

# 01. HORIZONTAL LEGISLATION

## OVERVIEW

The third revised version of the National Program for the Adoption of the EU Acquis (NPAA) for 2018 foresees the adoption of a series of laws and bylaws in order to harmonize the horizontal legislation with EU directives. Concluding with the date this report was written, only a small number of laws and by-laws were adopted.

The Government of the Republic of Serbia did not allow additional funds for the recruitment of new experts to be received by the institutions that are members of the Negotiating Group 27, therefore they were not able to strengthen their administrative capacities for the transfer and implementation of the legal framework of the European Union<sup>8</sup>.

In 2018, the interested public participated in a number of decision-making and policy formulation processes, with varying success. The involvement of the interested public in the drafting of amendments to the Law on Environmental Impact Assessment<sup>9</sup> and the Law on Strategic Environmental Impact Assessment<sup>10</sup> is set as a positive example of the timely involvement of the public. On the other hand the space for public participation in development of other relevant documents, such as the National Emission Reduction Plan, was limited.

Environmental inspection continues to be a problem due to its limited capacity for quality implementation. Judicial practice in environmental matters is still under-developed, as evidenced by the growing number of registered environmental crime offenses on one hand, and the declining number of convictions for the same crime, on the other.

## LEGISLATIVE FRAMEWORK

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 (Bucharest Agreement)<sup>11</sup>, adopted by the National Assembly of the Republic of Serbia in September 2018, partially transposes the Directive 2011/92/EU into domestic legislation. In order to fully transpose Directive 2011/92/EU on Environmental Impact Assessment into domestic legislation, it is necessary to adopt the Decree on Amendments to the Decree on the Establishment of List (I) of projects for which Impact Assessment is obligatory and the List (II) of projects for which an environmental impact assessment can be required. According to the third<sup>12</sup> revised National Program for the Adoption of

---

8 Report on the implementation of NPAA <http://www.mei.gov.rs/srl/dokumenta/nacionalna-dokumenta/npaa>

9 "Official Gazette of the Republic of Serbia", No. 135/2004 and 36/2009

10 "Official Gazette of the Republic of Serbia", No 135/2004 and 88/2010

11 "Official Gazette of the Republic of Serbia– international contracts", No. 12 since September 27, 2018.

12 National Program for the Adoption of the Acquis of the European Union [http://www.mei.gov.rs/upload/documents/nacionalna\\_dokumenta/npaa/npaa\\_2018\\_2021.pdf](http://www.mei.gov.rs/upload/documents/nacionalna_dokumenta/npaa/npaa_2018_2021.pdf)

the EU Acquis (NPAA), a new Regulation requiring a list of (i) projects for which impact assessment is mandatory and a list of (ii) projects for which an impact assessment may be required for the full harmonization with the Annexes of the Directive 2011/92 / EU should have been made in the fourth quarter of 2018. However, the new Regulation has not been adopted to date, and the proposal for a new Regulation was not even included the Government's Work Plan for 2018.<sup>13</sup>

The Environmental Impact Assessment Directive from 2011 (Directive 2011/92/EU) has been amended by Directive 2014/52/EC in order to improve the environmental impact assessment process. Harmonization with this Directive is planned to be achieved by amending the Law on Impact Assessment, as well as amending the Rulebook on Public Inspection, Presentation and Public Discussion on the Environmental Impact Assessment Study<sup>14</sup>; the Rules of Procedure of the Technical Commission for the Assessment of the Environmental Impact Assessment Study<sup>15</sup>; the Regulations on the Content of the Requirements on the Need for Impact Assessment and the Content of the Requirements for the Determination of the Scope and Content of the Environmental Impact Assessment Study<sup>16</sup>; the Rulebook on the Contents, Appearance and Manner of Keeping a Public Book on Conducted Procedures and Decisions on the Environmental Impact Assessment<sup>17</sup> and the Rulebook on the Contents of the Environmental Impact Assessment Study<sup>18</sup>. Adoption of amendments to these laws and bylaws was planned for the fourth quarter of 2018, but in late February 2019 amendments to laws and bylaws were not adopted or entered into the legislative procedure of adoption.

In October 2018, the Law on Amendments to the Law on Planning and Construction<sup>19</sup> was adopted. Most comments by civil society organizations have not been accepted, and a report on the held public debate has not been published on the website of the Ministry of Construction, Transport and Infrastructure. However, one of the key changes adopted is that investors in the process of obtaining location conditions must consult the Law on Environmental Impact Assessment, which was not previously explicitly required. This resulted in further harmonization with the Impact Assessment Directive 2011/92/EU.

