



ANALYSIS **of the Operation** **of Small Hydropower** **Plants**

Skopje, 2022

Title: Analysis of the Operation of Small Hydropower Plants

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МЗМП



"The Law in defense against the negative impact of small hydropower plants in Macedonia" Project is funded by the Open Society Foundation- Macedonia.

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LIST OF ABBREVIATIONS

| | |
|-------------|---|
| EARNM | Energy Agency of the Republic of North Macedonia |
| WMB | Water Management Basis |
| CSO | Civil Society Organization |
| SAO | State Audit Office |
| SCDMAPLRPSI | State Commision for Decision-Making in Administrative Procedure and Labor Relation Procedure in Second Instance |
| EU | European Union |
| LW | Law on Waters |
| EL | Energy Law |
| LE | Law on Environment |
| LNP | Law on Nature Protection |
| LCPPP | Law on Concessions and Public-Private Partnership |
| LEAP | Local Environmental Action Plan |
| LEDP | Local Economic Development Plan |
| MASA | Macedonian Academy of Sciences and Arts |
| MoE | Ministry of Economy |

| | |
|-------|--|
| MoEPP | Ministry of Environment and Physical Planning |
| SHPP | Small Hydro Power Plants |
| NWS | National Water Strategy |
| EIA | Environmental Impact Assessment |
| RES | Renewable Energy Sources |
| RBMP | River Basin Management Plan(s) |
| ERC | Energy Regulatory Commission |
| RNM | Republic of North Macedonia |
| SEA | Strategic Environmental Assessment |
| EDS | Energy Development Strategy |
| HPP | Hydro Power Plants |
| EBRD | European Bank for Reconstruction and Development |
| SEI | State Environmental Inspectorate |
| NP | National Park |
| PINP | Public Institution National Park |

INTRODUCTION
METHODOLOGY



Every human activity, to a greater or lesser extent, affects the environment and biodiversity. The economic activities for energy production in North Macedonia affect several environmental media, soil, air, water and the like. The share of energy produced from renewable energy sources is becoming increasingly important in society. The gradual abandonment of energy produced from thermal power plants and their replacement with “clean energy sources” is a priority in North Macedonia. In order to achieve this goal, starting from 2007, more than 100 concessions have been awarded for the use of water for the construction of small hydropower plants in the country.

The purpose of this analysis is to provide a comprehensive overview of the law in the area of operation of small hydropower plants and its application. The analysis covers the period until March 11, 2022 and provides an overview of Macedonian legislation (laws, bylaws and strategic documents) that regulates the planning and establishment of small hydropower plants, in terms of minimizing their impact on the environment and ecosystems. At the same time, an overview of the most important international documents in this area that North Macedonia has ratified and consequently are part of the domestic law is provided. Taking into account the strategic commitment of the country for membership in the European Union, the Analysis provides an overview of the most important relevant Directives of the European Union and provides a general assessment of the compliance of the Macedonian law with the international law. In addition to a review of the applicable law, the Analysis provides an overview of its enforcement.

The Analysis contains eight chapters:

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|-----|---|
| I | Concessions |
| II | Environment |
| III | Waters |
| IV | Nature Protection |
| V | Energy |
| VI | Relevant international law |
| VII | Findings on environment and SHPP operation of relevant institutions |
| VII | Conclusions and Recommendations |

The analysis will achieve the set goal by identifying the shortcomings of the Macedonian legal system in terms of normative set-up and implementation of legislation to respond to the question of whether Macedonian legislation provides for effective protection of the environment and biodiversity against the negative impact of small hydro power plants. At the same time, the document is intended to inform the general public and public concerned about the laws and bylaws that regulate the operation of small hydropower plants.

The analysis provides recommendations for amending the legislation in this area and for improving the enforcement of the applicable law.

The analysis aims to achieve the following research goals:

- To identify the legal shortcomings in the applicable law that contribute to reduced protection against the negative impact of small hydropower plants;
- To identify laws that are not harmonized with international legislation and the extent of their non-compliance;
- To identify the problems and challenges in the implementation of the Macedonian legislation on environmental protection against the negative impact of small hydropower plants.

