



# Horizontal Legislation

# Overview

The previous reporting period was marked by the strong influence of the COVID-19 pandemic on citizens' rights to take part in decision making processes related to the environment. In many cases, citizens' right to attend public debates on various projects and plans was limited or completely denied (in some cases, police prevented the public from attending public debates). Moreover, the competent authorities' work was additionally slowed and made more difficult due to public servants working remotely. As part of the shift to working online that the pandemic has required, some processes were organised online, however regulation on public participation haven't been fully applied in these cases.

Legislative activity, as in the previous period, was at a minimum, and slowed down further due to the pandemic. The necessary Amendments to the Law on Environmental Impact Assessment and the Law on Strategic Environmental Impact Assessment have yet to be adopted. A draft of the IV Aarhus Implementation Report was prepared but was not adopted in 2020.

The Aarhus Convention Compliance Committee reacted to breaches of rights under the Aarhus Convention, concluding that the Aarhus convention should be applied fully during the pandemic, that the rights guaranteed by the Convention may not be diminished, and that signatory countries (including Serbia) can in no way justify limiting the rights guaranteed by the Aarhus convention by citing the pandemic. The period was also marked by somewhat increased activity by the Inspection for Environmental Protection, and a more active role of the Ombudsman in monitoring the safeguarding of the right to a healthy environment.

# Strategic and Legislative Framework

Even though the Republic of Serbia has almost completely harmonized national legislation with the Directive on Environmental Impact Assessment (GRS 2018), its successor, Directive 2014/52/EU, adopted to improve the environmental impact assessment process, has yet to be transposed. In order for this Directive to be fully transposed into domestic legislation it is necessary to adopt amendments to the Law on Environmental Impact Assessment, as well as amendments to the Regulation on Amendments to the Regulation on Establishing the List of Projects Requiring a Mandatory Environmental Impact Assessment (List I), and the List of Projects which May Require an Environmental Impact Assessment (List II).

According to the National Programme for the Adoption of the Acquis, (NPAA) (GRS, 2018), the original deadline for adopting the Law on Amendments to the Law on Environmental Impact Assessment was the fourth quarter of 2018, which was initially pushed back to 2019 by the Government Work Plan (VRS, 2019), and then further to October 2020 (GRS, 2020). Up to the time of writing of this report, no activities have been undertaken to amend the above Law, despite the Government Work Plan for 2021 envisaging that the Law should be adopted in December 2021 (GRS, 2021). Since the process to amend the Law was initiated in 2018, the working group has not met regularly. Working group members were selectively involved in certain processes and communication between working group members was almost non-existent. This trend continued in 2020, as no activity has been undertaken related to adopting amendments to the Law.

Workshops and training sessions for civil servants and judiciary representatives pertaining to amendments to this Law (envisaged in the NPAA for 2020) were not held, as they are contingent on the Law having been adopted.

There has been a similar outcome to the adoption of the Law on Amendments to the Law on Strategic Environmental Impact Assessment, which is required for complete harmonization with the Directive on Strategic Impact Assessment (Directive 2011/42/EU).

The process of amending the Law on Strategic Environmental Impact Assessment, which is taking place alongside the process of amending the Law on Environmental Impact Assessment, was supposed to have been completed with the adoption of the Law in late 2018. However, its adoption has continuously been postponed. Even though the Government Work Plan for 2020 envisages the last quarter of 2020 as the new deadline for adopting the Law on Strategic Environmental Impact Assessment, this has not yet happened. The new Government Work Plan has pushed the deadline to adopt this Law to December 2021 (VRS 2021).

Directive 2003/4/EZ on public access to environmental information has been fully transposed into domestic legislation. To achieve complete harmonization, yearly updates to the Ecoregister and the Pollutant release and transfer register must be ensured, in addition to raising the Environmental Protection Agency's capacities to expand the scope of its reporting (GRS, 2018).

