

Serbia and Montenegro EIA Overview

SERBIA

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THE REGIONAL ENVIRONMENTAL CENTER
for Central and Eastern Europe



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General Information	5
Important factors to consider when introducing a national EIA system	5
Brief descriptions of legal acts, regulations and other provisions concerning EIA in Serbia	5
Implementation of Council Directive 97/11/EC	5
Major players in the EIA process	5
EIA training and capacity-building programmes present in Serbia	6
Environmental Impact Assessment	7
Links between EIAs and consent for development	7
Screening	7
Defining the contents of an EIA report	7
Reviewing an EIA report	8
Mechanisms for issuing approval	8
Past results of EIA implementation in Serbia	8
Espoo Convention	9
Which legal procedures have been established in Serbia to incorporate requirements of the Espoo Convention?	9
Public involvement	10
Procedural questions	10
Strategic Environmental Assessment	13

General Information

Important factors to consider when introducing a national EIA system

There are no constitutional decrees explicitly regulating the question on competence concerning EIA. The issue was decided when republics adopted their environmental laws in succession: Serbia (1991) Article 4, par. 2; and Art. 16; and Montenegro (1996), Art. 7, par. 4 and Arts. 17-20. The republics were applying mechanisms and procedures of EIA simultaneously in order to regulate actual problems emerging, as well as to realise other other political aims in the field of environment.

Based on the present state of environment legislature, all activities concerning EIA are completely under competence of the republics.

Brief descriptions of legal acts, regulations and other provisions concerning EIA in Serbia

The federal Law on Basics of Environmental Protection contains four articles and two paragraphs on EIA:

- Article 6 specifies the obligation to conduct EIAs “in cases of planning or realising acts that could have negative impact on environment.”
- Article 20, par. 1 specifies the obligation to conduct EIAs for those acts which eventually effect environmental pollution.
- Article 20, par. 2 specifies a list of such acts requiring EIA, in addition to providing confirmation that project realisation and content analysis are within the bounds of legal regulation.
- Article 20, par. 3 specifies that “in cases of trans-boundary pollution, exchange of information on EIA with relevant organs of other states is under competence of the Federal Ministry.”

The first three regulations are more universal in nature character, formulating the EIA requirements in general. The EIA requirements were formerly regulated by republican legislatures — prior to adoption of the Federal Law on the Basics of Environment Protection (1998).

The Espoo Convention was taken into consideration

with regard to Art. 20, par. 3, and an attempt has been made to harmonise Serbian legislation with convention principles, along with the obligations emerging from it.

Both republican legislatures (Serbian and Montenegrin) are familiar with the concept of EIA, and have developed legal norms for its regulation. The EIA concept is not new to domestic practice and legislature.

Implementation of Council Directive 97/11/EC

Council Directive 97/11/EC is not implemented in the national legislation, but the nearly completed *Book of Regulations on EIA* will include an updated list of objects and activities requiring EIAs.

The objective of the new Serbian Law on a System of Environmental Protection (which currently awaits approval by Parliament) is to incorporate EU environmental legislation and to be brought up to international standards.

Major players in the EIA process

Regarding existing legal practice (at both the federal and republican levels), the question is: Who is the “in-country environmental partner” for international cooperation? The groups listed below are in charge of the following:

Federal Level

- The Office of Environment’s Secretariat for Health, Labour and Social Care still acts as the focal point for some conventions (UNEP post-bombing clean-up projects, for example), but with limited capacity and no direct links to ministries at the republican level in either Serbia or Montenegro.
- Other federal bodies involved at least partially in international environmental concerns include: the Federal Ministry for Foreign Affairs (now completing FRY Government Cooperation), Federal Ministry for Foreign Economic Cooperation (Stability Pact within the Regional Environmental Reconstruction Programme for South Eastern Europe — REREP),

Federal Hydro-Meteorological Institute (conducting international cooperation on transboundary water-pollution concerns, such as the Joint Danube and Tisza Survey; ICPDR cooperation and Sava River Projects).

Republican Level

- In the Republic of Montenegro the main partner is the Ministry of Spatial Planning and Environment.
- In the Republic of Serbia the main partner is the Ministry for Protection of Natural Resources and Environment.