Other revised NPAA envisages amendments to the Law on Environmental Impact Assessment for the end of 2017. Amendments to the Law on Environmental Impact Assessment have not been adopted to date (February 2019). At its own initiative, civil society took part in the process of drafting the law, and the Ministry of Environmental Protection provided a good example of how civil society can be involved in the process; its capacities being used in order to improve the documents while still in the pre-draft phase. The Ministry included several civil society organizations in the working group, and a wider consultative process with civil society organizations outside the

---

13 [http://www.gs.gov.rs/doc/PLAN\\_RADDA\\_VLADE\\_2018.pdf](http://www.gs.gov.rs/doc/PLAN_RADDA_VLADE_2018.pdf)

14 "Official Gazette of the Republic of Serbia", No. 69/2005

15 *Ibid*

16 *Ibid*

17 "Official Gazette of the Republic of Serbia", No. 69/2005

18 *Ibid*

19 "Official Gazette of the Republic of Serbia", No. 83/2018

working group was organized. They were timely informed about the meetings of the working group and invited to submit their comments and thus contribute to the creation of this document.

By postponing the adoption of the Law on Amendments to the Law on Strategic Environmental Impact Assessment, as well as the missing by-laws, strategic impact assessment procedures remained largely unregulated and uneven in quality, depending on the capacity of the competent body conducting the procedure. After the initial postponement of the Government Work Plan for 2018<sup>20</sup> by the third NPAA, have set the plan for legislative changes to be completed in December 2018. Although an independent expert was involved in a separate working group for amending the law, consulted interested civil society organizations in a separate consultative process, as well as individual state institutions, until the moment of writing this report, the announced amendments to the legislation were not adopted and they will not be adopted until the Government Work Plan of the Republic of Serbia for 2019 and the new revised version of the NPAA are published. Without the adoption of the Law on Amendments to the Law on Strategic Environmental Assessment, as well as the missing secondary legislation, Directive 2001/42/EC on Strategic Impact Assessment cannot be completely transposed into domestic legislation.

Directive 2003/4/EC on public access to environmental information has been fully transposed into domestic legislation. In order to achieve full harmonization, it is necessary to ensure annual updating of the Eco-registry, as well as a strengthening of the capacity of the Environmental Protection Agency to expand the scope of its reporting.

Directive 2003/35/EC, which regulates public participation in the drafting of certain plans and programs relating to the environment, is still partly transposed into domestic legislation. Amendments to the Law on Environmental Impact Assessment are necessary in order for the Directive to be fully implemented. Although amendments to the Law on Environmental Impact Assessment, according to the third revised NPAA, were planned for the fourth quarter of 2018, none of the expected amendments were made.

Directive 2004/35/EC on on environmental liability with regard to the prevention and remedying of environmental damage, is at an early stage of transmission. For the full transposition of this Directive, the Law on Liability for Environmental Damage is required. According to the latest version of the NPAA, the passing of this law was postponed for 2019 (2nd quarter). The process of draftin of this law, which has started four years ago, is currently in a deadlock.

Directive 2008/99/EC on the protection of the environment through criminal law is partly transposed into domestic legislation. The provisions of this Directive have been transposed through the following laws: the Criminal Code<sup>21</sup>, the Law on Liability

---

20 Government Work Plan for 2018 [http://www.gs.gov.rs/doc/PLAN\\_RADA\\_VLADE\\_2018.pdf](http://www.gs.gov.rs/doc/PLAN_RADA_VLADE_2018.pdf)

21 "Official Gazette of the Republic of Serbia", No. 85/2005, 88/2005 – correction, 107/2005 – correction, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016

of Legal Entities to Criminal Offenses<sup>22</sup> and the Law on Nature Protection<sup>23</sup>. The Law on Amendments to the Criminal Code was planned to be adopted in the 4th quarter of 2018, through which a full harmonization of the provisions of this Directive with domestic legislation would have been achieved, but that law has not been adopted to date.

