

## 1. Horizontal Legislation

### RATIONALE

There has been no progress in transposing horizontal legislation while poor implementation is identified, particularly with regard to EIA and SEIA procedures. Implementation of environmental impact assessment (EIA) and strategic environmental impact assessment (SEA) indicate low capacities of responsible public institutions, lack of proper public participation and great influence of the investors.

Local authorities are still struggling with low capacity, low quality of EIA studies and heavy pressure from the investors and politicians. There is no improvement regarding the consultation with the public. Energy Community has identified the problems with EIA procedures in Serbia<sup>8</sup>. *Ensuring that the provisions of the Environmental Impact Assessment Directive are applied in practice, with particular regard to the provisions on public participation and access to justice*, is set as one of the priorities for Serbia. Procedural shortages are identified in conducting EIA procedures. Significant legal cases of violating the environmental impact assessment procedures speak in favor of the previously-stated. In Administrative Court judgment no. I-1 Y 11152/13 the official decree on approval of the environmental impact assessment study for two hydro plants on Lim River in Prijepolje Municipality was annulated in May 2015. Violation of the Law on Environmental Impact Assessment, with regard to right of participation, was identified. At the same time the Court identified the violation of the provision of the ESPOO Convention, since no public consultation on the transboundary effects of the project had been conducted, although the project is predicted to be carried out on the border between two countries, Serbia and Montenegro. The same issue is identified with regard to the environmental impact assessment procedure for the construction on new block of lignite power plant in Kostolac Municipality, close to the Serbian-Romanian border, since transboundary public consultation has never been conducted for the EIA study in 2013. Lack of capacities of environmental CSOs and low interest of the legal professionals for environmental jurisprudence is the main reason that such cases are still rare in front of the Serbian courts.

It is identified that local and national authorities omit to conduct SEA for environmental plans and programmes. It is reported that National Emission Reduction Plan for Power Sector was developed but, according to the official information, strategic impact assessment has not been conducted. SEA Directive (2001/42/EC) defines environmental assessment as an important tool for integrating environmental considerations into the preparation and adoption of certain plans and programmes which are likely to have significant effects on the environment. It is clearly stated in SEA Directive (Article 4, General Obligation) that environmental assessment shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure. According to EC Progress Report 2015 work on a national emission reduction plan for the power sector was completed. Article 6 defines that draft plan or programme and the environmental assessment report shall be made available to the authorities and the public.

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<sup>8</sup> Energy Community Secretariat, Annual Implementation Report, September 1<sup>st</sup> 2015, pg. 194.

Problems with regard to free access to documents are identified. ECO Register of the Environmental Protection Agency is not being updated properly (eg. when searching for National Environmental Approximation Strategy incorrect information about current Ministry displays <http://www.ekoregistar.sepa.gov.rs/nacionalna-strategija-za-aproksimaciju-u-oblasti-zivotne-sredine-za-republiku-srbiju>). In several cases in 2015 Ministry of Agriculture and Environmental Protection omitted to deliver information of public importance upon the request, according to terms defined by the Law on Free Access to Information of Public Importance. It happened regardless the fact that NPAA witnesses the Directive (2003/4/EC) on public access to environmental information is almost completely transposed by the Law on Ratification of the Aarhus Convention, Law on Ratification of PRTR Protocol, Law on Personal Data Protection and Law on Access to Information of Public Importance. Incompatibilities between the Law on Access to Information of Public Importance and the Law on Environmental Protection are identified by the UNECE in Third Environmental Performance Review for Serbia (2015). Law on Environmental Protection provides less favorable terms of access to environmental information than does the Law on Free Access to Information of Public Importance.

## **DEVELOPMENTS**

However, some improvements are identified in prepared draft laws with regards to transposition of horizontal legislation. Also, the quality of the Annual report on the state of environment has slightly improved.

It is important to mention that Draft Law amending the Law on Environmental Protection (which was the subject of public consultation in July 2015) offers the solution for above mentioned incompatibilities between Law on Environmental Protection and Law on Free Access to Information of Public Importance. By the second version of Draft Law on Environmental Protection (published for the purpose of public hearing in the National Parliament) definitions of the public authority and environmental information are aligned with the provision of the Aarhus Convention. The incompatibilities between Law on Access to Information of Public Importance and Law on Environmental Protection, in relation to the obligation of the authorities to act in accordance with set deadlines, will be solved since the priority of the Law on Access to Information of Public Importance is approved. The transposition of the Environmental Liability Directive has begun. Working group, consisting of representatives of Ministry and governmental agencies and bodies, Chamber of Commerce, representative of insurance company and civil society organisation, has been established. The first pre-draft version of the Law on Environmental Liability has been developed and discussed with the private sector and interested public. Public discussions regarding the Environmental Liability Directive transposition, currently in its early stage, could serve as a role model for improvement of legislative processes.

## **RECOMMENDATIONS**

- ✓ Respect for legally binding rules for implementation of EIA procedures, and implementation of the principles of Aarhus Convention, are the key elements for an effective horizontal sector.
- ✓ Unfair political pressure investor influence must be tackled so as the professional and experienced public officials can perform their work more objectively.
- ✓ Principles of sustainable development must be respected as a framework for projects with obvious adverse effects on the environment. Nature protection, particularly in natural protected areas must prevail towards particular economic interests.
- ✓ Interests and specificities of local communities must be taken into account in project development, particularly in water management, waste and renewable energy.