Directive 2003/35/EC which provides for public participation in drawing up certain plans and programmes relating to the environment, has still only partially been transposed into domestic legislation. Amendments to the Law on Environmental Impact Assessment must be adopted to achieve full transposition.

To fully transpose Directive 2004/35/ES on environmental liability with regard to the prevention and remedying of environmental damage, Law on Environmental Liability must be adopted. The drafting of this law began in 2015 and, according to the NPAA, it should have been adopted in the second quarter of 2019; however, the drafting process is still on-going. During the drafting process, the Ministry of Environmental Protection, in cooperation with the Aarhus Network and the OSCE Mission to Serbia, held a series of public consultations in several cities throughout Serbia in October and November of 2019. In addition to representatives from the Ministry and the Aarhus Network, representatives of local self-governments and civil society also attended the

consultations. The Government of the Republic of Serbia plans to adopt the Law on Environmental Liability in December 2021.

With regard to Directive 2008/99/ES on the protection of the environment through criminal law, no progress has been made since last year. The Directive has still only been partially transposed into domestic legislation. The adoption of a Draft Law on Amendments to the Criminal Code is planned for December 2021 (VRS, 2021).

Directive 2007/2/EC on establishing Infrastructure for Spatial Information in the European Community (INSPIRE) has been transposed into domestic legislation through the adoption of the Law on National Spatial Data Infrastructure (Official Gazette of the Republic of Serbia, No. 27/2018).

# The Implementation of Regulations

The trend of shrinking space for public participation continued in 2020. While all social spheres were marked by the COVID-19 pandemic this year, the pandemic has been exploited as an excuse to prevent the participation of the interested public in the decision making process. This especially applies to attendance of public debates on strategic impact assessments, and impact assessments for various projects and plans. In some situations, such as the public debate on the Urbanization Plan for part of Makiško polje, a police presence was noted on the day that the public session of the Planning Commission was held.

A lack of coordination between institutions working on drafting legislation was also evident. For example, during the preparation of amendments to the Law on Nature Protection, public participation was entirely lacking (public participation is especially important for the acceptability assessment, which, in some cases, will be carried out as part of impact assessments or strategic environmental impact assessments).

Civil society representatives requested that the competent institutions halt all public debates and insight activities several times, because the way these processes were being carried out ran contrary not only to the law, but democratic principles and civic rights. During these processes, the basic conditions for public participation in decision-making processes were not provided.

Environmental activists and experts have repeatedly pointed out that a lack of the rule of law is especially evident in the field of environmental protection, where laws are often circumvented, both by investors and local authorities, while such behaviour is often not sanctioned (BOS, 2020a). In addition, public access to environmental information during 2020 was limited due to the pandemic, as officials at relevant institutions worked outside of their offices and communication with them was slow.

During a public debate in Zrenjanin in September 2020, citizens were prevented from participating in the public presentation of the Environmental Impact Assessment Study for the construction of a factory by the Chinese company Linglong International Europe d.o.o.; 60 people were present and, according to the Regulation on public events, only 30 people were allowed to enter. (RERI, 2020a). At that time, an Order banning assembly in indoor and outdoor public places in the Republic of Serbia was in force. It is unclear why this and other public presentations and discussions were scheduled despite the unfavourable epidemiological situation. In doing so, local authorities disregarded the Rulebook on Public Insight, Presentation and Public Discussion about the Environmental Impact Assessment Study and failed to fulfil their duty to enable a transparent environmental impact assessment procedure, which requires the participation of any member of the interested public at all public presentations or discussions.

