Policy Recommendations for Assessing Environmental Impacts

CO-SEED

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One of the CO-SEED project activities in 2016 and 2017 was a Comprehensive Analysis of Environmental Impact Assessments and Strategic Environmental Assessments. The aim of this analysis was to determine the general characteristics of the regulatory framework that prescribes these procedures as well as its compliance with EU legislation, while particularly dealing with the factors that affect its implementation within the general political, economic, and social context in Serbia.

This analysis includes laws and bylaws that regulate the environmental impact assessments (EIA) and strategic environmental assessments (SEA), procedures and mechanisms for implementation, as well as good practice principles and examples. Compliance of national regulations with corresponding EU regulations was analyzed, as well as plans for further harmonization and application, areas where improvements are necessary are identified, and recommendations for improvements are made accordingly.

Recommendations also rely heavily on previously published analyses and research, as well as information obtained through consultation with other CSOs (among others beneficiaries of the CO-SEED Grant program), experts from both domestic and foreign companies engaged in EIA and SEA processes and the public sector. The goal is to present an already significant accumulated experience in this field and thus facilitate the cross-sectoral dialogue which leads to the improvement of these processes.

Considering that the Law on Amendments to the Law on Environmental Impact Assessment is under preparation, and its draft was informally accessible to the expert public, there is a raised concern that certain proposed amendments are designed to simplify the procedure of environmental impact assessments to the detriment of environmental interests.
With this in mind, the following is deemed necessary:

Policy recommendation 1. ***Harmonization of the Law on EIA with the new EIA Directive of the EU***

The process of harmonization of regulations with EU standards is defined in the strategic documents of Serbia within the process of EU accession. In the interest of protecting the environment, EIA process should be completed with total and consistent transposing of EU legal standards. Transposition of amendments to the Directive 2011/92/EU, implemented by Directive 2014/52/EU, would create the appropriate framework for improving the quality and content of EIA studies, determine deadlines for stages of the process that will ensure compliance with high

standards of environmental protection and enable a more significant public participation and access to justice. The amendments would establish the obligation to prevent, reduce and eliminate consequences of adverse impacts on species and habitats protected by Directive 92/43/EEC on habitats and Directive 2009/147/EC on birds. Further, these amendments would establish an obligation to create common procedures to fulfil the provisions of the directives, and impose precautionary measures for projects that could have significant adverse effects on the environment, due to their susceptibility to major accidents and/or natural disasters. An important change refers to the duty of competent authorities to fulfil their obligations in the EIA procedures with objectivity and not allow there to be situations that lead to a conflict of interest.

Policy recommendation 2. ***Amending provisions of the Law on EIA that refer to public information by prescribing legally mandatory notifications through electronic media. It is necessary to consider changing the provisions on informing the public through local papers, so that information can be more easily accessible to the public throughout the territory of Serbia.***

Although Article 29 of the Law on EIA provides the possibility of notifying the public through electronic media, Directive 2014/52/EU actually makes it obligatory for member states to provide the public with access to information in electronic format, and to "take the necessary measures to ensure that the relevant information is electronically accessible to the public, through at least a central portal or easily accessible points of access, at the appropriate administrative level". A central portal would provide a simpler approach to information at national, regional and local levels, and at the same time eliminate the need and costs of establishing and managing such portals by local self-governments. A good example of this practice is the "EIA Information System" in the Czech Republic. Also, the obligation to inform the public through a paper that is published across the whole territory of Serbia, as opposed to local papers, would make the access to information equal to all citizens.

Policy recommendation 3. ***Extending or precisely determining deadlines for delivering opinions of interested agencies and organizations, as well as interested public.***

The Law on EIA enables interested agencies and organizations, as well as interested public, to give their opinion during the stage of decision regarding the need for an EIA request (Article 10), request for determining the scale and content of EIA (Article 14) as well as during public insight, presentation and discussion on the EIA study (Article 20). However, set deadlines, of 10, 15 and 20 days, are often insufficient to enable adequate familiarization with the matter and collection of relevant data required to evaluate the requests and studies (e.g. deadline under Article 10 is shorter than the deadline for delivering information specified in the Law on Free Access to

Information of Public Importance, that allows citizens to find out on the basis of which data do the institutes for nature conservation issue conditions and opinions relevant to EIA). This practice hinders wider and better public participation, which could be ensured by prolonging these deadlines.

