

01. HORIZONTAL LEGISLATION

OVERVIEW

Some progress has been achieved in aligning the Law on Environmental Protection and the Law on Free Access to Information of Public Importance with the requirements of Chapter 27, which will improve citizen's ability to exercise the right to information and contribute to the better implementation of the Aarhus Convention. The quality of public consultations on Environmental Impact Assessment/Strategic Environmental Assessment (EIA/SEA) procedures was poor, with consultations rarely organized in a transparent or adequate manner. Proper implementation of transposed provisions of the Environmental Impact Assessment Directive² and Strategic Environmental Impact Assessment Directive³ remain a burden for the public administration at national and local levels. A Green Fund has been established through amendments to the Law on Environmental Protection, however bylaws that should ensure independent oversight, adequate control of public spending and proper implementation of the 'polluter pays' principle have not yet been adopted. The reporting period was characterised by poor legislative activity, with the responsible authorities adopting only one of seven planned legislative acts related to horizontal legislation.

POLICY & LEGISLATIVE DEVELOPMENTS

There has been progress in aligning the Law on Environmental Protection and the Law on Free Access to Information of Public Importance as well as the Aarhus Convention and related *acquis*. The amended Law on Environmental Protection provides satisfactory definitions of "environmental information" and "public authority", which are now in line with definitions stated in the Aarhus Convention. Further, Article 78, paragraph 2, of the Law on Environmental Protection states that access to environmental information shall be exercised in accordance with the law governing access to information of public importance, thereby nullifying previous incompatibilities between the Law on Free Access to Information of Public Importance and the Law on Environmental Protection in regard to the obligation of authorities to act in accordance with set deadlines. As a result, the overall legislative framework for access to information about the environment has been improved.

2 Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment

3 Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment

The Law on Ratification of Amendments to the Convention on Environmental Impact Assessment in a Transboundary Context was adopted on the 19th of February 2016. There was no progress related to the transposition of the Environmental Liability Directive⁴. A pre-draft version of a Law on Environmental Liability was developed in May 2016, however it was decided that the law is a midterm priority and will not be adopted before 2017⁵. The Law on Ratification of the Multilateral Agreement of the SEE Countries for Implementation of the EIA Convention in a Transboundary Context was planned to be adopted by the end of the reporting period, however it has not yet been adopted. A decree on amendments to the decree prescribing projects for which an environmental impact assessment is mandatory and those where an environmental impact assessment may be required was not adopted by the end of 2015, as was planned⁶. Despite planning to adopt a Law on National Spatial Data Infrastructure by the end of 2015, this law has also not yet been adopted.⁷

Several action plans that should have been adopted during the reporting period have not, including the Action Plan on Enhancing Administrative Capacities, the Multi-Year Plan for Investment and Financing, and the Action Plan for Implementation of the National Environmental Protection Programme. These delays indicate that environmental protection is not among legislators' priorities and illustrates a lack of capacities for full transposition of the *acquis*.

IMPLEMENTATION

Some progress has been made concerning the legal framework for accessing environmental information. However, access to information is still subject to arbitrary decisions by civil servants and provision of access to politically sensitive documents remains limited.

The quality of public consultations in EIA/SEA procedures is poor. Public consultations are rarely organized in a transparent or adequate manner. The Ministry of Agriculture and Environmental Protection is obliged to publish all calls for public hearings and consultations on its website. However, information about the time and date of hearings is often not provided. For example, in the period September-October 2015 international and Hungarian organizations alerted organizations in Serbia that consultations on expanding the Paks Nuclear Power Plant project in Hungary was on-going. The EIA consultation for the PAKS Nuclear Power Plant was not conducted properly and only a small number of CSOs were directly approached to participate. Responsible authorities often delay issuing EIA reports and fail to inform interested parties about final decisions relating to EIA studies.

