actions of institutions within the scope of freedom of action, as well as the determination of public legal duties or rights of private persons and the adjudication of disputes arising from public legal contracts.

Within the course of administrative proceedings, while performing its duties, a court shall itself (*ex officio*) objectively determine the circumstances of a matter and provide a legal assessment of these, adjudicating the matter within a reasonable time.

In the course of an administrative proceeding the court shall determine:

1) whether the administrative act and the actual action of the institution complies with the provisions of Administrative Procedure Law and other norms of law;

2) whether the norms of law and public legal contract give specific rights to or impose duties on the participants in an administrative proceeding; and

3) the compliance of the public legal contract with the norms of law, the fact of its being in force and the correctness of fulfilment.

In examining the legality of an administrative act or actual action and in ascertaining public legal duties or rights of private persons, in case of doubt the court shall verify whether the norm of law applied by the institution or to be applied in the administrative court proceeding conforms to the norms of law of higher legal force.

If a court acknowledges that a norm of law does not conform to the Constitution (*Satversme*) or norms (acts) of international law, it shall suspend court proceedings in the matter and send a substantiated application to the Constitutional Court. After the coming into force of the decision or judgment of the Constitutional Court, the court proceedings in the matter shall be renewed the following court proceedings shall be based upon the view of the Constitutional Court.

If a court acknowledges that the binding regulations of a local government do not conform to Cabinet regulations or the law or Cabinet regulations do not conform to the law, or an internal regulatory enactment does not conform to an external regulatory enactment or directly applicable general legal principles, it shall not apply the relevant legal

norm. The court shall substantiate its view regarding non-conformity with the norms of law of higher legal force in the decision or judgment.

7) EU environmental law:

Which decision will your court take, if

- a) the environmental impact assessment prescribed by Community law has not or not duly been carried out in connection with the project in question?**

According to the law “On Environmental Impact Assessment” Article 3 environmental impact assessment shall be required for proposed development which are related to the objects referred to in Annex 1 of this Law. Annex 1 „Objects Requiring Impact Assessment” include: Construction of motorways and express roads. If the environmental impact assessment has not or not duly been carried out in connection with the project court set aside the relevant administrative act in full or in part or declare it invalid (will take decision that environmental impact assessment shall be carried out).

If prior to the examination of a received submission, the competent authority- Environment State Bureau takes a decision that an impact assessment of the intended activity is required, it shall inform in writing the initiator and the concerned State authorities and local governments regarding the initiation of the impact assessment.

Decision of the competent authority may be appealed to a court in accordance with the procedures specified by regulatory enactments.

- b) the project adversely affects a natural habitat which is eligible for designation as a special area of conservation in the sense of the EU “Habitat Directive” but has not yet been transmitted to the Commission?**

According to the Habitat Directive Article 6 (and law “On Specially Protected Nature Territories” Articles 43 and 44) any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of Article 6 paragraph 4, the competent national authorities shall agree to the plan or

project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.

Law “On Specially Protected Nature Territories” include list (Annex to the law) of protected nature territories of European significance (*Natura 2000*).

Court will review the lawfulness of the decision with taking into account provisions of Article 6 of the Habitat Directive, law “On Specially Protected Nature Territories” and different considerations:

- 1) the absence of alternative solutions;
- 2) imperative reasons of overriding public interest, including those of a social or economic nature;
- 3) compensatory measures necessary to ensure that the overall coherence of Natura 2000;
- 4) a priority natural habitat type and/or a priority species in the affected territory (in such case the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest).

If provisions of Habitat Directive Article 6 and law “On Specially Protected Nature Territories” Articles 43 and 44 are not taking into decision making procedure, court shall set aside the relevant administrative act in full or in part or declare it invalid.

c) the project adversely affects a natural habitat which has been transmitted to the Commission a being eligible for designation as a special area of conservation but which has not yet been placed on a Commission list?

Law “On Specially Protected Nature Territories” include list (Annex to the Law) of Protected nature territories of European significance (*Natura 2000*). There are not difference in national legislation that a natural habitat has not yet been transmitted to the Commission or a habitat has been transmitted to the Commission a being eligible for designation as a special area of conservation but which has not yet been placed on a Commission list.

If provisions of law “On Specially Protected Nature Territories” Articles 43 and 44 are not taking into account in the decision making procedure, court shall set aside the relevant administrative act in full or in part or declare it invalid.

Concerning this question there is Judgment of the Court of Justice of the European Communities of 13 January 2005 in Case C-117/03 (reference for a preliminary ruling from the Consiglio di Stato: Società Italiana Dragaggi SpA and Others v Ministero delle Infrastrutture e dei Trasporti and Regione Autonoma del Friuli Venezia Giulia.)³. The operative part of judgment on 13 January 2005, is as follows:

On a proper construction of Article 4(5) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, the protective measures prescribed in Article 6(2), (3) and (4) of that directive are required only as regards sites which, in accordance with the third subparagraph of Article 4(2) of the directive, are on the list of sites selected as sites of Community importance adopted by the Commission of the European Communities in accordance with the procedure laid down in Article 21 of the directive.

In the case of sites eligible for identification as sites of Community importance which are included in the national lists transmitted to the Commission and, in particular, sites hosting priority natural habitat types or priority species, the Member States are, by virtue of Directive 92/43, required to take protective measures that are appropriate, from the point of view of the directive's conservation objective, for the purpose of safeguarding the relevant ecological interest which those sites have at national level.

³ Judgment of the Court of Justice of the European Communities of 13 January 2005 in Case C-117/03 [http:// curia.eu.int/jurisp/cgi-bin](http://curia.eu.int/jurisp/cgi-bin)

d) the project adversely affects a birds sanctuary in the sense on the EU- “Birds Directive” ?