The public session of the Planning Commission of the public insight process for the Draft Spatial Plan for the special purpose area designated for the construction of the thermal power plant "Kolubara B" was scheduled to take place on July 15th 2020, but was pre-emptively postponed due to the COVID-19 pandemic. The session was rescheduled for September 14th. However, when the session was finally held it was terminated after only half an hour following an argument between representatives of the Ministry of Construction, Transportation and Infrastructure and civil society representatives who were in attendance, about irregularities related to the session. CSO representatives insisted that the public session was not allowed to be scheduled due to the epidemiological situation. The number of people gathered at the Lazarevac Municipal Building, where the session was held, exceeded the number of people that were allowed to congregate in one place by the Order banning assembly in indoor or outdoor places in the Republic of Serbia. Despite the fact that it was noted that the number of people present at the meeting hall exceeded the allowed number, the chairperson opened the session, in direct violation of the Order. Additionally, neither the chairperson nor any of the Commission members took official minutes of the session, which constitutes a breach of the very same Rulebook cited by the competent authority in an attempt to limit

the number of participants (BOS, 2020b). After the session was terminated, no information on a new date was published. The Ministry later held the session without public participation on October 16th 2020. According to information received from the Ministry, based on a request for information of public importance, the Ministry published a notification about the planned session only on the day of the session in one print newspaper.

The same situation was repeated during the public insight session on the Draft Detailed Regulation Plan for part of Makiško polje accompanied by the Strategic Environmental Assessment Report for the Plan. This Plan envisages that the wider water source area of Belgrade should be rezoned into building land for the construction of almost 4.5 million m<sup>2</sup> of residential and commercial space, which would jeopardize the city's drinking water supply. Even though many interested citizens came to attend the public debate, they were prevented from attending by the police, municipal police, and security guards, under the pretence of adhering to the epidemiological measures in force at the time (BOS, 2020v).

A similar example illustrating the practice of exploiting the extraordinary measures imposed due to the COVID-19 pandemic in order to hinder public participation, is the case of a request to increase the flotation capacities of the copper mine in Majdanpek, owned by Serbia Zijin Copper, where the public was not even given the opportunity to submit comments during the Environmental Impact Assessment procedure (RERI, 2020b). The Ministry of Environmental Protection adopted a decision that the company was not obliged to compile an Environmental Impact Assessment Study, even though the Ministry failed to first publish the company's request alongside the appropriate documentation on its website for public insight. For this reason, the interested public was not able to access information about the project, and was consequently unable to submit comments.

The Aarhus Convention Compliance Committee reacted to breaches of rights under the Aarhus Convention, concluding that the Aarhus convention should be applied fully during the pandemic, that the rights guaranteed by the Convention may not be diminished, and that signatory countries (including Serbia) can in no way justify limiting the rights guaranteed by the Aarhus convention by citing

the pandemic. Limiting the right to public participation in decision making processes by citing the pandemic, practiced by administrative institutions in Serbia during 2020, therefore constitutes a breach of the Aarhus Convention.

The period covered by this Report was also marked by the process of compiling the IV Aarhus Implementation Report. The methodology for the Report, as well as the public consultations organized in five cities in Serbia, allowed for participation by various interested parties, including institutional representatives, local self-governments and civil society. The process resulted in a Draft IV Aarhus Implementation Report, which was yet to be adopted by the Government at the end of 2020.

Beyond the aforementioned trend of shrinking space for public participation in environmental impact assessments, the studies themselves still contain serious flaws, as was the case in previous years. Though oversights in the studies are often specific to each individual case, common characteristics are nonetheless evident. The most common flaws are diminishing and underestimating potential negative environmental impacts, insufficient detail in presenting initial states in studies, and failure to use up-to-date and widely available data on the state of the environment. These flaws have been identified, for example, with regard to the contents of the Study on Environmental Impact Assessment for the Legalization of the Thermal Power Plant Complex "Nikola Tesla A"; ranging from procedural oversights, the failure to conduct an analysis of the power plant's impact on climate change, and incomplete data on the state of the environment, to attempts to circumvent the need for a comprehensive overview by "slicing" the project up into several units (BGEN, 2020).

