

According to research by the “Stanište” Ecological Association and the European Policy Centre,¹⁴ **most local governments spend less on environmental policy than they collect through environmental fee revenue.** The total amount of unspent funds in the last six years reached RSD 6.5 billion. Contrary to what is stated in the Rulebook on the Standard Classification Framework and the Chart of Accounts for the Budget System revenues in local budget funds from environmental protection are not only exclusively spent on environmental projects. Research has shown that in a large number of local governments environmental protection funds are spent and classified under the domain of environmental protection without actually belonging to that sector, for the activities such as: maintenance of rural roads, maintenance of the manmade waterways network, hail protection systems, construction of sports facilities, asphaltting streets, pest control, zoos, animal control services, court fines for dog bites, winter maintenance, replacement of asbestos pipes, water supply network maintenance, subsidies for water, gas debt, heating, boilers, and flood recovery measures.

The Draft Law on Fees for the Use of Public Goods was finally made public in December 2017, and the public consultation was concluded on the 5th of March, 2018. Coalition 27 submitted its comments and proposals on the Draft of this law to the relevant ministry during public consultations. Legal solution proposed by the Government should unify all fees in one, instead of them being determined by 13 different laws, as has been the case to date. **The aforementioned Draft Law confirms the abolition of the dedicated character of the funds collected from environmental protection fees; enabling the funds collected for environment protection to be used for other purposes.**

According to the Post-Screening Document, Serbia should have prepared a planning document entitled “Multiannual Investment and Financing Plan”¹⁵ by 2016, but still, there has been no information on whether this document has been completed.

Bearing in mind the significant funds that Serbia will need in the coming years to reach the EU standards in this area, it is clear that the proposed system of financing environmental protection will not be able to secure them.

¹⁴ The report available at: <http://cep.org.rs/wp-content/uploads/2017/10/Lokalne-finansije-i-%C5%BEivotna-sredina.pdf>

¹⁵ The complete document available at: <http://eukonvent.org/wp-content/uploads/2015/07/Status-i-planovi-preno%C5%A1enja-i-sprovo%C4%91enja-pravnih-tekovina-EU-za-poglavlje-27-%C5%BDivotna-sredina-i-klimatske-promene.pdf>

01. HORIZONTAL LEGISLATION

OVERVIEW

On March the 1st, 2018, the Government of the Republic of Serbia adopted the second revised National Program for the Adoption of the EU Acquis (NPAA) for the period 2018-2021. Having in mind the previous objectives and their non-fulfillment in the last period (2016-2018), this document provides an overview and a timeframe for the adoption of legal regulations in the field of environmental protection once again delaying adoption of amendments and modifications to the law and bylaws that should regulate some of the key areas of horizontal legislation.

The implementation of the regulations in the area of horizontal legislation has improved to a certain extent, but overall capacity is still lacking, especially at the local level. The quality of Environmental Impact Assessment (EIA) studies are still generally low. Transparency and proactive involvement of the public in the environmental decision-making process has been improved to a lesser extent, but still insufficiently. Because of that, participation of the public in these processes is sporadic and of insufficient quality.

The problems with access to information of public importance in environmental issues has been noticeable through a growing number of complaints about the decisions of the Ministry in charge, which have been submitted to the Commissioner for Information of Public Importance and Personal Data Protection. Inspection activities in the field of environment present a problem due to limited capacity for quality implementation. Judicial practice in environmental matters is still under development, as evidenced by the growing number of charges in relation to environmental crime, but at the same time there are less and less convictions.

The non-earmarked character of the funds collected from the environmental fees and taxes and the possibility of spending these funds for other purposes (introduced after the Law on the Budget System had been amended) was confirmed by the new Draft Law on Fees for the Use of Public Goods.

LEGISLATIVE FRAMEWORK

The Environmental Impact Assessment Directive 2011/92/EU has not yet been fully transposed into the domestic legislative framework. Issues that have not been made fully compliant with the EU legal regulations in this area concern environmental impact assessment in a transboundary context (Article 7 of the Directive), as well as projects that are subject to environmental impact assessment, which are clearly defined in both Annex I and II of the Directive. In the latest revision of the NPAA, as of February 2018, the adoption of the Law on the Confirmation of the Multilateral Agreement between the countries of South-East Europe for Implementation of the Convention on Environmental Impact Assessment in a Transboundary Context – transposing Article 7, is envisaged for the first quarter of 2018. At the time of writing this report (March

2018), the proposal of the said Law has not yet entered parliamentary procedure¹⁶, and the law is unlikely to be adopted within the specified timeframe. The new Regulation amending the existing Regulation on determining the List (I) of projects for which the environmental impact assessment is obligatory and the List (II) of projects for which the environmental impact assessment can be required should have been adopted by the end of 2016. The new, revised NPAA envisages its adoption by the end of 2018. Directive 2014/52/EU on the assessment of the impact of certain public and private projects on the environment has introduced amendments to improve the quality of the impact assessment procedure. Harmonisation with this directive is planned for the last quarter of 2018 by the revision of the NPAA, with amendments and modifications to the Law on Environmental Impact Assessment and amendments and modifications to a number of bylaws¹⁷.