4 Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage

5 Transposition and implementation of Environmental and Climate Change Acquis – Chapter 27: Status and plans, Government of the Republic of Serbia, page 33

6 Transposition and implementation of Environmental and Climate Change Acquis – Chapter 27: Status and plans, Government of the Republic of Serbia, page 329

7 Transposition and implementation of Environmental and Climate Change Acquis – Chapter 27: Status and plans, Government of the Republic of Serbia, page 34

Development of the **National Emission Reduction Plan (NERP)**, according to Decision D/2013/05/MC-EnC⁸ of the Ministerial Council of the Energy Community, indicates poor implementation of the Law on Strategic Environmental Impact Assessment (SEA Law). Article 9 of the SEA Law states that the responsible authority is required to adopt a decision on the preparation of a strategic environmental impact assessment after it obtains an official opinion from the public authority responsible for environmental protection. According to information provided by the Ministry of Agriculture and Environmental Protection, a decision on the preparation of a strategic environmental impact assessment has not been adopted. If the authorities have decided not to conduct a strategic environmental impact assessment for certain strategic documents, such as in this case, then they should at least formally adopt this decision and publish it in Official Gazette of the Republic of Serbia. According to information provided by the Ministry of Agriculture and Environmental Protection, a decision not to prepare of a strategic environmental impact assessment has also not been adopted.

The draft NERP was submitted to the Energy Community Secretariat on December 31st 2015.

According to Directive 2001/42/EC of the European Parliament and of the Council of June 27th 2001 on the assessment of the effects of certain plans and programmes on the environment (SEA Directive) "environmental assessment is 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 in the Member States, because it ensures that such effects of implementing plans and programmes are taken into account during their preparation and before their adoption." It is clearly stated in Article 4 of the SEA Directive that the environmental impact assessment shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure. At the 10th Environmental Task Force of the Energy Community the representatives of the Republic of Serbia stated that "if the NERP becomes part of the Serbian legal system, an SEA shall be carried out as well. However, since by the end of 2015, the final document will not be adopted, this is not yet foreseen"⁹. **Our conclusion is that the Republic of Serbia is omitting to conduct a proper Strategic Environmental Assessment in regard to NERP, but has nonetheless moved to implement provisions of the (Serbian) SEA Law and the SEA Directive. The implementation of the SEA Directive in Serbia should be carefully monitored by the European Commission.**

The Serbian Government is preparing the Third National Report on the implementation of the Aarhus Convention. A call for consultations with the public was launched and input collected. However, no further information is available despite assurances that the public will be informed about further steps in the development of the report.

8 Decision of the Ministerial Council of the Energy Community D/2013/05/MC-EnC: On the implementation of Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants

9 10th meeting of Energy Community Task force on Environment, 28th of October 2015, Energy Community Secretariat - Vienna, Austria <http://bit.ly/2bhWVbh>

Other important issues also remain, such as the inability of the national authority to access and provide information from businesses. For example, when the Republic of Serbia submitted the NERP in December 2015, CSOs inquired about the sources of information used for the development of the plan. The Ministry of Agriculture and Environmental Protection responded that, according to the Article 4 of the Aarhus Convention, access to information may be limited in cases when the third party considers information to be of high importance and therefore does not wish to provide it. Furthermore, and of significance, representatives of the Ministry said that the National Emission Reduction Plan was developed without data on emissions from all industries and polluters. According to the Article 4.4 of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, information on emissions that is relevant for the protection of the environment should be disclosed.

The Annual report of the Commissioner for Information of Public Importance and Personal Data Protection for 2015 noted an increased number of complaints regarding access to information of public importance related to the environment.¹⁰ 415 requests for information of public importance were addressed to the Ministry of Agriculture and Environmental Protection, after which 111 complaints were lodged against the Ministry. This is the second highest number of complaints lodged against any Ministry, behind only the Ministry of Internal Affairs¹¹. According to the Commissioner¹², the Ministry of Agriculture and Environmental Protection failed to comply with four resolutions made by the Commissioner requiring the Ministry to provide information to applicants.