The methodological approach in the preparation of the Analysis included the application of several research methods:

DESK RESEARCH | consulting international law, analyses, reports and recommendations of international and Macedonian independent bodies on the compliance of Macedonian with international law and implementation of Macedonian applicable legislation. In parallel, a research on the Macedonian legislation consisting of laws, strategic documents and bylaws was conducted, whereas at the same time the analyses and documents previously prepared by the project team were used;

CASE STUDIES | analysing the actions of specific competent state institutions and the application of the relevant legal provisions in addressing, that is, acting in specific situations;

REQUESTS FOR FREE ACCESS TO PUBLIC INFORMATION | using the tool for free access to public information in order to collect relevant information;

CONSULTATIVE MEETING AND WRITTEN CONSULTATIONS | holding a meeting with representatives of relevant state institutions in order to discuss the findings and data of the Analysis and its update with activities planned by state institutions in the area of operation of small hydropower plants and environmental protection.

The analysis is analyzing and covering the period until March 11, 2022, when a consultative meeting with representatives of relevant state institutions was held. The analysis contains an overview of the regulations (laws and bylaws) published in the "Official Gazette".

01



The awarding of a water use concession is one of the first steps in the construction of SHPPs. The manner and procedure for awarding concessions is regulated by the Law on Concessions and Public-Private Partnership, which is the basic law on this issue, whereas the Law on Waters contains provisions that specifically deal with the awarding of concessions for water use.

Law on Concessions and Public-Private Partnership¹

This law is a general law and its provisions are applied in all procedures for awarding concessions, except in cases where it is not determined otherwise by special laws.

The law is based on the principles of equality, transparency, non-discrimination, proportionality, mutual recognition, environmental protection and efficiency in the procedure for a conclusion of a contract for concession for goods of general interest, as well as quality and efficient performance of the works and services of the concluded concession contract.²

The SHPP construction is covered by awarding a concession for goods of general interest, which includes awarding the right to use goods of general interest,³ that is waters. The Government of RNM appears as a grantor,⁴ that is the entity that awards the right to use the water, whereas the concessionaire may be a domestic or foreign legal entity or natural person or a consortium.⁵ The awarding of a concession must also include the concession fee, which is determined in the concession contract on the basis of the feasibility study which is to justify the award of the concession for goods of general interest. The concessionaire is obliged to pay the concession fee.⁶

It could be noted that the process of awarding a concession commences with preparatory activities, being implemented by the Government, that is, the ministry which it appoints to be in charge thereto. Among the more important analyses that the state must prepare is an environmental impact assessment of the concession.⁷ After the completion of the preparatory activities, the process for awarding a concession commences with the announcement

1 "Official Gazette of the Republic of Macedonia" no. 6/2012, 144/2014, 33/2015, 104/2015 and 215/2015 and "Official Gazette of the Republic of North Macedonia" no. 153/2019 and 261/2019

2 Law on Concessions and Public-Private Partnership ["Official Gazette of the Republic of Macedonia" no. 6/2012, 144/2014, 33/2015, 104/2015 and 215/2015 and "Official Gazette of the Republic of North Macedonia" no. 153/2019 and 261/2019], Article 2

3 Ibid, Article 4 paragraph 2 item 3

4 Ibid, Article 4 paragraph 2 item 6

5 Ibid, Article 4 paragraph 2 item 8

6 Ibid, Article 9

7 Ibid, Article 16 paragraph 2 line 3

of a decision for awarding a concession⁸ and a public call for awarding a concession in which all elements and criteria of assessment are determined.⁹ The collection, evaluation and ranking of the offers received is performed by the Commission for Conducting a Procedure established by the Government upon the proposal of the minister in charge of the field for which the concession contract is awarded.¹⁰ Usually, water concessions for SHPPs are awarded by the Minister of Environment and Physical Planning, although the minutes of the Government sessions indicate cases when the Minister of Economy is in charge of extending the SHPP concession contracts.

The submission of offers after the decision for awarding a concession is conditioned by provision of a guarantee by the tenderer in the form of deposited funds or a bank guarantee the value of which should be at least 0.25% of the estimated value determined in the tender documentation. The Government, that is, the competent ministry, is obliged to return the guarantee to those tenderers whose offers have not been accepted.¹¹

The law alternatively defines the criteria for selection of the most favorable offer and the Commission is left with the opportunity to choose whether the evaluation of the offers received will be performed according to:¹²

- I The economically most favorable offer that contains elements related to the subject of the concession for goods of general interest:
 - 1 Quality;
 - 2 Technical features;
 - 3 Aesthetic, functional and ecological features;
 - 4 Other elements laid down by the special law regulating the subject of the concession;

- II Highest offered concession fee.

