

Regional Overview of Current Reforms of EIA Systems in South Eastern Europe

Status as of June, 2003

This chapter provides a summary of EIA requirements and procedures in SEE countries prepared on the basis of the comparative analysis table and national reports from Albania, Bosnia and Herzegovina, Croatia, FYR Macedonia, Serbia and Montenegro, including, Kosovo (territory under UN interim administration). It describes existing and proposed policy provisions and requirements for public involvement, screening, scoping, review and monitoring. In addition, it focuses on the accreditation of experts and companies, which was one of the recurring issues in the debates over the establishment of EIA systems in the SEE region.

Existing and Planned Policy Provisions

All SEE countries are in the process of aligning their EIA systems in accordance with EC requirements.

New national environmental framework laws with EIA provisions were adopted in 2003 in Albania, Kosovo & Bosnia and Herzegovina. The Federation of Bosnia and Herzegovina did the same in 2003 while the Republika Srpska did this in 2002. These countries are in the process of developing secondary EIA legislation. Albania also passed a new EIA law in 2003.

The proposed Serbian Environmental Law on the System of Environmental Protection (hereinafter Environmental Protection Law) lays down basic EIA provisions and has been submitted for approval by Parliament (May 2002). The subsequent EIA Regulation, which lays down detailed EIA procedures, is currently under review. Montenegro initiated reforms to the EIA Act in 2003.

FYR Macedonia is in the process of drafting the Framework Environmental Law, which will provide a future basis for an EIA system.

Croatia already has well-established environmental legislation and practices that apply to EIA. First introduced in 1980, EIA procedure was revised by the Law on Environmental Protection (1994) and now faces amendment in order to bring the EIA legislation in line with the EC EIA Directive.

Ongoing legislative efforts in SEE countries are supported by various institutional strengthening programmes offered inter alia by REReP, the European

Agency for Reconstruction (EAR), the Mediterranean Technical Assistance Program (METAP), the World Bank and other EC assistance projects.

However, as shown by the experience of other Central and Eastern European countries soon to gain EU membership, the transposition of EC legislation is a much simpler exercise than the actual implementation of new requirements. The practical implementation of new provisions is likely to reveal many inconsistencies in the newly introduced EIA systems, which may call for further legislative amendments.

Public Involvement

Provisions for public involvement are not yet in full compliance with EC requirements. According to the requirements of the EIA Directive, the public should be involved at least at the review stage of EIA. This requirement is met only by Bosnia and Herzegovina, Kosovo and Croatia.

In Bosnia and Herzegovina, an appropriate ministry is responsible for informing the public, organising a public hearing, if required, and sending received comments to a developer.

Similarly in Kosovo, based on its new environmental protection law, the EIA report has to be available for public review and a hearing.

There are no detailed prescriptions for public involvement in Croatia. However, relevant state agencies; likely affected municipal-, county- or regional authorities; members of the public either affected, likely to be affected or having an interest in the project; and the general public should be consulted at the review stage. A developer has an obligation to describe whether the public has been consulted in the EIA report.

In Montenegro, there are certain provisions for a public hearing at the review stage. However, a public hearing is (a) not obligatory and depends on the decision of the Ministry of Environment and Physical Planning, and (b) it may be organised only for developments that have a potentially significant impact on the environment. In addition, the results of public debate are not binding.

In Albania, consultation with various authorities and institutions is obligatory, but there is no requirement for

public participation at this stage. However, based on current practice, the public most likely to be affected by a particular development is usually consulted at the review stage.

Macedonia and Serbia have no requirements for public involvement at the review stage.

SEE countries have no obligatory provisions for public involvement at other stages of the EIA process. However, it will be changed by the upcoming wave of new environmental legislation, and particularly by secondary legislation on EIA. Provisions of the Aarhus Convention and recent Directive 2003/35/EC (regarding the implementation of the Aarhus Convention) will be incorporated into national systems that will provide an opportunity for improving public participation in EIA. Even so, much remains to be done in this respect.

Screening

A majority of SEE countries currently legislate or propose to legislate provisions for screening in secondary EIA legislation. There is usually no problem in adopting the Annex I list. However, Annex II already poses more difficulty in terms of establishing and/or interpreting case-by-case criteria and thresholds.

Albania, due to the recent adoption of its EIA law (2003), has the most advanced legal transposition of screening requirements established by the EC EIA Directive. The two annexes follow Annex I and Annex II of the Directive, with full EIA required for Annex I projects and partial EIA required for all projects listed in Annex II. However, the complete practical implementation of these legal requirements will require serious capacity-development efforts.

In terms of practice, Croatia has a long tradition of EIA and the most well-established screening system in SEE. The Croatian Rule Book on EIA (2000) has one list of projects (Annex I of the Rule Book on EIA) subject to obligatory EIA, which incorporates many elements of Annex I of the EIA Directive. However, since it was constructed on the basis of a different approach to grouping activities, it is not in full compliance with the EC Directive.

Bosnia and Herzegovina and Kosovo have just passed new environmental protection laws, which include EIA provisions that provide the basis for introducing a screening system based on both Annex I and Annex II. Both countries are still in the process of defining detailed arrangements concerning screening criteria and thresholds.