The situation is similar regarding the Report on Strategic Environmental Impact Assessment. For example, in the case of the Strategic Environmental Assessment for the Special Purpose Area Spatial Plan for the Construction of the "Kolubara B" Thermal Power Plant the question of the plant's impact on the quality of the environment, i.e., air quality, as well as public health, was only considered at a local level, even though available data and research shows that the impact is far broader, regional and cross-border. Biodiversity was only superficially addressed and biodiversity data was incomplete. The Study offers

no variant solution analysis, and one of the proposed solutions is to abandon the project. Climate change impact was not identified or considered, which is unacceptable given Serbia's commitments under the Paris Agreement, as well as the current climate policies of the EU, which Serbia is striving to join, and with which Serbia already has significant economic exchange – which will be jeopardized by the impact of "Kolubara B".

Civil society organizations have pointed out that the Strategic Assessment Report for the "Avala Film" Detailed Regulation Plan was incomplete (C27, 2020). Crucial flaws in the report included the fact that the Review was not compiled in accordance with the appropriate strategic and planning documents related to environmental protection, planning and construction, including the Environmental Protection Programme for the City of Belgrade, the Afforestation Strategy for the City of Belgrade, the Climate Change Adaptation Action Plan with Vulnerability Assessment for the City of Belgrade, the General Regulation Plan for Green Spaces in Belgrade, among others. The Review also failed to use current data on the state of the environment, protected species, and their habitats.

Respect for citizens' right to a healthy environment has still not reached a satisfactory level. During 2020, the Ombudsman received 5,056 cases, 72 of which were in the area of environmental protection, accounting for 1.42% of the total number of cases. According to the Ombudsman's annual report, most of the complaints filed by citizens about environmental protection related to air, water and soil pollution, waste management, and reactions to citizens' complaints by competent inspectorates. The number of complaints made by citizens related to environmental protection decreased compared to the previous year (OB, 2021). The Ombudsman's report states that competent institutions often fail to take preventive action due to a lack of financial and human resources, and that a number of local self-governments have failed to perform their legal duties related to compiling strategic documents in the area of environmental protection in a timely manner, if at all. A series of reviews of the application of legal provisions pertaining to environmental protection were conducted, most of which were initiated by the Ombudsman themselves due to poor air quality and air pollution (OB, 2021).

In response to citizens' complaints, the Ombudsman also initiated reviews to determine whether inspections of facilities that may have adverse effects on the environment were carried out in accordance with the law, as well as to investigate the competent authorities' reactions to citizens' complaints on the construction of small hydropower plants and waste management (OB, 2021). The Ombudsman highlighted that a comprehensive inspection of PE EPS and the "Kolubara" Mining Basin must be carried out in order to review the application of environmental protection regulations and the approved Environmental Impact Assessments. This is necessary in order to determine whether appropriate monitoring is being conducted in these communities regarding certain environmental factors, and whether mining and energy activities are causing threshold values to be exceeded in these areas (OB. 2020a).

Citizens also informed the Ombudsman via complaints that two active mines in the Bosilegrad Municipality are releasing waste water into the Brankovska and Ljubatska Rivers. After carrying out inspections of the two companies operating the mines, the Ministry of Environmental Protection adopted a decision ordering them to carry out measures to ensure compliance with the law (OB. 2021). Based on complaints from residents in Bor, and those living in the mining zones of the Veliki Krivelj, Bor, and Cerovo mines, the Ombudsman sent an Opinion to the Ministry of Environmental Protection stating that the City of Bor must adopt a Short-term Action Plan, which is currently being developed, as soon as possible, and must continuously and fully inform citizens about the state of the environment throughout the City (OB. 2020b).

# Financing

According to the National Environmental Approximation Strategy, horizontal legislation is an area where harmonization should not be particularly challenging from an economic and financial standpoint, while the expected costs of implementing regulations in this area are far greater (GRS, 2011). The post-screening document adds that most of the expenditure in this sector, around €15million will be incurred by implementing the INSPIRE Directive (Negotiating Group, 2015).

There is an evident lack of information about costs related to harmonizing Serbia's regulations in the area of horizontal legislation with those of the EU, as well as their implementation. Data on expenditure is mostly unavailable to the public, and even when certain data is available, it is often not sufficiently precise, and does not contain appropriate explanations, as is the case with the Ministry of Environmental Protection's Report on Budget Expenditure.