Directive 2007/2/EC on the Establishment of an Infrastructure for Spatial Information in the European Community - the INSPIRE Directive has been transposed into domestic legislation by the adoption of the Law on the National Spatial Data Infrastructure.<sup>24</sup>

## IMPLEMENTATION OF LEGISLATION

The public has not been involved in decision making on environmental issues in a timely manner, during the processes of adoption of some very important documents. In October 2018, the National Assembly adopted amendments to the Law on Environmental Protection<sup>25</sup>, creating a formal legal requirement for farmers to apply for funding from the European IPARD Fund.<sup>26</sup> There was no public discussion procedure related to these amendments, with the following explanation given by the Ministry: "... having in mind that it is not a law that significantly changes the regulation of a certain issue, nor is it a new systemic law, it is an amendment of the law to a lesser extent ... public discussion was not held".<sup>27</sup>

Concerning the adoption of the National Emission Reduction Plan (NERP), the Strategic Environmental Impact Assessment Report, as well as the NERP, became available to the public one year after the validity starting date of the NERP (January the 1<sup>st</sup>, 2018) through the publication of the public debate on the Report on Strategic Environmental Impact Assessment for the National Emission Reduction Plan (NERP)<sup>28</sup>. A public discussion procedure, organized in this manner, is inconsistent with the principle of informing the public and its participation proclaimed in the Law on Environmental Protection, as well as with the Law on the Confirmation of the Convention on Access to Information, Public Participation in Decision-making and the Right to Legal Protection in Environmental Issues<sup>29</sup> by which the public should be involved at an early stage of the decision-making process concerning environmental issues, and they should be informed in an adequate, timely and efficient manner. In addition, ac-

---

22 "Official Gazette of the Republic of Serbia", No. 97/2008

23 "Official Gazette of the Republic of Serbia", No. 36/2009, 88/2010, 91/2010 – correction, 14/2016 and 95/2018 – state law

24 "Official Gazette of the Republic of Serbia", No. 27/2018

25 "Official Gazette of the Republic of Serbia", No. 135/2004, 36/2009, 36/2009 - state law, 72/2009 - state law, 43/2011 - decision US, 14/2016, 76/2018 and 95/2018 - state law, Article 9

26 <http://www.ekologija.gov.rs/skupstina-usvojila-izmene-i-dopune-zakona-o-zastiti-zivotne-sredine-i-set-ekoloskih-zakona/?lang=lat>

27 [http://www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi\\_zakona/2018/2386-18%20lat.pdf](http://www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi_zakona/2018/2386-18%20lat.pdf), pg. 9.

28 <http://www.ekologija.gov.rs/nu-raspravu-o-strateskoj-proceni-uticaja-na-zivotnu-sredinu-za-nacionalni-plan-za-smanjenje-emisija-iz-starih-velikih-postrojenja-za-sagorevanje-nerp/?lang=lat>

29 "Official Gazette of the Republic of Serbia", No.38/09.

According to the Law on Strategic Environmental Impact Assessment, the public insight and public debate on the Strategic Environmental Impact Assessment Report should be organized as a part of presentation of plan and program for public inspection and a public discussion on the program or plan itself, which it was not held.

The pressure of civil society organizations and local communities has led to positive developments in the field of environmental impact assessment. However, there are still many challenges to the successful implementing of these procedures. During the given reporting period, the Ministry of Environmental Protection made more than 20 resolutions, according to which the exploitation of rivers, stone and gravel were exempt from the environmental impact assessment, despite the damage that these projects may leave on natural resources<sup>30</sup>. Reasons for concern are also evident in the projects of skiing infrastructure in protected areas; for which it is difficult to provide an objective assessment of the impact on nature, especially with regard to the estimates of cumulative impact, which are lacking in the design phase<sup>31</sup>. The problem of applying the Law on Environmental Impact Assessment in the case of mini hydropower plants was brought into the public's focus due to the pressure of local communities, civil society organizations, representatives of the academic community and the media. In the resolution<sup>32</sup> of the European Parliament on the European Commission's reports on Serbia's progress in the EU accession process, the Serbian government is being urged to adopt the necessary measures for the purpose of preserving protected areas, with a special emphasis on small hydropower plants in the Stara Planina Park of nature. The same resolution encourages the Government of the Republic of Serbia to increase transparency in the process of project planning through greater citizen participation and involvement of all stakeholders. In February 2018, the first decision on repeating the procedure for the approval of Environmental Impact Assessment Study for SHPP "Paklestica"<sup>33</sup> on the Visočica River was made, after which, in April 2018, the Administrative Court in Belgrade annulled the Ministry's decision to repeat the procedure. In November 2018, the Supreme Court of Cassation annulled the ruling of the Administrative Court in Belgrade and thus the Ministry's decision became valid.