Policy recommendation 4. ***Considering the introduction of minimum data necessary for reliable assessments.***

One of the more prominent weaknesses of EIA studies is data quality, especially when it comes to data on biodiversity, water, landscape and climate changes. Many EIA studies, as well as requests for decision on the need for EIA, use obsolete literature data, data related to a wider area, inaccurate or data transcribed from other studies, so the possible impacts of the project are evaluated without adequate field research and credible knowledge on the existing state of the environment. Prescribing legal obligations for a necessary minimum of data collected should be considered in order to ensure reliable assessments.

Policy recommendation 5. ***Introduction of a licensing system for legal and natural persons that participate in the development and approval of EIA studies and SEA reports.***

The Law on EIA stipulates that a legal entity, or an entrepreneur, forms a multidisciplinary team composed of persons with evidence of qualification for preparation of EIA studies (higher education degree of appropriate studies and at least five years of professional experience, or the title of an official planner), and thus formally ensures that studies are made by qualified experts. However, introducing special rules for obtaining licenses for development of EIA studies would be a higher professional requirement for their developers and so the quality of studies would improve. The same principle should also be applied to the appropriate provision in the Law on SEA, which allows the possibility for the report developer to form a multidisciplinary team of experts qualified for the analysis of each SEA element, but that should also be a legal obligation. Finally, the introduction of licenses for persons participating in the work of technical and expert commissions would ensure higher quality evaluations of produced studies and reports. Other alternative model would be the introduction of provisions in the Law on EIA that would prescribe who cannot be the study developer. This would make it impossible for dependents, daughter-companies and similar parties with a clear conflict of interest, to be the developers of studies for parent-companies, which is a frequent practice in Serbia.

Policy recommendation 6. ***Amending the Law on EIA with regards to the mandatory documentation that is provided with requests for decision on the need for EIA and determination of scale and content of the EIA study.***

The current Law on EIA, and in particular the draft with amendments, reduces the number of mandatory documents that are to be provided by the operator with the requests (Articles 8 and 12). This in particular concerns the lack of the operator's obligation to provide evidence on the rights to real estate (proof of ownership, lease, use), which is absolutely unacceptable in terms of legal security, i.e. minimum requirements that the operator must fulfil in order to legitimize himself as a party to the proceedings – operator having the rights to the real estate. Also, it is unacceptable that these requests are enclosed with just a conceptual design or any other general project outline, as those can provide important information for the study (e.g. technology, capacity, BAT guaranties and similar). Suggested change to the Law on EIA is to explicitly prescribe the obligation of the operator (investor, project developer) to produce appropriate evidence on the right to real estate where the proposed facilities are planned to be developed, i.e. which are objects of the study, as well as project documentation of a higher order (e.g. main project, derived state, detailed project, technological project, etc.).

Policy recommendation 7. ***Ensuring the full implementation of the Aarhus Convention by harmonization of the Law on EIA provisions with provisions of the Data Secrecy Law.***

Article 27 of the Law on EIA, which prescribes the obligation to submit for inspection the complete documentation on the conducted EIA procedure, excludes documents protected as business, official or state secrets. This provision of the Law on EIA leaves room for misinterpretation or abuse in deciding which documents will be publicly reviewed.