8 Ibid, Article 17 paragraph 1

9 Ibid, Article 28

10 Ibid, Article 20

11 Ibid, Article 27

12 Ibid, Article 31

The public call must define the criteria by which the offer will be evaluated, the maximum number of points for each of the elements, the manner in which the fulfillment of the elements will be evaluated and how they will be applied.¹³

After the opening and evaluation of the offers, the ministry in charge appointed by the Government adopts a decision for selection of the most favorable offer, which along with the evaluation report shall be submitted to all tenderers, having the right to appeal. After the completion of the appeal procedure and the finality of the decision for selection of the most favorable offer, the grantor proceeds to concluding a contract for awarding a concession.¹⁴

The LCPPP regulates that concession contracts may be concluded for a period up to 35 years, and in determining the period for which the contract is concluded, financial-economic indicators and technical and/or technological specifics of the subject of the contract, based on feasibility study which is to justify the award of the concession shall be taken into consideration.¹⁵ The amendments to the concession contract is done by concluding an annex upon the initiative of the grantor or the concessionaire, and in particular in the following cases:¹⁶

- Danger against the national security and country defense, threat to the environment, nature and human health and public order facilities;
- Decay of the facility under concession or objective impossibility to use it in the case of *force majeure*;
- Amendment to relevant regulations;
- Other cases that lead to a change in the actual or legal base for using the facility or providing the service, or carrying out the concession activity;
- Other cases laid down by special laws.

In the cases when there are changes in the substantive requirements, that is such requirements that if anticipated in the initial announcement or in the tender documentation, would have enabled the tenderers to submit a significantly different offer, as well as where the changes would exceed the scope of the contract to the extent that such changes would as well include services that were not initially covered, a new procedure for awarding a contract award shall be initiated.¹⁷

13 Ibid

14 Ibid, Article 32, 33, 34 and 35

15 Ibid, Article 39

16 Ibid, Article 41

17 Ibid, Article 38

If the Government, according to a previous analysis of the economic feasibility of the concession, shall assess that there is no more economic justification, and after obtaining the consent of the concessionaire, it may adopt a decision to conclude an annex to the concession contract to change the purpose of part of the funds, but only for investment in facilities of public interest and in the amount required for the implementation of that part of the subject of the concession. The decision for annex to the contract determines the purpose of the funds, the amount of funds that were needed for the implementation of part of the subject of the concession, the manner and the dynamics of the implementation of the purpose of the funds.¹⁸

Concession contracts may be terminated by agreement or by a decision for unilateral cancellation made by the Government or the concessionaire in cases where one of the parties commits a crucial violation of its obligations. Some of the reasons for unilateral termination by the Government are the cases in which the activity is carried out in an inappropriate or low quality manner in terms of rules, parameters and other conditions for carrying out the activity; there has been a crucial violation of the provisions of the contract or the laws applicable to the contract as well as in cases where the concessionaire has not acted upon the measures imposed in the supervision procedure conducted in accordance with the special laws.¹⁹

In the case if the Government, that is the ministry in charge:

- identifies new circumstances which, if known before the commencement of the procedure for awarding a concession, the public call would not have been announced or would have been substantially different;
- there is no offer received until the expiry of the deadline for submission of offers;
- there is no acceptable offer submitted

the procedure for awarding a concession is annulled. The procedure may be additionally annulled if only one offer arrives by the deadline for submission of offers, that is, if during the evaluation of offers only one acceptable offer remains.²⁰

18 Ibid, Article 41-a

19 Ibid, Article 43-44

20 Ibid, Article 38

Law on Waters²¹

The Law on Waters is a special law in relation to the LCPP, thus the provisions of this law have primary application in relation to the awarding of the concession for electricity generation in hydropower plants.