EIA training and capacity-building programmes present in Serbia

Ongoing projects in Serbia's environmental sector include:

- The project: Development of Environmental Legislation in FRY, is a result of the Bilateral Cooperation between the governments of Finland

and the Republic of Serbia (Phase I) — from January 2002 to December 2004, which is being made possible by a grant from the Finnish Government, is a joint effort to develop environmental legislation. Phase I will focus on responding to immediate needs of the Republic of Serbia. Phase II is expected to also involve the Republic of Montenegro at the federal level. The purpose of Phase I of the project is to develop a Framework Law on the System of Environmental Protection expected to be in force with the commencement of project activities and other relevant legislation in Serbia. The legislation, to be fully prepared by the end of 2002, will be harmonised with EU environmental legislation regarding: EIAs; integrated licensing and control of activities with environmental impacts; access to environmental information and the most urgently needed legal instruments for full implementation of said legislation.

- The Stability Pact and other REReP projects are ongoing with other countries in the region. Projects under the REReP umbrella include: Institutional Building and Legal Harmonisation: Republic of Serbia, which is being conducted by the OSCE.

Environmental Impact Assessment

Links between EIAs and consent for development

The Government of the Republic of Serbia adopted the Law on Environment Protection in 1991 (*RS Official Register*, 66/91), and the *Book of Regulations on EIA (List of objects and activities that require EIA)* in 1992 (*RS Official Register*, 61/92), whereby environmental protection was formally introduced into the legal system.

Screening

The influence of impact analysis is defined in the *Book of Regulations on EIA*, which includes the list of objects and activities requiring impact analysis. It is necessary to define more this list about particular object and activities that requires impact analysis in order to transfer broader and more specific competency at both the regional and local levels.

Defining the contents of an EIA report

A project description should include (Directive 85/337/EEC):

- physical characteristics of the whole project, including the ground area required for the period of construction and utilisation of the project;
- main characteristics of the production process;
- an estimate on the variety and quantity of expected waste and emissions that could emerge from the utilisation of project facilities;
- a brief review of main alternatives considered by the investor (if included in the project), and an explanation of main reasons, from an environmental perspective, for selecting a particular one;
- a description of environmental factors possibly affected by the suggested project, with special attention being paid to human population, fauna, flora, soil, water, air, climate, material goods (including architectural and archaeological heritage), landscape, and the interdependency of these factors;

- a description of possible significant environmental effects resulting from project operation, the management of natural resources, emissions of polluting substances, and damage from waste removal;
- a description of methods used for evaluating the estimated effects on the environment;
- a description of measures designed to prevent, decrease or control negative effects on environment; and
- excerpts of information stated in previous passages.

EIA has come to be included in the processes of city planning and technical documentation design. It became necessary for the issuance of urban, construction and utilisation permits for objects and activities when the Serbian Government adopted the Law on Spacial Settlement Planning and Arrangement (*RS Official Register*, 44/95) and the Law on Object Construction (*RS Official Register*, 44/95) in 1995. These two laws took principles of environmental protection into consideration.

Due to these processes, EIA has become an integral part of spatial planning and construction when suggested activities are analysed critically in terms of environment impact. A decision on whether or not to go ahead with the construction of project facilities can be made only after such an analysis is performed. If approval is granted, then additional conditions may be imposed.

EIAs consider every possible impact of alternative technologies and locations on project realisation. A completed study identifies all potential impacts during the period of construction, in addition to the operational life-span of the realised project — including any contingency plans in case of accident.

When conducting an EIA, project compliance with government programmes must be taken into consideration concerning the project. EIAs must present an overview of the eco-system, an estimate on the range and significance of possible impacts, as well as protective measures and monitoring methods for every possible significant impact.

Reviewing an EIA report

The Ministry for Protection of Natural Resources and Environment, according to Art. 16 of the Law on Environment Protection and Book of Regulations on EIA, issues a "decision on accepting environment protection requirements" (after fulfillment of prior EIA requirements) and a "decision on approval of a delivered, detailed EIA" (Environmental Object and Activity Impact Analysis) in order to obtain necessary urban and construction permits from competent local or republican bodies.

The Decision on Accepting Environment Protection Requirements and Prior EIA has become an integral part of urban planning documentation, and one of requirements which an investor must fulfill in order to obtain an urban planning permit from competent local or republican bodies.