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Policy recommendation 8. ***Amending provisions of the Law on EIA regarding the procedure for EIA study evaluation, in order to ensure equal participation of the public at this stage.***

Article 23 (2) of the Law on EIA enables the president of the technical committee to invite to the commission sessions the project developer, EIA study producers, and representatives of authorities responsible for the issued conditions and opinions. Paragraph 3 of the same article also includes that, upon the proposal of the technical committee, responsible authority can demand from the project developer to perform amendments to the EIA study within a specified deadline. Deficiency of the Law on EIA lies in the fact that the interested public, as a party, is completely excluded from the procedure of the requests for amendments to the study, without the opportunity to participate in the commission sessions, without the right to declare on the final version of the study, which, paradoxically, can be contested only in the administrative dispute before the Administrative Court. These provisions need to be amended for the purpose of securing equal and timely participation of the public at all stages of the process.

Policy recommendation 9. ***Improving the Law on SEA in terms of overall opportunities for public access to information, participation in decision making and judiciary processes.***

The Law on SEA is under significant criticism regarding the effectiveness of public involvement in the process of drafting the reports, since the public is not treated as a party to the proceedings, nor does the law contain provisions on legal protection in the event of violation of the procedure for participation in the public discussion. Therefore, this law does not meet standards prescribed by the Aarhus Convention, ratified by the Republic of Serbia, and does not transpose the provisions of the EU SEA Directive that determines obligations of the competent authorities to make information about the decision on implementation or non-implementation of the SEA publicly available, as well as its reasoning (Article 3). Consequently, it is necessary to make changes to this law so that the public would receive an active legitimation with full capacity of a party in the process.

Policy recommendation 10. ***Establishing mechanisms to prevent conflict of interest in EIA and SEA procedures.***

In so far identified situations, conflict of interest arises from the absence of the obligation to separate functions of conducting the EIA procedure from the inspection supervision, development of EIA studies by related legal entities, and situations when local self-government units, as founders of public enterprises, are project holders and at the same time the authorities responsible for implementation of EIA or SEA procedures. Separation of functions, and transfer of authority from local to republic or provincial level, are some of the possible measures to prevent these occurrences that need to be to systematically resolved.

Policy recommendation 11. ***Harmonization of provisions of the Law on Planning and Construction with the Law on EIA.***

The Law on Planning and Construction recognizes the importance of SEA and clearly defines it within its provisions, which, unfortunately, is not the case for EIA. The only article of The Law on Planning and Construction mentioning EIA study is the article 117 that actually contradicts the Law on EIA, as it implies that the EIA procedure can already begin during the general project phase that comes before the conceptual design (which is among the needed documents for filing a request for decision on the need for EIA, under Article 8 of the Law on EIA). It is essentially important to harmonize the provisions governing the procedure of issuing the permits for location (Articles 54-57), construction (135-137), and use (154-160).

EIA study, and agreement to perform the study, or decision that no EIA is required, are an integral part of the documentation that is enclosed with the application for the issuance of permits for construction or with the application for initiation of project implementation (construction, construction works, technology change, change of activity and others), as stated in the Article 18 of the Law on EIA. There is no corresponding provision in the Law on Planning and Construction, because of which building permits for projects subjected to EIA can be issued without the implementation of this procedure, that is, the impact assessment is enclosed as a necessary document only with the application for initiation of project implementation. This fact largely formalizes and takes the point out of the significance of this procedure. Also, it is especially important to harmonize the provisions governing the work of the Technical Committee that assesses the fulfilment of conditions from the decision to grant consent to the EIA, i.e. qualifications of persons participating in the Technical Committee on the review of facilities and obligations of authorities in charge of issuing the use permits to notify the authorities on EIA about the appointments.

Policy recommendation 12. ***Ensuring conditions for the implementation of the appropriate assessment of impacts on the ecological network.***

Of key importance for the implementation of the appropriate assessment of impacts on the ecological network is the adoption of the Regulation on the appropriate assessment. This procedure, which is stipulated by Article 10 of the Law on Nature Protection, including preliminary and main appropriate assessment, needs to be defined within the framework of the EIA and SEA procedures, since the preliminary appropriate assessment is conducted before or during the stage of obtaining the location permit.

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