Unlike the LCPPP, which envisages that concessions for goods of general use are awarded only by public announcement, the LW regulates that in case a request is submitted by a state-owned enterprise²², the Government may award a concession without conducting a public call procedure. Such a request of the state-owned enterprises should be submitted to the MoEPP and an explanation and basic data about the entity that submits the request, a proposed period for awarding the concession, an area where the concession activity is to be carried out and a land survey report for special purposes shall be attached to it. Based on this request, the MoEPP submits to the Government an elaborated proposal for award of a concession for water use without conducting a public call.²³

LW lays down that the mandatory condition for concluding the concession contract is obtaining a water use permit, and it is necessary in the tender documentation to additionally state the conditions that are to be contained in the water use permit, as well as the conditions that are necessary to be met or investigated in order to protect and improve environmental media and areas. In the cases when the concession is awarded without conducting a public call procedure, the decision to award the concession states that a mandatory condition for concluding the concession contract is obtaining a water use permit. The water use permit shall not create legal effect unless the concession contract is concluded. By obtaining a concession through a public call, the selected most favorable bidder shall obtain a water use permit.²⁴

21 "Official Gazette of the Republic of Macedonia" no. 87/2008, 6/2009, 161/2009, 83/2010, 51/2011, 44/2012, 23/2013, 163/2013, 180/2014, 146/2015 and 52/2016 and "Official Gazette of the Republic of North Macedonia" no. 151/2021

22 Public enterprises, public institutions, trade companies established by RNM and companies where the state has direct and indirect ownership-based control, that is, if owns the bigger part of the company's capital or majority of shareholders'/ partners' votes and if it appoints more than half of the members of the governing or supervisory board, that is, governing bodies of the company, legal entities that exercise public powers for the part of the public powers

23 Law on Waters ["Official Gazette of the Republic of Macedonia" no. 87/2008, 6/2009, 161/2009, 83/2010, 51/2011, 44/2012, 23/2013, 163/2013, 180/2014, 146/2015 and 52/2016 and "Official Gazette of the Republic of North Macedonia" no. 151/2021], Article 54 and 55-a

24 Ibid, Article 56

Unlike the LCPPP, LW establishes special limitations on the duration of concessions for hydropower plants:²⁵

- With capacity over 10 MW up to 70 years
- With capacity of 2 to 10 MW up to 50 years
- With capacity up to 2 MW up to 30 years

LW lays down that the concession fee is determined by the concession contract and it is a one-time fee, except for the electricity generation with installed capacity above 10 MW, which shall consist of an annual fee paid for each year during the validity of the contract. The amount of the annual fee is determined as a percentage of the gained average price of the electricity generated, whereas the amount of the one-time fee is determined as a percentage or installment amount of the calculated or estimated annual amount of the annual fee.²⁶

In addition to the reasons for termination of the concession that are listed in the LCPPP, the LW envisages additional reasons, which refer to the cases when the water use permit is revoked from the entity.²⁷

Bylaws

The awarding of concessions through the prism of SHPPs is mainly regulated in two bylaws.

Decree on the content of the contract for establishment of public-private partnership and the concession contract for goods of general interest²⁸

Adopted on the basis of the LCPPP, the Decree lays down that the contract, having the provision of public service as a subject, must contain provisions for:²⁹

25 Ibid, Article 57 paragraph 1 item 1

26 Ibid, Article 58

27 Ibid, Article 60

28 "Official Gazette of the Republic of Macedonia" no. 44/2012

29 Decree on the content of the contract for establishment of public-private partnership and concession contract for goods of general interest ("Official Gazette of Republic of Macedonia" no. 44/2012) Article 2

- events that may cause damage and the manner of action of the contracting parties in cases of their occurrence;
- environmental protection;
- submitting notifications during the contracting period.

An environmental impact assessment study/elaborate is also attached to the contract.³⁰

In addition to these provisions, the contracts for award of a concession for goods of general interest also contain provisions of the regulations that regulate the specific field.³¹

Decision on determining the manner of defining the amount of the one-time and annual fee for water use concession³²

Adopted on basis of the LW, the Decision lays down that the one-time fee for a concession for electricity generation must not be less than the ten-time amount of the estimated annual fee, according to the realization for electricity generation in the first year of use.³³ At the same time, the Decision lays down that the amount of the annual concession fee for the electricity generation from SHPPs with a capacity of up to 10 MW is a percentage of the average realized price of electricity generated for each kilowatt-hour produced on the threshold of the power plant in each year of use, but not less than 2%. For HPPs with a capacity of above 10 MW, the annual concession fee for electricity generation is a percentage of the average realized price of electricity generated for each kilowatt-hour produced on the threshold of the power plant in each year of use, but not less than 1.5 %.³⁴

³⁰ Ibid, Article 3

³¹ Ibid, Article 4

³² "Official Gazette of the Republic of Macedonia" no. 19/2014

³³ Decision on determining the manner of defining the amount of the one-time and annual fee for water use concession ("Official Gazette of the Republic of Macedonia" no. 19/2014), Article 2 paragraph 1 item 1