Detailed EIAs have become an integral part of technical documentation, and a Decision on Approval of a Delivered, Detailed EIA is one among several documents that any investor must have in order to obtain a construction permit from competent local or republican bodies.

According to the Book of Regulations on EIA and its "list of objects and activities requiring impact analysis," realisation of an EIA is compulsory for all objects and activities requiring a permit from the Ministry of Planning and Construction, or any other competent ministry according to regulations on planning and construction.

EIA reports are not fully implemented into national legislation, but they exist in the new Serbian Law on a System of Environmental Protection, which is now awaiting Parliament's approval.

Serbian law needs additional regulations specifying rules relevant for: public involvement in the decision-making process, conducting post-project analysis — especially with regard to time-frames, scope and application modes of objectives.

Mechanisms for issuing approval

The investor delivers an EIA, completed by a competent professional organisation, to the Ministry for Protection of Natural Resources and Environment of the Republic of Serbia, together with a request for issuing approval.

The mechanism for issuing approval requires an examination of delivered documentation by an expert team from within the Ministry, and well as an inspection of the location where any facility construction shall take place. According to republic regulations, consultations with various experts are required for those objects, technologies and activities capable of having negative effects on either the quality of environment or health of the local population.

According to Art. 88, par. 3 of the Law on Environment Protection, approval is conditional upon

the obligation of the investor to pay 1 percent of the entire value of the suggested project to the Environment Protection Budget of the Republic of Serbia (according to the polluter pays principle).

Environmental protection measures, being an integral part of the EIA, must be considered during the preparation of technical documentation and construction of the suggested object, especially in the case of accidents and reparation. Implementation of necessary protective measures during construction falls under professional regulation of the Ministry — namely, the Republican Environmental Protection Inspectorate.

There is a lack of regulations within the federal and Serbian legal system regarding the analysis of federal and domestic legal regulations and practice concerning public involvement in the decision-making process. Obligations in this regard are limited to domestic law. Since this situation raises a number of practical problems, it is clear that these questions should be resolved through adequate norms of national legislation.

Past results of EIA implementation in Serbia

In those countries preoccupied with social and economic problems, such as Republic of Serbia, environmental issues are not a top priority, and the difficulty of moving ahead with viable environmental legislation reflects these difficulties.

During the period from 1992 to the present, the number of completed EIAs submitted to competent authorities has grown from 60 per year to over 1,000. The wide variety of facilities and projects for which EIAs have been completed, however, has resulted in a failure to focus on a number of important criteria. Many projects for which EIAs have been carried out are not of great republican or national significance. In the interest of quantity over quality, vast amounts of knowledge and experience have been spent on "small polluters", while projects posing greater environmental risks have not been so carefully examined.

The Decision on EIA Approval is only one of several documents an investor must submit in order to receive an urban-, construction- or utilisation permit from competent authorities, though this particular permit has became the most important document in resolving various conflicts of interest.

Competent services are also facing the problem of illegal, unregulated constructions. Serbia's Office for Environmental Protection does not possess the legal foundation necessary to regulate previously built facilities, which represents a serious problem.

It is evident that the official list of projects and activities contains too many general descriptions, and the vagaries of these definitions leads to various interpretations.

Eswoo Convention¹

Which legal procedures have been established in Serbia to incorporate requirements of the Espoo Convention?

Principles of the Espoo Convention and their effective application in Serbia and Montenegro raise a number of practical questions at both the federal and republican levels:

- What are the complications that arise from being a federal state composed of two separate republics?
- Which body shall be designated as the competent authority for writing the EIA procedure into national law?
- How will the public be involved in this procedure?
- How will EIA procedure be incorporated in an international, transboundary context with regard to the following: dissemination of information, document preparation and the contents thereof, and the final decision-making process regarding activities connected with implementing EIA procedure in a transboundary context?
- Who will carry out post-project analysis? How will the procedure be carried out?

The Espoo Convention does not contain special decrees concerning composite states (federations): its decrees refer in like manner to both unitary and composite states. As is the case with several other international contracts, it is necessary to bear in mind the specifics of Serbia and Montenegro when applying principles of the Espoo Convention.

Likewise, the divisions of competence between the federation and member republics concerning realisation of EIA in Serbia is not realised on a systematic and functional basis, nor with objectives clearly formulated in advance. There are no constitutional decrees explicitly regulating questions of competence concerning EIA.

