

Policy Recommendations for Assessing Environmental Impacts



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The analysis on Implementation of Environmental Impact Assessments and Strategic Environmental Assessments in Montenegro (hereinafter Analysis on Implementation of Environmental Impact Assessment or Report) was prepared between August and October, 2016 as part of the project [Civil Society Acts for Environmentally Sound Socio-Economic Development \(CO-SEED\)](#).

The Analysis on Implementation of Environmental Impact Assessment (hereinafter Analysis or Report) is the result of careful consideration of relevant regulations and practices of their implementation. It also included an overview of comparative experiences in other countries, mainly EU members. The first step to prepare the Report was an analysis of existing laws and by-laws related to Environmental Impact Assessments (EIAs) and Strategic Environmental Assessments (SEAs). This included analysis of the degree of compliance between national and relevant EU regulations, and plans for further approximation, implementation and enforcement. The Report also drew upon previous studies and analyses related to this topic. Finally, important input for the Report was obtained through interviews with people involved in the implementation of EIAs, such as representatives of competent authorities at national and local levels, representatives of professional companies, and individuals involved in the making of EIAs, as well as representatives of civil society organizations.

Recommendations to improve relevant regulations and practices for implementation of EIAs and SEA have been defined based on the above analyses, issues, and conclusions arising from the Report.

These recommendations are as follows:

Policy recommendation 1. Additional harmonization of the Law on Environmental Impact Assessment with the New EIA Directive is necessary.



Directive 2011/92/EU was amended by Directive 2014/52/EU and that modification has not yet been transposed into national legislation. Provisions within the Law on Environmental Impact Assessment should be modified to fully transpose Directive 2014/52/EU. This includes, among other things, a focus on habitats and species protected by the Habitats Directive (Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora) and the Birds Directive (Council Directive 2009/147/EC on the conservation of wild birds) for biodiversity-inclusive EIAs. It is also to enable coordinated and/or joint procedures of impact assessments and evaluation of acceptance. More attention is also to be paid to the assessment of the impacts that

may arise due to the risk of accidents or disasters during the execution of a project. Amendments will strengthen the obligations of developers and the powers of competent authorities to ensure sufficient quality of assessments, and that the duration of public hearings is not to last longer than 30 days. Finally, a significant amendment to the Law is required to add a new Article (in accordance with the Article 9a, Directive 2014/52/EU) requiring that competent authorities carry out their duties related to EIAs in an objective way and to avoid any conflict of interest. Compliance with Directive 2011/92/EU is planned for 2017 (which is in accordance with deadlines required for EU members).

Policy recommendation 2. It is necessary to extend the Provisions of the Law on Strategic Environmental Assessment regarding consultations in the scoping phase. It is also necessary to specify, through the above mentioned Law, the necessity of informing the public about the decision not to implement an SEA. In addition, requirements that the opinions expressed in consultations for SEA reports should be taken into account for the final version of the plan/program should be more precisely regulated.



Solutions in the Law on Strategic Environmental Assessment do not require detailed and consultative scoping. Therefore the scope and content of SEA Reports often reflects the legal minimum. It is often a mere rewriting of the provisions of the relevant article of the Law. The Law does not include provisions that explicitly require consultations at the scoping phase, while Directive 2001/42/EC does by including the obligation to consult authorities and organizations. The Law on Strategic Environmental Assessment could also define more precisely the procedure, and requirement to inform the public, for decisions not to implement an SEA. For example, when the outcome of the screening phase is the decision that an SEA is not required. Finally, it is necessary to specify the obligation, before the adoption of a plan or program, that the SEA Report considers the opinions expressed during consultations, and that interested authorities and the public are informed about the outcome of the process. This should include a statement that explains in a concise way how the environmental issues are integrated into the plan/program, how the SEA Report reflects the opinions gathered through consultative processes, why the plan/program in the adopted form was chosen, and what other reasonable alternatives were considered. This will allow interested parties to gain insight into results of the SEA and the planning process.

Policy recommendation 3. To define the obligation (possibly in a by-law) to prepare terms of references for SEAs, or at least to promote that as an example of good practice.

Determining the scope is common for EIAs. It is a positive thing to do and enables early consultations between the project developer and the competent authority. For SEAs however, the scoping phase is usually reduced to a mere rewriting of the provisions on the content of SEA reports. In some cases, this is done without even bothering to adjust the general provisions of the Law to the plan/program for which the assessment is conducted. Montenegrin law does not recognize the process of project development for SEAs.