Following the appeal of the citizens' association against the Environmental Impact Assessment Study, the Administrative Commission of the Government of the Republic of Serbia in December 2018 adopted a decision<sup>34</sup> annulling the decision of the Ministry of Environmental Protection of May 2018 determining the scope and contents of the environmental impact assessment study, for the construction of a facility for energy

30 <http://www.ekologija.gov.rs/category/obavestjenja/procena-uticaja-na-zivotnu-sredinu/resenja/resenja-o-potrebi-izrade-procena-uticaja/>

31 <http://www.ekologija.gov.rs/zahtev-za-odlucivanje-o-potrebi-procena-uticaja-na-zivotnu-sredinu-izgradnje-objekta-ski-staze-krcmar-ko-brzece-opstina-brus/>; <http://www.ekologija.gov.rs/zahtev-za-odlucivanje-o-potrebi-izrade-studije-o-proceni-uticaja-na-zivotnu-sredinu-projekta-izgradnje-pristupnog-puta-do-ski-centra-na-goliji-sa-pratecim-parkingom-ko-brusnik-na-teritoriji-so-ivanj/>

32 Resolution on the European Commission's reports on Serbia's progress in the EU accession process <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2018-0478+0+DOC+PDF+V0//EN>

33 Decision on the repetition of the procedure for granting approval to the Environmental Impact Assessment Study of the Small Hydro Power Generation Project (SHPP) "Paklestica" <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>

34 <http://www.upss-nis.org/wp-content/uploads/2019/01/Vlada-RS-Poni%C5%A1tavanje-Re%C5%A1enja.pdf>

utilization of municipal waste and landfill gas Vinča. The decision of the Administrative Commission was made on the basis of an incomplete and incorrectly established factual situation and with a significant violation of the procedure provisions, which has an impact on the legality and regularity of the initial decision.

Public access to environmental information remains at a low level. The report of the Commissioner for Information of Public Importance and Data Protection for 2017,<sup>35</sup> for the first time, provides independent data for the Ministry of Environmental Protection. The report states that in 2017, 124 requests for access to information were submitted to the Ministry of Environmental Protection and its units, while 9 complaints were submitted to the Commissioner because requested information was not provided. The Ministry of Environmental Protection was established in 2017, and before that it functioned within the Ministry of Agriculture and Environmental Protection, so it is currently not possible to compare the data of the Commissioner for the previous years.

According to data on the work of the Ombudsman, a total of 499 complaints in the period from 2007 to 2018 indicated violation of the rights in the field of environmental protection. These complaints represent about 1% of all complaints received annually. In 2017, 42 cases received were related to environmental protection (1.2%).<sup>36</sup> Complaints concerned the violation of the rights of citizens to be fully and objectively informed about the state of the environment, the right to legal protection in relation to the environment, the collection and provision of information in the field of environmental protection. Among the proposals for improving the position of citizens in relation to the administrative bodies, seven proposals refer to the Ministry of Environmental Protection. Among other things, the Ministry is recommended to: "... take all measures in order to provide the missing strategies and planning documents in the field of environmental protection", and "... use all available mechanisms in order to ensure human and financial capacities for the purpose of full implementation of environmental regulations".<sup>37</sup>

Judicial practice in the field of criminal liability for damage to the environment is still underdeveloped. During 2017, 2187 applications for environmental offenses<sup>38</sup> were filed, which is slightly lower than in the previous year, 2016 (2507). 712 offenses from this group are committed by unknown perpetrators, while the charges were raised against 610 persons. 512 persons were convicted of an environmental offence in 2017<sup>39</sup>. These figures show that, with the increasing trend in the number of charges for an environmental offense, the number of convictions still remains in decline. For

35 Report of the Commissioner for Information of Public Importance and Data Protection for 2017 <https://www.poverenik.rs/sr-yu/izvetaji-poverenika.html>

36 Regular annual report of the Protector of Citizens for 2017, page 15. Available at: <https://www.ombudsman.rs/attachments/article/5671/Godisnj%20izvestaj%20za%202017.%20godinu.pdf>

37 *Ibid*, pg. 75.