The Federal Law on Basics of Environmental Protection contains the following provision:

- Article 20, par. 3 specifies that: “[I]n cases of transboundary pollution, the exchange of EIA information with relevant bodies of other states is under

competence of the Federal Ministry.” (This provision was drafted in such a way as to draw closer towards ratification of the Espoo Convention and the potential obligations this entails.)

When implementation of the Espoo Convention begins, the federal organ in charge of environmental matters will, according to existing legislature, be authorised to exchange EIA information with competent bodies from other states. Thus the federal body could actually gain competence in the following activities:

- receiving necessary information and documentation, according to the Espoo Convention, from competent bodies from other states, and to forward these to competent republican bodies;
- forwarding necessary information and documentation received from competent republic bodies, according to the Espoo Convention, to competent bodies from other states;
- delivering and receiving final decisions on proposed activities adopted by competent bodies in the country and from abroad, and to inform republican bodies on these issues;
- taking part in the exchange of information concerning research programmes detailed in Art. 9 of the Espoo Convention; and
- taking an active part in closing new bilateral and multilateral agreements or other arrangements, in accordance with Art. 8 of the Espoo Convention. This could also include the preparation of draft agreements, consulting on this procedure with competent federal and republican bodies, and forwarding these drafts to foreign partners. When realisation of these drafts is initiated by other states, the activity of federal organs could include: the reception of such documents and their forwarding to competent republican (and, if needed, federal) bodies; organising discussions on these drafts; finalising principles of Serbia and Montenegro; informing partners from abroad; participating in negotiations with representatives from the competent bodies of other states; and finalising the text of agreements and introducing them to parliamentary procedure.

The first requirement for implementation of the Espoo Convention within a national framework is to establish the EIA procedure. It bears repeating that this procedure has been conducted for several years at the republican level.

More detailed questions on the procedure itself are regulated in both republics by legal acts. Thus the Serbian legislature is familiar with EIA concepts and has developed legal norms for their regulation. In other words, this concept, regulated by the Espoo Convention, is not new to domestic law and practice. In this way, one of the first requirements for implementation of the Espoo Convention's obligations in Serbia and Montenegro has already been fulfilled.

On the other hand, the difference between the two lists can be argued. There is the list of activities requiring EIAs in accordance with national regulation and another list, which is included in Annex I to the Espoo Convention requiring EIAs according to convention standards. Obviously, these two lists share many common elements, but there are significant differences. It should also be taken into consideration that Serbia and Montenegro has drawn up separate lists for activities requiring EIAs, and there are particular differences between them.

There is a list of 17 specific activities listed in the Espoo Convention that contains some generalities that can lead to different interpretations within differing frameworks of national legislatures. Examples of this include: cutting woods in "large" areas; "large" petroleum and chemical storage facilities; "significant" mining activities; "large" gas and petroleum pipelines; and other similar terminology.

Public involvement

The EIA procedure concerning public involvement is, to a certain degree, less confusing. Principles of the Espoo Convention require that states involve the public in the decision-making process concerning the EIA procedure (Art. 2, par. 2). The public must also be entitled to compensation for damages caused to the environment by projects existing either within or beyond a country's borders (Art. 2, par. 6). Convention principles explicitly require possibilities for open public dialogue and debate, and that the public be able to comment on any proposed activities.

These principles openly refer to standards accepted in the subsequently adopted Aarhus Convention (1998) on information accessibility, public involvement in the decision-making process and accessibility of the legal system in question concerning the environment. Also, these standards refer openly to relevant sources of European Union Law.

An analysis of domestic legal regulations and practice concerning public involvement in the decision-making process reveals the lack of regulations enabling public involvement in both the federal and Serbian legal system. Espoo Convention regulations and principles on this subject are omitted altogether in domestic legislation. Thus these national regulations should be adjusted and harmonised according to the Espoo Convention.

Since implementation of this procedure poses complicated practical problems, these questions should be addressed through adequate norms of national legislation. This is attainable either by adopting a special regulation on this question, or by modifying existing EIA regulations and determining the possibility of public involvement in this process with greater precision.

It is likely that implementation of this convention principle will not be possible without adequate regulations of domestic legislature that can address the specifics of the situation in Serbia and Montenegro, and which can be developed afterwards into components of national law.

