

Serbia and Montenegro **EIA Overview** MONTENEGRO

April 2003

*Elaborated within the REReP 1.4 project
EIA Capacity-Building in South Eastern Europe*

Funded by the European Union's Obnova and Phare Programmes

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THE REGIONAL ENVIRONMENTAL CENTER
for Central and Eastern Europe



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ISBN: 963 9424 307

Published by:
The Regional Environmental Center for Central and Eastern Europe
Ady Endre ut 9-11, 2000 Szentendre, Hungary
Tel: (36-26) 504-000, Fax: (36-26) 311-294, E-mail: info@rec.org, Website: www.rec.org

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This publication has been produced with the assistance of the European Union.
The contents of this publication can in no way be taken to reflect the views of the European Union.

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General Information

Important factors to consider when introducing a national EIA system

Important factors in the introduction of the national environmental impact assessment (EIA) system in the Republic of Montenegro are the following:

- On December 20, 1991 the Parliament of Montenegro adopted the Declaration on Montenegro as an Ecological State. According to this declaration, Montenegro is “establishing a state relationship with nature and calls upon all citizens, irrespective of their national, religious, political and other beliefs, to protect the identity of the surroundings in which we live in the name of their own survival and the survival of their descendants.”
- Protection of the environment has its point of support in the Montenegrin Constitution of 1992. Article 1 states: “Montenegro is a democratic, social and ecological state.” Article 19 states: “Everyone shall have the right to a healthy environment and shall be entitled to timely and complete information on its condition. Everyone has the duty to preserve and promote the environment.” Article 65 states: “The state shall protect the environment. Freedom of earning and free entrepreneurship shall be restricted by environmental protection.”
- In March 2001 the Government of Montenegro adopted a study entitled, “Developmental Directions of Montenegro as an Ecological State,” which represents a long-term sustainable development strategy.

Brief descriptions of legal acts, regulations and other provisions concerning EIAs in Montenegro

National legal regulations concerning EIA in Montenegro are:

- Environment Law, 1996;
- Environmental Impact Assessment Act, 1997; and
- Guidance on EIA content, 1997.

The Environment Law of Montenegro is a general law that prescribes only basic legislative measures and leaves room for detailed regulation of respective environmental issues to be closely defined in respective regulations.

With an aim towards providing a preventive approach, which is one of the most successful instruments of environmental protection, Arts 17-19 of the law prescribe the obligation of environmental impact assessment (EIA) for activities that can affect the environment.

Article 17

Each development project or activity, either planned or carried out by legal or physical entity, which is either local or foreign in origin, and which is likely to result in pollution of the environment or to pose any risk to the environment, shall be subject to preparation of an EIA statement.

Prior to carrying out the project or activity as referred to in Par. 1 herein, the investor shall carry out the procedure of a prior environmental impact assessment.

The environmental impact assessment shall identify, describe and assess both direct and indirect effects on the environment, particularly and respectively regarding:

- (1) human beings, flora and fauna;
- (2) soil, water and sea, air, climate and landscape;
- (3) interaction between factors of those contained in lines (1) and (2);
- (4) assets of cultural and historical heritage; and
- (5) economic and social surroundings.

The investor shall bear the expenses for the elaboration of an environmental impact assessment statement.

Article 18

The Government of Montenegro shall enact: types of projects mandated for preparation of an EIA statement; the contents and methods for drawing up an EIA statement; selection of alternative solutions regarding technology and chemicals; selection of location; criteria that must be fulfilled by professional organisations entitled to draw up EIA statements; methods of appraisal and verification; public participation; and, other issues pertaining to the EIA statement.

Article 19

The Ministry of Environment and Physical Planning (or, Ministry) is entitled to grant approvals for EIA statements involving those projects referred to in Art. 17 of this law.

Permission for the execution of any project shall not be given prior to approval of the provisions stipulated in Par. 1 herein.

The EIA Act, being the first one to be adopted (1997), prescribes: the procedure and contents of EIAs; types of activity that require elaboration of the EIA statement; criteria that must be observed by all institutions granted license to elaborate upon EIA statements; public participation; and, models of evaluation and verification. The EIA Act applies to all new installations, as well as existing installations intended for carrying out any changes that may have significant negative effects on human beings or the environment.