38 Statistical office of the Republic of Serbia; Bulletin (2018): Adult perpetrators of Criminal Offences in the Republic of Serbia in 2017, page 18 Available at: <http://publikacije.stat.gov.rs/G2018/Pdf/G20185643.pdf>

39 *Ibid*, pg. 39.

example, in 2008, 819 persons were convicted for this criminal offense<sup>40</sup>. Among the environmental offenses reported in 2017, the most frequent were those for timber theft (1707).

Challenges in establishing liability for environmental damage primarily concern the limited capacity for adequate inspection. In the area of environmental inspection, the lack of professional independence of environmental inspectors, as well as excessive workloads, imposes a special challenge at the local level, since inspectors in many local self-government units also “perform the work of utility, construction and transport inspectors, as well as the work of environmental officers, agricultural and construction experts and other works ordered by their superiors”.<sup>41</sup>

## FINANCING

In relation to other areas of Chapter 27, the economic costs for the area of horizontal legislation are relatively low. Most of the costs in this area are used for the implementation of the INSPIRE Directive. According to estimates from the post-screening document<sup>42</sup> of the 2015, about 15 million euros is needed for the full implementation of the INSPIRE Directive (the assessment is based on the experience reported by EU Member States whose areas, population and basic information are similar to Serbia's).

During 2018, additional funds for employment were not granted by the Government of the Republic of Serbia to the institutions that are members of the Negotiating Group 27, therefore they were not able to strengthen their administrative capacities for the transfer and implementation of the *acquis communautaire*. The exception is the Republic Geodetic Authority, which was granted a decision by the Government of the Republic of Serbia to increase the number of employees. By engaging new experts, the capacity of the Geospatial Data Center in the implementation of the INSPIRE Directive has been increased.

Despite the announcements of the competent authorities, the lack of implemented regulations, that would ensure the operation of the Green Fund, were not adopted. After the Environmental Protection Fund had been abolished and the Green Fund established as a budget line in 2016, the adoption of secondary legislation announced for the beginning of 2017 was postponed, thereby the date on which the missing by-laws will be passed still remains unknown.

---

40 *Ibid*, pg 39.

41 Ministry of Environmental Protection (2018): Environmental Inspection Report for 2017, page 17; Available at: [http://www.ekologija.gov.rs/wp-content/uploads/inspekcija/lzvestaj/Inspekcija\\_za\\_zastitu\\_zivotne\\_sredine\\_2017.pdf?lang=lat](http://www.ekologija.gov.rs/wp-content/uploads/inspekcija/lzvestaj/Inspekcija_za_zastitu_zivotne_sredine_2017.pdf?lang=lat)

42 Status and plans for the transposition and implementation of EU *acquis* for Chapter 27 - Environment and Climate Change, available at: <http://eupregovori.bos.rs/progovori-o-pregovorima/uploaded/Post-screening-SRP.pdf>

## **RECOMMENDATIONS:**

### ***Legislative framework***

- Adopt all necessary bylaws in order to enable proper functioning and independent monitoring of the Green Fund.
- Improve the qualitative processes of the Strategic Environmental Assessment (SEA) and Environmental Impact Assessment (EIA) by adopting the necessary bylaws and planned amendments to the Law on EIA and the Law on SEA.
- Harmonize List I (projects for which environmental impact assessment is obligatory) and List II (projects for which an impact assessment may be required) with Annexes I and II of Directive 2011/92/EU.
- Establish a list of plans and programs for which a strategic impact assessment is mandatory and a list of plans and programs for which a strategic impact assessment may be required.

### ***Implementation of Legislation***

- Provide transparent and timely information to the public on the conduct of public hearings through promotion of public information via the Internet, in accordance with the guidelines for the development of web presentations of state administration bodies, territorial autonomy bodies and local self-government units.
- Comply with the Rulebook on the Content of the Request for the Impact Assessment Need and the Content of the Requirements for Determining the Scope and Content of the Environmental Impact Assessment Study<sup>43</sup> while elaborating studies on environmental impact assessment.
- Ensure inclusion of a cumulative impact assessment in environmental impact assessment studies.
- Regularly publish investment plans for improving water and waste management at the local level.
- Establish a quality control of environmental impact assessment studies, as well as a review of studies every five years.
- In order to achieve greater compliance with Directive 2003/35/EC, it is necessary to increase the capacity of national institutions, local self-governments and Aarhus Centers in relation to public participation procedures during the preparation and modification or revision of plans and programs.
- Increase penalties for environmental pollution.

---

43 "Official Gazette of the Republic of Serbia", No. 69/05