Procedural questions

Information procedure

Information procedure is specified in special principles of the Espoo Convention. The Law on Basics of Environment Protection (federal law), includes only a norm specifying that the exchange of EIA-related information with competent bodies from other states is realised by a competent federal ministry (Art. 20, par. 3).

All other regulations of the Espoo Convention regarding the information procedure could either be directly implemented or involve certain modifications to domestic regulations. The latter step would enable a more precise arrangement of these issues — especially where the internal coordination of particular activities is necessary.

This group of Espoo Convention regulations includes the following:

- informing (on behalf of the state from which the damage originates) all parties who could suffer the effects of proposed activities;
- establishing a deadline for informing these parties (as early as possible, and, at the very latest, when the general public is informed about such proposed activities);
- composing and coordinating the content of information regarding any damage originating from Serbia and Montenegro, and under whose competence such activities should be realised;
- ensuring the inflow of other relevant information upon receiving a response from an endangered state (questions concerning procedure, schedule for pres-

- entation of comments, information on proposed activity and any possible transboundary effects);
- ensuring adequate response when Serbia and Montenegro is the country suffering damage; i.e. when there is a possibility that Serbia and Montenegro will suffer transboundary effects of a proposed activity taking place in another country (certification upon receiving such information, a deadline for participation in impact analysis, information concerning potentially endangered environment under its competence when this information is necessary for the preparation of necessary impact-analysis documentation);
- taking action if any information on proposed activities is not issued and transboundary effects (either caused by or suffered by Serbia and Montenegro) and exchanging necessary information before the Investigation Committee when it is not possible to reach an agreement on questions determining the possibility of transboundary effects from proposed activity (Annex IV to the Convention); and
- delivering public comments and objections on a proposed activity on behalf of a region that could suffer environmental damage (Art. 3, Par. 8).

Document preparation

It is necessary to modify the laws of both republics regarding the preparation of EIA documentation. Nevertheless, the character, scope and manner of such modifications must be examined in detail. This applies to both of the following:

- When Serbia suffers any environmental damage, the Espoo Convention lists the required documents in Annex II. It is clear that this content, according to domestic regulations, is, to some degree, already included in a detailed EIA.
- When damages occur that originate from activities within Serbia, complete EIA documentation within its possession must be distributed to interested parties.

In the interest of creating an atmosphere of free public dialogue and debate, it is also important to determine and clarify the way in which this documentation should be distributed, both to administrative bodies and the public of a country suffering damage.

Conducting consultations on the basis of documentation

Serbia and Montenegro also requires the addition of certain rules for coordinating consultation between representatives (from Serbia and Montenegro or abroad)

on behalf of any state suffering environmental damage. This involves careful consideration of consultation deadlines, in addition to preparing and establishing the contents of these consultations.

Reaching a final decision

Since domestic federal law regulates the question of competence for the exchange of information, it is clear that final decision making should lie with the relevant federal body.

Existing regulations should be modified in accordance with principles of the Espoo Convention on the decision-making process — especially those involving the general public and the results of completed consultations.

It is also necessary to consider situations that could emerge in cases when subsequent relevant information on transboundary effects come to light — information unknown at the time of reaching a decision and before the suggested activity has begun. Such information may involve revised damage estimates, failure to fully inform parties, agreeing to new rules of consultation, etc.

Post-project analysis

Domestic law also requires additional regulations relevant for conducting post-project analyses, especially with regard to scope, modes of application and scheduling. All such circumstances are formulated in Annex V to the Espoo Convention (monitoring harmonisation of project aims with those issued in an authorised permit, impact overviews of management preparedness in case of accident, acknowledgment of previous estimates, drawing effectively from past experience, etc.).

It is clear that certain prerequisites for implementing Espoo Convention principles already exist. This is evident from recent accomplishments within environmental law, as well as existing EIA practice. It is also clear that some amendments and additions to existing regulation will have to occur in order to secure fuller implementation of certain Espoo Convention principles. It will also be necessary to regulate certain issues in more detail through special legislative measures.

End notes

¹ Serbia and Montenegro is not party to the Espoo Convention.

Strategic Environmental Assessment

No strategic environmental assessment legal instrument for spatial planning is currently included within Serbian law. The instrument, however, has been written into the new Serbian Law on a System of Environmental Protection, which is awaiting approval from Parliament. A book on SEA regulations will also be published.