In January 2018, the Ministry of Construction, Transport and Infrastructure announced a program of public consultations on the Draft Law on Amendments and Modifications to the Planning and Construction Law¹⁸. The presented Draft Law still did not address the existing inconsistencies with the Environmental Impact Assessment Law. Thus, an opportunity has been missed to introduce impact assessment procedure into the procedure for obtaining a building permit in a clear manner; which is why the impact assessment procedure often has only a formal character. Regulating the inconsistencies with the Law on EIA and the Law on Strategic Environmental Assessment (SEA), the Planning and Construction Law would become harmonised with Article 2 of the Environmental Impact Assessment Directive 2011/92/EU which explicitly binds states to “adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment... are made subject to a requirement for development consent and an assessment with regard to their effects”. The inconsistency of these two laws is largely the result of insufficient horizontal coordination between the relevant ministries.

Directive 2001/42/EC on Strategic Environmental Assessment has been partly transposed into domestic legislation. Planned amendments and modifications to the Law on Strategic Environmental Assessment and the adoption of the missing bylaws have been moved to the end of 2018. This delay of harmonisation with the provisions of the Directive means that the procedures of strategic environmental assessment will remain largely unregulated and of uneven quality, and will depend primarily on the capacity of the relevant authority conducting the procedure.

¹⁶ The mentioned Draft Law is on the list of laws in the procedure on the internet page of the Parliament of the Republic of Serbia <http://www.parlament.gov.rs/akti/zakoni-u-proceduri/zakoni-u-proceduri.1037.html> (last visited on March the 3rd, 2018).

¹⁷ Bylaws regulating the environmental impact assessment procedure: Rulebook on public insight, presentation and public discussion about the environmental impact assessment study; Rulebook on work of technical committee for environmental impact assessment study; Rulebook on the content of the request on the need for environmental impact assessment and contents of the request for defining the scope and content of environmental impact assessment study; Rulebook on the content, appearance, and manner of keeping the register of completed proceedings and decisions made on environmental impact assessments; Rulebook on the content of the environmental impact assessment study.

¹⁸ The public consultation program on the Draft Law on Amendments and Modifications to the Planning and Construction Law is available at: <http://www.mgsi.gov.rs/cir/aktuelnosti/program-javne-rasprave-o-nacrtu-zakona-izmenama-i-dopunama-zakona-o-planiranju-i>

Directive 2003/4/EC on public access to environmental information has been almost completely transposed into domestic legislation, concluding with the Law on Amendments and Modifications to the Law on Environmental Protection (“Official Gazette of the Republic of Serbia”, No. 014/2016). This Law regulates the active and passive flow of information in the field of the environment. When it comes to achieving full compliance, it is necessary to ensure annual updating of the ecoregister, as well as strengthening the capacity of the Environmental Protection Agency to expand the scope of reporting.

Directive 2003/35/EC regulating public participation in the drawing up of certain environmental plans and programmes has been partly transposed into domestic legislation. However, in order to fully harmonise the legislation in this area, it is necessary to adopt amendments to the Law on Environmental Impact Assessment, which, in accordance with the revised NPAA, is planned for the fourth quarter of 2018. In addition, in the second revised version of the NPAA from 2016, in the plan of transposition of legislation in order to fully align with this Directive, it was planned to adopt amendments to the Law on Waters in the fourth quarter of 2017. However, in the third revision of the NPAA from 2018, in the part referring to the horizontal legislation, there are no plans for the adoption of amendments to the Law on Waters (its amendments have been planned for Chapter 27 in part that refers to regulating water management and are envisaged to be in place by the fourth quarter of 2019).

Directive 2004/35/EC on environmental liability remains in the initial phase of the transposition. It has been partly transposed through five laws and four bylaws. According to the Third Revised Version of the NPAA, the adoption of the Environmental Liability Law in terms of preventing environmental damage has been postponed again, this time for the second quarter of 2019.