Policy recommendation 4. To use the Law on Strategic Environmental Assessment and/or Law on Planning and Construction (or other relevant by-laws) to set up integrated measures for SEA Reports when issuing urban-technical requirements.

Urban-technical requirements are issued (UTU) on the basis of detailed plans. This is the first step in the procedure for obtaining permission to carry out a project. It is important to integrate the results of applicable SEAs into this process. Specifically when issuing urban-technical requirements relevant SEA Reports should be considered in order to enable consistent and effective application of the principles of SEAs. This has not been the case so far, especially when it comes to measures for preventing and reducing negative impacts on the environment.



Policy recommendation 5. Areas of application of SEAs should be extended to include the Concession Act and plans for granting concessions.

Implementation of SEAs to date has shown that there are programs, such as granting concessions for exploiting small streams to generate electricity, which are not subjected to assessment, but could have significant cumulative effects. This deficiency is even recognized in the National Sustainable Development Strategy (NSDS) 2030. This Strategy identifies, among other things, that the practical implementation of impact assessments remains difficult. The Strategy also points out the fact that SEAs are unduly required for the lower level spatial plans, while it is not required for concession acts for exploitation of water and forests. This stands out as an important weakness.

Policy recommendation 6. *The Law on Environmental Impact Assessments and relevant by-laws, as well as the Law on Strategic Environmental Assessments should consider responsibilities and include the obligation to collect a minimum amount of data necessary for reliable assessments.*

One of the main disadvantages of the impact assessments is related to a lack of sufficient available data and a weak database. This is due to inconsistent information, as well as endeavours by the organizations/individuals with ownership of relevant data to obtain additional benefits through the processes of impact assessments. The lack of data is particularly visible for impact assessment on biodiversity, water, landscape and climate change. There are examples in impact assessments when field research that is necessary for a proper impact assessment are postponed to a later phase (after the issuing of a licence.) For SEAs there is also a practice transferring the responsibility for assessment of particular impacts to a future EIA. The obligation to collect additional data in order to ensure a reliable assessment is not prescribed.

Policy recommendation 7. *To ensure better application of results it is necessary to specify the role of inspection and supervision, and measures that can be imposed in the case of a violation of measures prescribed in an approved SEA Report.*



The Law on Strategic Environmental Assessment does not define investigative powers. It also does not define what measures could be undertaken for monitoring/surveillance that the law is enforced. Instead, this is regulated in provisions of the Law on Inspection Control.

Policy recommendation 8. *It is necessary to ensure early implementation of impact assessments, especially for SEAs, as well as better cooperation and continuous exchange of information (feedback) between the team that prepares the plan/program and the SEA team.*

Explanation: An important weakness of SEAs is late implementation of the procedure itself. Although the decision is made simultaneously with the development plan, the process itself can be carried out much later after the basic planning parameters have already been established. Some impact assessments start even much later, after the detailed project is finished or when it is not

possible anymore to constructively influence the development of a project. In cases when the SEA is late, the maneuvering space for competent authorities to consent to projects is narrowed. Refusing to approve can also be politically sensitive, particularly if omissions were been made deciding on implementation and the content of reports.

Policy recommendation 9. It is especially important, for the implementation of regulations, that additional efforts are made by all participants in the process to implement procedures to informing the public, hold consultations, and organize public hearings (which is respected presently). These processes contribute significantly to the quality of an EIA and the SEA and result in better assessments. This is reflected in the EIA and SEA Directives.

To date public participation and consultations has not reached a satisfactory level. Further stimulus and improvement is needed, this should include using a variety of different consultation methods, adequate sharing of information, and, as much as possible, incorporating the opinions and suggestions from the authorities and the public into assessments. This should include descriptions of how consultations and public participation influenced decision-making processes.



Policy recommendation 10. Implementation of incentive mechanisms for professional companies to objectively and properly approach impact assessments should be considered.

The capacities of professional companies are insufficient. Without adequate incentive mechanisms for performance improvement and the adoption of pragmatic approaches these companies will continue to fulfill only minimum requirements for the preparation of studies/reports while using as little of the firm's resources as possible.



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