In 2016 –up to the beginning of November– the Commissioner for Information of Public Importance and Personal Data Protection noted 270 lodged complaints regarding access to information of public importance related to the environment. Over half of these complaints (141) were lodged because of so-called administrative silence. Of the total number of 270 complaints, the proceedings for 125 cases have been closed: in 61 of these cases the Commissioner ordered that information should be provided to the complainant; in 61 of the cases the commissioner terminated proceedings because, in the meantime, the public authorities had complied with the freedom of information requests following the intervention of the Commissioner; and in 3 cases complaints were dismissed because of formal deficiencies. In 82.8% of rejected cases, the public authorities specified abuse of the right to information of public importance as the reason for turning down the access to information request¹³.

10 Republic of Serbia, Commissioner for Information of Public Importance and Personal Data Protection; Report on implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection for 2015, page 21 <http://www.poverenik.org.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2015/IZVESTAJ2015/enizvestaj2015.pdf>

11 Ibid, page 23

12 <http://www.poverenik.org.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2015/IZVESTAJ2015/neizrnsenaresenja2015.doc>

13 From the presentation of Stanojla Mandić, Deputy Commissioner for Information of Public Importance and Personal Data Protection in the Republic of Serbia, held during the Aarhus Ogledalo conference in Belgrade, November 18th 2016.

FINANCING

In 2012, the Environmental Protection Fund was abolished, however the Government continued to collect fees paid by polluters and channelled this income into the state budget. Collecting taxes in this way failed to ensure regular and systematic financing of the environmental sector and allowed the allocation of collected taxes for other purposes.

In February 2016, the amendments to the Law on Environmental Protection established the Republic of Serbia Green Fund, which will collect all environmental-related taxes, funds and donations from various sources, aiming to enable more efficient use of funds allocated for environmental protection. The Green Fund has been formed as a budgetary fund (the Ministry of Finance will therefore be responsible for controlling the allocation of funds). The Green Fund is expected to become operational on January 1st 2017. However, to the best of our knowledge the bylaws required for the operation of the Green Fund have not yet been adopted (the Law stipulates that bylaws should be adopted within a one-year period after the law enters into force). The Green Fund cannot, therefore, be expected to be fully operational for some time. The lack of independent oversight and adequate control of the Green Fund resulting from the lack of necessary bylaws may have negative consequences for public spending in the environmental sector and on the EU accession process, as budget transparency is not sufficiently ensured in practice. The Ministry of Agriculture and Environmental Protection has already prepared a list of priority areas that the Green Fund will target – including a list of priority projects for the sub-sectors of waste management and wastewater management. However, neither the list of projects nor the methodology for the selection and prioritisation of infrastructure projects in the field of the environment are available to the public.

It is our conclusion that the **framework for environmental financing**, established by the Law on Environmental Protection, **will not be effective and will not contribute to the implementation of EU principles related to the environment, particularly the 'polluter pays' principle**. The system of environmental taxes is defined by the Law on Environmental Protection as a source of funds earmarked for achieving the objectives of environmental policy and is based on the "Polluter pays" principle. However, according to the recent amendment of the Law on Budgetary System (Article 2, para. 15) neither environmental taxes nor any other income earmarked for the Green Fund are recognised as a source of public income. The inconstancy of those two legal acts will negatively affect the recently established environmental financing system. Our concerns about this issue were raised previously with the Delegation of the EU on the 4th of December 2015¹⁴.

RECOMMENDATIONS

Policy & Legislation

- Pass all necessary bylaws in order to ensure proper functioning and independent monitoring of the Green Fund.

14 <http://bit.ly/25UYnp8>

Implementation

- Enhance participation in public hearing procedures through making the process more transparent and inclusive, especially through providing timely information about the hearings and published reports.
- Improve SEA and EIA procedures and expand the list of projects for which SEA and EIA procedures are required.
- Ensure cumulative environmental impact assessments, particularly for small hydro plant projects.
- Utilize available information channels to inform interested members of the public and publish information related to environmental impact assessments on official websites of local municipalities.
- Publish investment plans for improvement of water and waste management at a local level.
- Ensure proper implementation of the Aarhus Convention and prevent selective implementation and tendentious interpretation of the Convention by the authorities.

Financing

- Recognize environmental taxes and other income earmarked for the Green Fund as a source of public income that is reserved for funding environmental protection and preservation.