The provisions of Directive 2008/99/EC – Criminal Acts in the Field of the Environment, were partly transposed through the following laws: The Criminal Code, the Law on Liability of Legal Entities to Criminal Offences and the Law on Nature Protection. Complete harmonisation with the provisions of the Directive will be achieved by adopting the Law on Amendments and Modifications to the Criminal Code, which is envisaged for the last quarter of 2018.

Directive 2007/2/EC on establishing an Infrastructure for Spatial Information in the European Community, the so-called INSPIRE, has not been fully transposed into domestic law. The Law on State Surveying and Cadastre provides a framework for the INSPIRE Directive, while for its complete adoption it is necessary to adopt the Law on National Spatial Data Infrastructure, which has not yet been implemented. The Draft Law on National Spatial Data Infrastructure was published last year, and the deadline for its adoption was the last quarter of 2017; it remains unpublished while this year’s NPAA review does not state a new deadline for its adoption.

IMPLEMENTATION OF LEGISLATION

After the establishment of the Ministry of Environmental Protection, certain progress has been achieved in transparency and timely informing of the public of the processes of the environmental impact assessment and strategic environmental assessment carried out by the Ministry. However, the procedures carried out by local governments remain most often non-transparent and inaccessible to the public. For example, the procedure of a repeated public insight and strategic environmental assessment for part of the Draft Detailed Plan of the Regulation of Infrastructure Corridor in the Golija Nature Park in November 2017 was published in the newspaper *Danas*, but not on the municipal website.

Announcing public consultations on the environmental impact assessment study of the “Kula Belgrade” project on the website of the Ministry of Environmental Protection was conducted in a manner that was not in the spirit of proactive transparency. The news of the public consultation, which was originally scheduled for December the 28th, was published on December the 5th, 2017. The public consultation was postponed twice, once for technical reasons, and the second time because the members of the team who conducted the Study on EIA did not appear at the scheduled public consultation. In both cases, no new, current news about the new date for the public consultation was published; instead new information was published within the obsolete news briefing from December 5, 2017. This resulted in the fact that only a few representatives of civil society appeared at the consultation scheduled for January the 23rd, 2018, while on February the 2nd, when the public consultation was finally held, none of the representatives of civil society or any interested public appeared.

The quality of impact assessment studies remains low, even in cases of high-profile projects.¹⁹ The lack of bylaws that regulate the contents of documents and the work of actors in the environmental impact assessment procedure contribute to such a situation.

After the establishment of the new Ministry of Environmental Protection, the problem of the impact of mini-hydropower plants on the environment once again came into the focus of the public; under pressure of local communities, civil society organisations²⁰, representatives of the academic community²¹ and the media. The Ministry announced revision of the impact assessment procedures, as well as of the issued approvals and decisions for mini-hydropower plant projects in protected areas. In February 2018, the first decision on repeating the procedure for granting consent to the

19 Example: A public consultation on the Study on environmental impact assessment of the construction of “Kula Belgrade”, was cancelled twice due to the poor quality of the study and the unpreparedness of the project representatives, once in December 2017 and next time in January 2018. Due to the vague procedure and the lack of clearly defined minimum quality of the content of the Study, the further process of project realisation was extended for at least two months.

20 The data available at: <http://www.politika.rs/sr/clanak/387802/Da-Stara-planina-ne-ostane-zedna>

21 Small hydropower plants cause big problems, the interview with Professor Ratko Ristić, the Dean of the Faculty of Forestry at the University in Belgrade, *Politika*, December the 15th, 2017. Available at: <http://www.politika.rs/sr/clanak/394573/Male-hidroelektrane-prave-velike-probleme> <https://www.jutarnijglasnik.info/ekologija/dr-ratko-ristic-od-izgradnje-elektarana-na-staroj-planini-samo-bi-pojedinci-i-interesne-grupe-imali-korist/>

environmental impact assessment study was made public²².

The Report of the Commissioner for Information of Public Importance and Personal Data Protection from 2016²³ states that 344 requests were filed against the Ministry of Agriculture and Environmental Protection, as well as 81 complaints. In the case of the Ministry of Agriculture and Environmental Protection, the ratio of submitted requests and complaints to the Commissioner for not providing information is 1 appeal to every 4.2 requests, while the average figure for all ministries is 1 appeal to every 9.5 requests, indicating the difficulty of obtaining information which is under the jurisdiction of the Ministry of Agriculture and Environmental Protection. During 2017, a separate Ministry of Environmental Protection was established for which the information will be available after the publication of the Report of the Commissioner for Information of Public Importance for 2017.