The regulation prescribes: the categories of projects for which the EIA is obligatory (the 79 categories are listed in Annex 1); the requisite contents of EIA studies; criteria that must be complied with by institutions drawing up these studies; public participation; and, the methods of assessment and verification of these studies. The EIA is integrated into existing consensual procedures for projects in Montenegro. The decision-making process for granting an ecological permit is exercised only by the central authority, i.e. the Ministry of Environment and Physical Planning.

New and planned environmental requirements relevant to EIA

Other legislation and regulations of importance for industrial development and the environment under the authority of the Ministry of Environmental Protection and Physical Planning are the following:

- Law on Air Protection (No. 14/1980);
- Regulation on Admissible Concentrations of Harmful Substances in the Air (Nos. 4/82 and 8/82); and
- Law on Nature Protection (1989).

The following laws and regulations fall under the authority of the Ministry of Agriculture, Forestry and Water Resources:

- Law on Waters (Nos. 16/95 and 22/95);
- Regulation on the Quality of Wastewaters and Means of Their Being Conducted into Public Sewers and Natural Recipients (Nos. 10/97 and 20/97); and

- Regulation on the Classification and Categorisation of Waters (Nos. 14/95, 19/96 and 15/97).

At present, the EIA is the most important legal tool for environmental control of industrial development. However, EIA focuses only on new industrial development and does not adequately deal with the environmental problems of existing industries. There is a need to supplement EIA requirements and procedures with an environmental permitting and auditing system to ensure compliance of existing industries with EU requirements and standards.

New legislation should also clarify the respective responsibilities among authorities in both environmental and spatial planning, and help to ensure proper coordination between them. It should also provide procedures for public participation and the involvement of stakeholders.

There are several legal instruments relevant to the transport sector in Montenegro: the Law on Environment (1996); Law on Air Protection; Law on Waters; the Regulation on Admissible Concentrations of Harmful Substances in the Air; and the Regulation on Environmental Impact Assessment (1997).

Most relevant to the transport sector, the Regulation on Environmental Impact Assessment (1997) requires that large road- and rail projects complete an EIA study. To date, no rail projects have gone through the EIA process. However, the construction of one road tunnel and three bridges have been completed through the EIA process. The Ministry of Environment and Physical Planning considered these EIAs satisfactory, though not highly quantitative. At present, there are no EIA evaluation criteria; nor is there a standing EIA Commission to evaluate EIAs.

Implementation of Council Directive 97/11/EC

Montenegro's present environmental legislation needs to be brought up-to-date if it is to comply with EU requirements and standards.

Stages of the EIA process

The first step

The investor must check whether the proposed project is on the List of Activities Subject to EIA Requirements (Annex 1 of the EIA Act). If "yes", the second step follows.

The second step

The investor must prepare the EIA statement in accordance with the format and content prescribed in the EIA Act and, in accordance with the guidance on the content of the EIA statement, provide further details. The investor pays for the preparation of an EIA statement.

An EIA statement can be prepared only by a registered organisation (Art. 6 of the EIA Act). “Registered” means entry in a court register as a competent legal entity authorised for the preparation of project documentation. Conditions are as follows: (a) there must be an authorised project manager, holding at least a BSc, MSc or PhD, and with at least five years’ work experience; and (b) one authorised specialist for each environmental aspect.

The third step

Once the impact statement is prepared, it is examined and/or revised by the revision commission, which is engaged and paid by the investor. (There is no prescribed revision procedure in the EIA Act).

The investor submits the revised EIA statement, along with the report of the revision commission to the Ministry of Environment and Physical Planning.

The fourth step

A public hearing is not mandatory. Depending on the characteristics of the proposed project or sites, the Ministry may deem it necessary to organise a hearing with public participation. There is no prescribed procedure for public hearings. Usually, such a hearing is organised according to the rules and under conditions defined by the Ministry for each project. In general, the costs of the procedure are borne by the Ministry.

The fifth step

Based on the revision report, public opinion (if there is any) and the opinion of the advisors employed in the Ministry, the Ministry may grant or refuse an ecological permit.

The sixth step

At the moment of issuing an ecological permit, the investor is obliged to pay charges on investment at a rate of 2 percent of the investment value in a national park area, and 1 percent in other areas. The investor can either pay the whole amount at once, or 10 percent of the whole amount at the moment of the issuance of the permit, and the remaining 90 percent in successive increments up to the time of project completion. The payment of these charges precedes issuance of the final document: the operational licence.