Law “On Specially Protected Nature Territories” include list (Annex to the law) of Protected nature territories of European significance (*Natura 2000*). This list include all birds sanctuary in the sense on the EU- “Birds Directive”. Similar as into mentioned cases b and c if provisions of law “On Specially Protected Nature Territories” are not taking into decision making procedure, court shall set aside the relevant administrative act in full or in part or declare it invalid.

e) the project likely to exceed the limit values of the EU – “Ambient Air Directive” (esp. those for PM 10/ particulate matter)?

Directive 1999/30/EC of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air clarify that limit value shall mean a level fixed on the basis of scientific knowledge, with the aim of avoiding, preventing or reducing harmful effects on human health and/or the environment as a whole, to be attained within a given period and not to be exceeded once attained.

Article 5 of the Directive declare, that Member States shall take the measures necessary to ensure that concentrations of PM10 in ambient air, do not exceed the limit values laid down in Section I of Annex III as from the dates specified therein. The margins of tolerance laid down in Section I of Annex III shall apply in accordance with Article 8 of Directive 96/62/EC.

If the project likely to exceed the limit values of the EU – “Ambient Air Directive” court will take into account that limit values 50 µg/m³ PM10, not to be exceeded more than 35 times a calendar year, and 40 µg/m³ PM10 must be met by 1 January 2005. Limit values 50 µg/m³ PM10, not to be exceeded more than 7 times a calendar year and 20 µg/m³ PM10 must be met by 1 January 2010.

8) Consequences of procedural and substantive deficiencies of the planning decision:

a) Are there – in your natinal legal order – any procedural and/or substantive deficiencies which regularly render a planing decision completely void?

b) for which kinds of rulings does your national legal order provide in this case (e.g. cassation of the planning decision or declaratory ruling establishing its nullity)?

Law "On Environmental Impact Assessment" is in force from 1998, but in general there are not judgments of courts, including judgments of administrative courts. It seems, that there are not any procedural and/or substantive deficiencies which regularly render a planning decision completely void. Sometimes it is difficulties with decision making and lack of spatial plans of local municipalities.

There is one decision of the Constitutional Court of the Republic of Latvia "On the Compliance of the Cabinet of Ministers August 8, 2001 Decree No. 401 "On the Location of the Hazardous Waste Incineration Facility in Olaine" with Articles 111 and 115 of the Satversme, Articles 5 and 6 (Items 1-3) of the Waste Management Law, Articles 3 and 11 of the Law "On the Environmental Impact Assessment", Articles 14 and 17 (the First Part) of the Law on Pollution as well as Article 11 of the Law "On Environmental Protection"⁴.

The concluding part of the decision indicate: thus, even though the initial public participation and the discussion of the report of the working group had taken place and the requirements of regulations were formally observed, the public concerned – contrary to the requirements determined in Articles 1 and 17⁵ of the Law "On Environmental Protection" – was ineffectively involved in the process of environmental impact assessment. Therefore to avert formal public participation as well as to ensure adequate public participation, the Constitutional Court draws the attention of the Cabinet of Ministers to the fact that effectiveness of Regulations No. 213 "The Procedure of Evaluating Impact upon the Environment" (as concerns the right to public participation in decision-making, guaranteed in the Law "On Environmental Protection", Article 115 of the Satversme and Aarhus Convention) shall be assessed.

4 Decision of the Constitutional Court of the Republic of Latvia "On the Compliance of the Cabinet of Ministers August 8, 2001 Decree No. 401 "On the Location of the Hazardous Waste Incineration Facility in Olaine" internet home page of the Constitutional Court of the Republic of Latvia [http://www.satv.tiesa.gov.lv/Eng/Spriedumi/14-04\(02\).htm](http://www.satv.tiesa.gov.lv/Eng/Spriedumi/14-04(02).htm)

After the decision of the Constitutional Court Regulations No. 213 "The Procedure of Evaluating Impact upon the Environment" were amended. New provisions concerning public participation in the process of environmental impact assessment are added in regulations (new regulation instead of Regulation nr. 213 - Regulations No. 87 "Procedures for Environmental Impact Assessment" 17.02.2004).

c) for which kinds of rulings does your national legal order provide if the planning decision has only minor deficiencies/ is not completely void (e.g. modification of the planning decision by imposing additional requirements such as noise barriers, speed limits or reforestation)?

A court examined :

1) the administrative acts have been issued in compliance with procedural and formal preconditions;

2) the administrative acts comply with the norms of substantive law; and

3) the bases for administrative acts justify duties imposed on addressees or rights conferred, confirmed or denied to addressees.

If additional requirements such as noise barriers, speed limits or reforestation are substantive and procedural and formal preconditions are broken court shall set aside the relevant administrative act in full or in part or declare it invalid. In a case where an administrative act is set aside, the court shall stipulate the day as of which the administrative act is to be considered set aside.

If minor deficiencies do not affect substance of administrative act, then court take decision, that administrative act is in force.

d) Which rulings are likely to be given in the cases of the above-listed plaintiffs

General provisions are included in law "On Environmental Impact Assessment" and Administrative Procedure Law:

1) a submission which appeals the acceptance of a proposed development, if the rights of the public to information specified in regulatory enactments or participation in the process of environmental impact assessment have been violated or ignored, may be submitted to a higher institution or official within one month after the provision of the acceptance;

2) a decision of a higher institution or official may be appealed to a court in accordance with the procedures specified by regulatory enactments.

9) Remedy of the deficiencies

May procedural or substantive deficiencies of the planning decision be remedied during the judicial process? If yes, on which conditions?

No, procedural or substantive deficiencies of the planning decision can not be remedied during the judicial process.