In the Inspection Report of the Environmental Inspection for 2017²⁴, as a recommendation for the improvement of work, it states: “*Increasing the number of employed inspectors in the Sector for Environmental Monitoring and Precaution in order to increase the efficiency of implementation of work plans in the field of inspection supervision*”. During 2017, exceptional inspections were carried out 838 times. In its Report on illegal shooting, poisoning, trapping, possessing and trade in wild birds in the Republic of Serbia for the period 2000-2017²⁵ the Bird Protection and Study Society states that “over 300 hunting grounds managed by hunting organizations belonging to the civil society sector are visited by 20 hunting appropriately authorised environmental inspectors”.

Also, there has been an increase in the number of criminal charges for environmental crimes. In 2016, there were 2,507 charges filed for this criminal act. The number of charges for environmental criminal acts has been steadily increasing since 2010²⁶. On the contrary, the number of convictions has been decreasing. The criminal act of illegal logging stands out as the most common²⁷. The Centre for Investigative Journalism indicates in its research that the number of criminal charges for illegal logging has almost doubled in the last ten years (1,314 charges in 2007 compared to 2,007 in 2016). On the other hand, the number of convictions for the same criminal offence halved during the same period (730 sentences in 2007 in relation to 382 sentences in 2016)²⁸.

22 Decision on the repetition of the procedure for granting consent to the Environmental Impact Assessment Study of the project for the construction of a small hydropower plant (SHPP) “Pakleštica”, <http://www.ekologija.gov.rs/resenje-o-ponavljanju-postupka-davanja-saglasnosti-na-studiju-o-proceni-uticaja-na-zivotnu-sredinu-projekta-izgradnje-male-hidroelektrane-mhe-paklestica/?lang=lat>

23 The Commissioner for Information of Public Importance and Personal Data Protection <https://www.poverenik.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2016/latizvestaj2016.pdf>

24 The report available at: http://www.ekologija.gov.rs/wp-content/uploads/inspekcija/Izvestaj/Inspekcija_zastitu_zivotne_sredine_2017.pdf?lang=lat

25 The report available at: <http://pticesrbije.rs/wp-content/uploads/2017/10/Serbia-bird-crime-report.pdf>

26 Bulletin: *Adult Perpetrators of Criminal Offences in the Republic of Serbia*; Statistical Office of the Republic of Serbia; 2016. http://www.stat.gov.rs/WebSite/repository/documents/00/02/72/06/SB-629-Punoletni_2016.pdf

27 The report available at: <http://www.srbijasume.rs/pdf/IzvGodProg2016.pdf>

28 The data available at: https://www.cins.rs/srpski/research_stories/article/zbog-ilegalne-sece-godisnje-nes-tane-hiljade-hektara-suma-

FINANCING

Despite the announcements from the appropriate authorities, bylaws which would ensure the operation of the Green Fund have not been adopted. After the abolition of the Environmental Protection Fund and the establishment of the Green Fund as a budget line in 2016, in accordance with the adopted Decision on the Establishment of the Green Fund of the Republic of Serbia, the adoption of bylaws that were scheduled for the beginning of 2017 has not happened. The Law on the Budget of the Republic of Serbia²⁹ for 2017 allocated 2.29 billion dinars for the Green Fund. More than 95% of this amount (2.19 billion dinars) was intended as incentives to the recycling industry. The Budget Law for 2018 envisaged an increase in the amount of the Green Fund to 2.99 billion dinars. Incentives to the recycling industry are again 2.19 billion dinars, which makes up 73% of the total assets of the Green Fund.

In the meantime, the state continued to charge taxes and fees for environmental protection. According to the Minister for Environmental Protection, the total amount of funds collected in this way in 2017 was over 10 billion dinars, of which about 50% was allocated to the budget of the Ministry of Environmental Protection in 2018³⁰. To be precise, the Ministry was allocated a total of 5.85 billion dinars³¹. This discrepancy was the result of the modifications to the Law on the Budget System of Serbia from 2015 when the funds collected as fees and taxes lost their earmarked character. These changes are in contradiction with one of the basic principles of environmental protection – “polluter pays”, on which the EU legal system rests³². The same principle is also recognised by the Serbian Law on Environmental Protection³³ (Article 9).

Having been prepared a long time ago, the Draft Law on Fees for the Use of Public Goods was made public in December 2017, and the public consultations lasted until the 5th of March 2018. The proposed legal solution should unify all fees in one, instead of them being determined by 13 different laws (as it has been the case to date). The aforementioned Draft Law confirms the abolition of the earmarked character of the funds collected from environmental protection fees, and enables the funds collected for environmental protection to be used for other purposes.

