

Industrial Licensing and Environmental Impact Assessment Made Easier *

The recent enactment of Decree-Law 69/2003 and Regulation 8/2003 created a new legal framework for industrial licensing and repealed Decree-Law 106/95, which regulated the issue of industrial permits for the past decade.

The new regime is expected to create a more flexible licensing model by reducing conditions and simplifying procedures, all of which will allow more timely responses to company requests for the installation and development of industrial units.

Innovative Features

The new statute makes significant changes, particularly in regard to the following:

- Classification criteria for industrial facilities and related licensing regimes - the classification of industrial facilities pursuant to the Economic Activities Classification List has been abandoned. The new statute establishes new criteria, under which the applicability of the particular industrial licensing regime is determined on the basis of potential risk of the relevant industrial activity. The potential risk is evaluated on a scale from one to four, with one the most dangerous level and four the most reliable. The objective criteria used to identify potential risk focus on (i) the number of employees, (ii) the electric capacity of the establishment, and (iii) the heat rating of installed systems.
- Deadlines for making decisions - the deadlines for certain decisions within the industrial licensing procedure have been shortened. In particular, authorization for the location of an industrial facility must now be issued within 30 days instead of 45, and for the establishment of an industrial facility within 20 days rather than 30.
- Appointment of special administrative entities to coordinate the licensing procedure - depending on the industry involved, an administrative entity may be appointed to liaise with the investor, which will receive all applications needed to grant the final development permit.
- Simplification of the environmental procedure - under the old regime, the environmental procedure had to be carried out before the main licensing procedure, which caused considerable delay. The new regime allows the environmental procedure to take place simultaneously with the main licensing procedure. In certain circumstances the applicant may now follow a simplified environmental statement regime by submitting an environmental impact report, which can be prepared by a specialist company. The report will enable the investor to anticipate the environmental consequences of its industrial activities and, if necessary, to introduce changes in order to avoid any negative decisions or further delay in the licensing procedure. The environmental impact report must still be

approved by the relevant authority before the industrial development permit is issued.

Despite these improvements, one important issue remains unchanged. As a rule, the new law still forbids the applicant from commencing operations until the environmental statement or industrial permit is issued. The only exception afforded, which seems insufficient, is under the licensing regime for type 4 facilities (ie, those which represent the lowest potential risk of industrial activity). The facilities may commence operation upon submission of a request for inspection.

Comment

It remains to be seen whether the new regime is sufficient to meet its aim of fostering industrial activity. However, this will arguably be a difficult goal to attain because:

- land use plans severely restrict the expansion of industrial activity;
- there is a lack of criteria for the preparation of environmental impact reports, which could create conflict between the authorities or surprising decisions; and
- the considerable amount of bureaucracy involved remains the same, regardless of the size of project or the amount of investment involved.

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