# Recommendations



## Strategic and Legislative Framework

- 1.** Improve the quality 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.
- 2.** Harmonize List I (projects for which Environmental Impact Assessment is mandatory) and List II (projects for which an Environmental Impact Assessment may be required) with Annexes I and II of Directive 2011/92/EU.
- 3.** Create a list of plans and programmes for which a Strategic Environmental Assessment is mandatory and a list of plans and programmes for which a strategic environmental assessment may be required.



## The Implementation of Regulations

- 4.** Provide transparent and timely information to the public about public hearings through the improved provision of information online, in accordance with the guidelines for the development of the web presentations of state administration bodies, the bodies of autonomous provinces and local self-governments.
- 5.** Ensure the full implementation of the Regulation on the Methodology of Public Policy Management, Policy and Regulatory Impact Assessment, and Content of Individual Public Policy Documents (8/2019-79) in the environment sector.

- 6.** Fully implement the guidelines set out in the Rulebook on the content of requests on the need for environmental impact assessments and the content of requests for determining the scope and content of the Environmental Impact Assessment Study when drafting environmental impact assessment studies.
- 7.** Ensure the inclusion of a cumulative impact assessment in environmental impact assessment studies.
- 8.** Establish quality control of environmental impact assessment studies, as well as a review of studies every five years.
- 9.** In order to achieve greater compliance with Directive 2003/35/EC on public participation, increase the capacity of national institutions and local self-governments to conduct public participation procedures during the preparation and revision of plans and programmes.
- 10.** Increase penalties for environmental pollution.
- 11.** Increase and consistently implement penalties for non-compliance with regulations on the environmental impact assessment and strategic environmental assessment procedures.
- 12.** Ensure the full implementation of the Aarhus Convention during the COVID-19 pandemic with regard to citizens' rights to take part in the decision making process, right to information on the environment, and right to legal protection. All decision making processes (adopting plans, programmes, public policies, legislation, and approval of projects with possible environmental impacts) that violate citizens' rights must be postponed until epidemiological conditions allow for the implementation of these processes in accordance with Serbian law and the Aarhus Convention.

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# HORIZONTAL LEGISLATION

## March 2020

The **Preliminary Cooperation Agreement on the construction of the Kolubara B thermal power plant** was signed between EPS and the Chinese company PowerChina.

## June 2020

The beginning of the **public insight** procedure for the Draft Spatial Plan for the special purpose area designated for the construction of the thermal power plant "Kolubara B", and the Report on the Strategic Environmental Impact assessment for the Plan.

## July 2020

The **public session of the Planning Commission** was postponed due to the COVID-19 pandemic.

## September 2020

The **public session of the Planning Commission** was held in Lazarevac; a number of irregularities were observed.

## October 2020

The **public session on the Planning Commission was held on October 16<sup>th</sup> 2020** in Belgrade, in the morning, and without public participation. Irregularities were observed again.

- The permitted number of people present was limited to 30 due to epidemiological measures, but there were more than 30 interested citizens;
- The organizer of the public session suggested that citizens leave the premises;
- No record was kept;
- The public session was ended after an hour, without explanation, and without announcing the date on which it would be reconvened.

- The notification that the session would be held was only published in the Kurir newspaper on October 16<sup>th</sup> 2020 - the day of the debate.
- The Ministry of Construction, Transport, and Infrastructure provided information that a notification had been published on its website a day before the debate, which was not the case.



**KOLUBARA B**

## EPILOGUE

- ▶ The entire process of holding the public session was marked by numerous irregularities.
- ▶ During the procedure, the Order prohibiting gatherings in the Republic of Serbia in indoor and outdoor public places was issued, as well as the Rulebook on the Content and Procedure for Drafting Spatial and Urban Planning Documents.
- ▶ Citizens were not allowed to take part in the decision making process for the spatial planning of the special purpose area designated for the construction of the thermal power plant "Kolubara B" due to the publication of the notification on reconvening the public session on the day it was held.

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