29 The law on the Budget of the Republic of Serbia for 2017: <http://www.parlament.gov.rs/upload/documents/3081-16.pdf>

30 The data available at: <http://rs.n1info.com/a354662/Vesti/Vesti/Trivan-Preispitacemo-status-zasticenih-prirodnih-dobara.html>

31 The law on the Budget of the Republic of Serbia for 2017, page 128: <http://www.mfin.gov.rs/UserFiles/File/zakoni/2017/Zakon%20o%20budzetu%202018.pdf>

32 Environmental Liability: <http://ec.europa.eu/environment/legal/liability/index.htm>

33 The Law on Nature Protection (“Official Gazette of the Republic of Serbia”, Nos. 135/2004, 36/2009, 36/2009 – other law, 72/2009 – other law, 43/2011 – Decision of the Constitutional Court and 14/2016): https://www.paragraf.rs/propisi/zakon_o_zastiti_zivotne_sredine.html

Considering significant resources that Serbia will need³⁴ in the coming years and decades to reach EU standards in the field of environment protection, it clear that current system of financing environmental protection will not be able to respond to the needs for reforms in this policy area, nor will it be sufficient to ensure its sustainability.

RECOMMENDATIONS

Legislative framework

- Pass all necessary bylaws in order to ensure proper functioning and independent monitoring of the Green Fund.
- Qualitatively improve the Strategic Environmental Assessment (SEA) and Environmental Impact Assessment (EIA) processes by adopting necessary bylaws and planned amendments to the Laws on EIA and SEA.
- Harmonise List I (projects for which environmental impact assessment is mandatory) and List II (projects for which an impact assessment may be required) with Annexes I and II to Directive 2011/92/EU. Establish a list of plans and programmes for which a strategic environmental assessment is mandatory and lists of plans and programmes for which a strategic environmental assessment may be required.

Implementation of Legislation

- Improve public participation of the public in public consultation, especially at the local level through more transparent and comprehensive information. Creating a unified procedure for publishing information from public discussions would significantly contribute to the transparency of the process. The implementation of the *Guidelines for making web presentations from state administration, provincial authorities and local-government units*³⁵ which clearly indicate that relevant authorities should “regularly publish the most important information about their work, including news on all activities that are of interest to the general public” would also contribute to the provision of timely and transparent information to the public.

34 The exact amount of funds needed is not known; estimates vary from 10 to 15 billion euros in the next 20-30 years. Official estimates are not available, except for the estimates listed in the 2010 National Environmental Approximation Strategy for the Republic of Serbia (page 10), <http://www.misp-serbia.rs/wp-content/uploads/2010/05/EAS-Strategija-SRP-FINAL>; It takes 10.6 billion euros to protect the environment, <http://www.politika.rs/sr/clanak/326124/Drustvo/Potrebno-10-6-milijardi-evra-za-zastitu-zivotne-sredine>; For 20 years, 14 billion euros for environmental protection, http://www.rtv.rs/sr_lat/drustvo/za-20-godina-14-milijardi-evra-za-zastitu-zivotne-sredine_866350.html; It takes 10 to 15 billion euros for the protection of the environment, <http://ekonomski.net/za-zastitu-zivotne-sredine-potrebno-10-do-15-milijardi-evra.html>; It takes 15 billion euros for the environment: <https://www.danas.rs/drustvo/za-zivotnu-sredinu-potrebno-15-milijardi-evra/>

35 The Office for Information Technology and e-government of the Government of the Republic of Serbia, *Guidelines for making web presentations of state administration, provincial authorities and local self-government units*, (2014), page 12. Available at http://www.deu.gov.rs/doc/Smernice_5_0.pdf

- Ensure inclusion of cumulative impact assessment into studies of environmental impact assessment, particularly for hydro plant projects, wind parks, extraction of river sediments, etc, and adhere to the Rulebook on the content of the request for the need for impact assessment and the content of the request for the determination of the scope and content of the studies of environmental impact assessment ("Official Gazette of the Republic of Serbia", No. 69/05).
- Publish investment plans for improvement of water and waste management at a local level regularly.
- Establish a practice of quality control of environmental impact assessment studies, as well as a review of the studies every five years.
- In order to achieve higher compliance with Directive 2003/35/EC, it is necessary to increase the capacity of Aarhus Centres in relation to the participation of the public during the preparation and modification or revision of plans and programmes.