EIA training and capacity-building programmes present in Montenegro

The resources allocated for administration and enforcement of environmental legislation are far from sufficient. There is a strong need, not only for allocation of more resources, but for institutional strengthening and capacity building.

The introduction of cleaner technologies and environmental management remains very much an industry responsibility. Industrial modernisation should, in fact, be the joint responsibility of government and industry — particularly given the conditions for approximation with the EU.

Environmental Impact Assessment

Screening

According to the Law on Environment (No. 12/1996) and the Regulation on Environmental Impact Assessment (No. 14/97), all new industries are subject to an EIA procedure before a construction and utilisation permit can be granted. The Law on Environment does not provide for a specific environmental permitting system. The resources and institutional capacity of the Ministry of Environmental Protection and Physical Planning to follow up and control compliance with EIA and other general environmental requirements are extremely limited. Currently, there are only four officers among the staff for environmental control and inspection of industrial activities in Montenegro. Self-monitoring based on voluntary agreements is not used effectively. For new industries likely to be based on investments, and with management provided by large international industrial companies, self-monitoring and voluntary agreements will be important.

Public participation, awareness-raising and education

The legal basis for public participation in decision making is provided in Art. 2 of the Constitution of the Republic of Montenegro, which states that sovereignty belongs to the people, and that they exercise their power both directly and through freely elected representatives. The Montenegrin Constitution guarantees several basic rights that address public participation (the right to expression, association and assembly, and the right to information). More specifically, the right to participate in environmental decision making is proclaimed in Art. 7 of the Law on Environmental Protection. Public participation is also mentioned in Art. 42 of the same law, which states that non-governmental environmental organisations represent organised public participation in environmental decision making. However, this law provides neither procedures nor measures for implementing of this right.

Although the republican Environmental Impact Assessment (EIA) regulation of 1997 (*Official Gazette*, No. 14/97) explicitly mentions public participation in Art. 1, decision making in EIA cases belongs exclusively to the

Ministry of Environment and Physical Planning. Article 7 of the EIA Decree provides for public debate, with two conditions: (1) public debate is not obligatory, and depends on the decision of the Ministry of Environment and Physical Planning; and, (2) it may be organised only for undertakings that have a potentially powerful influence on the environment. In addition, the results of public debate are not binding. The manner in which EIA is regulated gives public officials considerable freedom to avoid public participation. So far, there are no signs that the issue of public participation will be regulated in greater detail in the future. (See also Chapter 1 on the decision making framework for environmental protection.)

Public awareness of environmental issues is rather low and is focused mainly on environmental accidents. The public is more focused on political and economic issues.

Environmental subjects are a part of basic education. However, there is still a lack of coherent staff training for integral environmental protection and improvement, as well as for sustainable development — especially at the highest levels of education.

Defining the contents of an EIA report

Published guidance on the content of an EIA statement explains in detail the required contents of all 10 chapters of the EIA statement prescribed by the EIA Act. The main purpose of this regulation is to help institutions in the preparation of EIA studies.

All new development projects and activities, either planned or carried out by a legal or physical entity, local or foreign, and which are likely to result in pollution of the environment or pose any threat to the environment, are subject to the preparation of an EIA statement. EIA statements, after being elaborated by the registered organisation, are submitted by the investor to the Ministry of Environment and Physical Planning for verification and issue of an ecological permit. Issuance of an ecological permit precedes issuance of an operational licence (Art. 19 of the Environment Law). Guidance on the content of EIA studies is published in the *Official Gazette of the Republic of Montenegro*, (No. 21/97).

EIA documentation must contain, at a minimum:

- a description of the location;
 - a description of the proposed activity and its purpose;
 - a statement of reasonable alternatives, including a “no-action” alternative;
 - information on the environment likely to be significantly affected, and alternative sites;
 - the potential environmental impact of the proposed activity and its alternatives, and an estimate of its significance;
 - a description of mitigation measures to keep adverse environmental impact to a minimum;
 - an explanation of predictive methods and underlying assumptions, as well as the relevant environmental data used;
 - an identification of gaps in knowledge and uncertainties encountered in compiling the required information;
 - an outline for monitoring and management programmes and plans for post-project analysis (when necessary);
 - a non-technical summary, including a visual presentation; and
 - the total amount of investment.
- “Eco-charges” (pollution and investment charges) collected by the Ministry of Environment and Physical Planning amounted to DEM 1.9 million in 2001. Revenues from investment charges amounted to 88 per cent of the total.