

2.1 Horizontal legislation

ASSESSMENT

As regards horizontal legislation, little progress has been made. The implementation of the *Environmental Impact Assessment Directive* has not been improved. There has been no progress in the implementation of the recommendations of the European Commission for improvement of public consultation process.

RATIONALE

Proper measures have not been taken in order to improve horizontal cooperation within Government and governmental bodies. Although Rule of procedures of the Government of Serbia defines obligatory consultations among public institutions during decision making process, this is not the case in the practice.³ Ex ante regulatory impact assessment as well as analyses of the effects of previous legal acts and documents is not a practice of the Government. Even the one of the most important policy documents being developed in 2013-2014, *Energy Development Strategy of the Republic of Serbia by 2025* (drafted in 2013), has not been subjected to the regulatory impact assessment, neither have achievements of the previous strategy been analysed. Moreover, since its constitution in April 2014, the National Assembly adopted 41 legal act and all documents were adopted in an emergency procedure, without an adequate public debate (As demonstrated in the Report⁴ developed by Lawyer's Committee for Human Rights).

Civil society, academia and other non-state actors are not recognized as relevant participants in the decision making process. Seldom consultation with civil society has been organized. Consultations with the civil society has been occasionally organized, public consultation, as an integral part of decision making process, has been organized with serious violation of the Rule of procedures of the Government of Serbia⁵. Within ENVAP⁶ II project only one meeting has been conducted with the presence of civil society organisations (initial meeting and the presentation of the project).

³ Among the examples of bad practice is the Draft version of the Law on Environmental Protection. Although the proposed amendments of the Law on Environmental Protection consists of several articles defining public access to information there was no consultations held with the Commissioners' for Information of Public Importance and Personal Data Protection Office.

⁴http://www.yucom.org.rs/upload/vestgalerija_36_4/1405436946_GS0_Saopstenje_Protest_zbog_netran_sparentnog_zakonodavnog_procesa_15072014.pdf

⁵ Analysis of the legal procedures and violation of the Rule of the procedures of the Government of Serbia, in the case of public consultation on Draft Law on Environmental Protection, is presented in publication *Challenged Democracy - public participation in environmental decision making, available in Serbian:*

<http://www.bos.rs/cei/uploaded/Demokratija%20pred%20izazovom%20%E2%80%93%20kako%20javnos%20t%20u%20C4%8Destvuje%20u%20stvaranju%20politike%20%C5%BEivotne%20sredine,%20februar%202014.pdf>

⁶ Description available in Serbian at: <http://www.merz.gov.rs/lat/odsek/envap-projekat>

Government of Serbia does not fulfill the provisions of the *Aarhus Convention*. The *Law on the Environmental Protection* is not in line with Article 2. of the Convention, regarding the definitions of "public authorities" and "environmental information".

The implementation of the *Environmental Impact Assessment Directive* has not been improved. There has been no progress in the implementation of the recommendations by the EC for improvement of public consultation process. Environmental impact assessment (EIA) process is still conducted in a purely formal manner, without serious attempt to be utilized in order to prevent harmful effects of future projects on the environment. EIA studies, approved by the Ministry or local public authorities, mostly do not contain alternatives studied by the developer nor, an indication of the main reasons for the particular choice, taking into account environmental effects. There is no serious attempt to utilize EIA procedures for promotion of the environmental education among citizens, local public authorities or private sector. Local authorities report difficulties in defining the projects which should be the subject of EIA⁷. Despite the fact that National Plan for Adoption of EU Acquis (NPAA) for 2013 pointed out the importance of adoption of the legal act that contains the full list of mandatory EIA projects, as well as those for which EIA may be required (as defined in codified version of Directive 92/2011/EU), this has not been achieved. Analyses of the level of implementation of the *EIA Directive* and recommendations for its improvement are not conducted nor has the public been consulted about the process. A notable example of local community engagement in EIA procedures was the case of Brodarevo dams where community resistance was followed by police repression and reported violation of human rights.

It is a common practice that decisions on the approval of the EIA and SEIA studies are being issued without explanation of the decision content and key reasons and arguments on which the decision is based (obligatory according to Article 25 of the Law on Environmental Impact Assessment). Decisions often contain unacceptable material as well as grammar errors (Decision on the approval of the EIA study no: 353-02-01205/2012-02).

Ratification of the Amendments on the ESPOO Convention has not been issued yet.

Developments

Second report on the implementation of the Aarhus Convention has been submitted to UNECE.

Supported by OSCE, Ministry of Energy, Development and Environmental Protection published *Practicum on Access to Justice in Environmental Matters in the administrative proceedings and disputes*.

⁷ Consultations with representatives of the local authorities on the implementation of horizontal environmental legislation has been held in 2013 and 2014 by Belgrade Open School.

Ministry of Agriculture and Environment has recently published the list of the submitted EIA requests on their website⁸. Otherwise, web presentation of the Ministry of Agriculture and Environment is not user-friendly and serves as an example of lack of understanding of the goals of the Aarhus Convention.

The transposition of the *Directive on Environmental Liability* is in its initial phase.

Challenges

The existing *Law on Environmental Protection* contains inadequate definition of the "public authorities" but no definition of the "environmental information". *Draft Law on Amendments and Supplements to the Law on Environmental Protection*, that was the subject of the public consultation in November 2013 obtain somewhat of further harmonization with *Aarhus Convention*. The document still lacks the definition of public authorities which is in line with the Convention. Although the Draft Law provides some alignment with minimum requirements of the *Directive on public access to environmental information* (EC 2003/04) it is not in line with the goals and purpose of the Directive.

The *Law on Environmental Protection*, and its proposed amendments, is in collision with the *Law on Access to Information of Public Importance*. In practice, for more than three months, after the Government was formed, there was no information about the activities or persons responsible for environmental policies within the Ministry of Agriculture and Environment. However, moderate progress has been made recently since the laws and bylaws have been published on the official web page of the Ministry of Agriculture and Environmental Protection.

Finally, according to Reports on the implementation of the National Programme for Adoption of the EU Acquis for 2013⁹ there has been no progress in the area of environment. For the period January – June 2013 the overall success in the adoption of the laws and bylaws, according to Plan, is 69% since 90 legal acts has been adopted out of 131 that has been planned.

RECOMMENDATIONS

Public participations in environmental policy making needs to be ensured, and encouraged with clear and transparent administrative proceedings in line with the *Aarhus Convention* and the Law on Access to Public Information.

ENVAP II project events should be open for CSOs and other non-state actors. Reports on the implementation of the project should be made publicly available.

⁸ <http://www.eko.minpolj.gov.rs/obavestjenja/procena-uticaja-na-zivotnu-sredinu/zahtevi-za-procenu-uticaja/>

⁹ Available at: <http://www.seio.gov.rs/dokumenta/nacionalna-dokumenta.734.html>

The first National Ecoregister for Environmental Information in electronic form needs to be properly updated.

Directive on Environmental Liability needs to be fully transposed and implemented.