Serbia's proposed draft Environmental Protection Law, which includes EIA provisions, has been submitted to Parliament (May 2002) and is awaiting approval. A proposed subsequent EIA regulation includes a very comprehensive screening system that fully incorporates Annex I and II of the EC EIA Directive. The proposed

system for discretionary application of EIA based on Annex II seems to be quite complicated, and its practical application may pose some difficulties. The regulation was prepared within the Yugolex project and submitted to the Ministry for Protection of Natural Resources and Environment in mid-June 2003.

Montenegro is just beginning to transpose its EIA legislation in line with EC requirements. It will follow a similar process as Serbia, since the new legislation will be developed within the Yugolex technical assistance programme.

FYR Macedonia is in the process of drafting its own framework environmental law. Chapter XI of this law will include provisions for EIA. Parallel to this, regulations on screening are designed and will follow Annex I and Annex II of the EC EIA Directive.

Scope of EIA Reports

Both Kosovo and Serbia have adopted the content of the EIA report provided in the EIA Directive on an unofficial basis, and for an interim period, until new EIA systems have been set in place. A similar approach has been adopted in FYR Macedonia, which also applies, on a temporary basis, the unofficial scoping guidelines prepared by the Ministry of Environment and Physical Planning, following the provisions of the EIA Directive.

Montenegro's EIA act (1997) and subsequent guidance on EIA content already closely mirror the requirements of the EIA Directive.

Albania's situation is slightly different since the new law requires two types of EIA to be prepared (full and partial); thus provision is made for scopes of both types of EIA. However, its scope requirements for obligatory (full) EIA are in compliance with the EIA Directive.

Croatia will incorporate the EC scoping requirements into the existing EIA system following the course of the upcoming legislative amendment. The scoping requirements in the Rule Book on EIA (2000) do not presently address all of the content requirements in the EIA Directive. For example, the description of main alternatives, aspects of the environment likely to be affected, and likely significant effects are not addressed adequately, and there is major focus on the location's acceptability and evaluation.

The proposed draft by-law on the scope of the EIA report in Bosnia and Herzegovina is fully compliant with the EIA Directive. Additionally, it incorporates the Espoo Convention's reference concerning the required description of transboundary impacts, along with measures suggested to address them.

Review

The most advanced EIA review system is in place in Croatia. The Ministry of Environment and Physical Planning establishes an independent commission to undertake the review function. The commission evaluates the thoroughness of the EIA study and quality of evidence supplied by a developer. It consists of at least five members proposed by government bodies, local government representatives and relevant technical experts. Commission members are appointed for each respective development, but if a larger number of proposed developments fall in the same category, a permanent commission may be appointed. For example, permanent commissions have been established for roads and airports. The Ministry of Environment and Physical Planning also may authorise the authorities of a respective county, or the City of Zagreb, to appoint a commission for assessing development. At the end of the review process, the Ministry of Environment and Physical Planning (the final competent authority for the review) receives the Commission's decision to approve or refuse a proposed project, together with all the other relevant documentation, and makes its final decision accordingly. In a situation when the information provided to the commission is insufficient, or it faces a dilemma concerning the recommendation, the final decision also rests with the Ministry.

In other countries, the relevant ministries and/or regional authorities that are competent EIA authorities are responsible for the review. In some cases, for example in Montenegro and Albania, external experts are used for a technical review.

Monitoring

Except for Serbia and Kosovo, SEE countries have made some type of provision for monitoring.

For example, in Bosnia and Herzegovina, monitoring requirements are defined in the EIA report, and the developer has to comply with the monitoring programme that becomes part of the environmental permit. A similar but less comprehensive requirement is in place in Montenegro.

In Albania an environmental audit can be requested if complaints are made; and in Croatia monitoring is required only in necessary or justified cases.

In FYR Macedonia, there are no special monitoring requirements, and they are applied only within the existing environmental inspection system (environmental inspectors are authorised and obliged to evaluate the compliance of facilities with present technical norms and equipment standards, in addition to evaluating their compliance with other legal norms). However, an interesting example of EIA monitoring is applied by various

national banks (e.g. Komercijalna Banka Inc. Skopje). All projects financed by a given bank are obliged to monitor basic pollution parameters against existing legal requirements.

Accreditation

The accreditation of individual experts and companies authorised to carry out an EIA process appears in discussions at a governmental level in the SEE region. There are two reasons for taking this step. Firstly, there is no real EIA consultant market available in these countries, except in Croatia. Secondly, there is no adequate EIA review system in place that could safeguard the quality of an EIA report. The establishment, or further continuation, of already existing accreditation systems (even for an interim period until an EIA consultant market is developed) is generally regarded as the best way to ensure EIA quality control.

Currently, accreditation systems exist in all SEE countries. Ministries of environment are the bodies responsible for issuing licenses, and they hold updated lists of accredited individuals and companies who may be consulted by a developer.

There is no accreditation system that is applied on a voluntary basis or administered by a non-governmental body. Such a system exists, for example, in the UK where the Institute of Environmental Management and Assessment accredits EIA practitioners and companies (See <www.iema.net/>). This institute allows registered individuals and companies to demonstrate that they are experienced and qualified to carry out EIA activities. Another example of sharing EIA know-how is the International Association for Impact Assessment (see www.iaia.org).