³⁴ Ibid, Article 3

02



The Environmental Protection Framework is established by the Law on Environment.³⁵

Law on Environment

The Law on Environment regulates the rights and obligations of the state, municipalities and legal entities and natural persons for environmental protection and improvement, for the purpose of exercising the right of citizens to a healthy environment.³⁶ The measures and the activities for environmental protection and improvement are of public interest.³⁷ LE aims to achieve:³⁸

- preservation, protection, restoration and improvement of the quality of the environment;
- protection of human life and health;
- protection of biological diversity;
- rational and sustainable utilization of natural resources;
- implementation and improvement of measures aimed at addressing regional and global environmental problems.

35 "Official Gazette of the Republic of Macedonia" no. 53/2005; 81/2005; 24/2007; 159/2008; 83/2009; 48/2010; 124/2010; 51/2011; 123/2012; 93/2013; 187/2013; 42/2014; 44/2015; 129/2015; 192/2015; 39/2016 and 99/2018. Decisions of the Constitutional Court of the Republic of Macedonia D. no. 151/2005 and 233/2005 as of 21.6.2006, published in "Official Gazette of the Republic of Macedonia" no. 79/2006, D. no. 154/2005 as of 13.9.2006, published in "Official Gazette of the Republic of Macedonia" no. 101/2006, D. no. 152/2005 as of 28.9.2006, published in "Official Gazette of the Republic of Macedonia" no. 109/2006, D. no. 146/2009 as of December 23, 2009, published in "Official Gazette of the Republic of Macedonia" no. 1/2010, D. no. 81/2017 as of January 31, 2018, published in "Official Gazette of the Republic of Macedonia" no. 28/2018 and D. no. 76/2017 as of March 28, 2018, published in "Official Gazette of the Republic of Macedonia" no. 65/2018

36 Law on Environment ["Official Gazette of the Republic of Macedonia" no. 53/2005; 81/2005; 24/2007; 159/2008; 83/2009; 48/2010; 124/2010; 51/2011; 123/2012; 93/2013; 187/2013; 42/2014; 44/2015; 129/2015; 192/2015; 39/2016 and 99/2018. Decisions of the Constitutional Court of the Republic of Macedonia D. no. 151/2005 and 233/2005 as of 21.6.2006, published in "Official Gazette of the Republic of Macedonia" no. 79/2006, D. no. 154/2005 as of 13.9.2006, published in "Official Gazette of the Republic of Macedonia" no. 101/2006, D. no. 152/2005 as of 28.9.2006, published in "Official Gazette of the Republic of Macedonia" no. 109/2006, D. no. 146/2009 as of December 23, 2009, published in "Official Gazette of the Republic of Macedonia" no. 1/2010, D. no. 81/2017 as of January 31, 2018, published in "Official Gazette of the Republic of Macedonia" no. 28/2018 and D. no. 76/2017 as of March 28, 2018, published in "Official Gazette of the Republic of Macedonia" no. 65/2018], Article 1

37 Ibid, Article 3 paragraph 1

38 Ibid, Article 4

The objectives set in this manner should be achieved by:³⁹

- forecast, monitoring, prevention, limitation and elimination of negative impacts on the environment;
- protection and development of environmental areas;
- preservation of a clean environment and remedy of the damaged parts of the environment;
- prevention of risks and hazards to the environment;
- encouraging the use of natural renewable energy sources;
- integrated approach to environmental protection and economic development;
- control over activities that may pose a threat to the environment;
- harmonization of economic and other interests with the requirements for environmental protection and improvement.

The LE defines the basic terms and concepts related to environmental protection. According to the LE, harmful impact and activity shall mean any negative impairment of the quality of the environmental media and areas,⁴⁰ environmental impact assessment shall mean an assessment of possible environmental impacts of certain planning documents, projects and planned activities,⁴¹ permit, that is, decision for project implementation shall mean a decision of the competent authority which gives consent to the investor/applicant for approval/continuation of the project implementation.⁴² According to the LE, the public shall mean one and/or more legal entities and/or natural persons and organizations and associations of citizens established in accordance with the law,⁴³ whereas the public concerned shall mean the public concerned at present and/or may be concerned in the future or having an interest in relation to the decision-making on the environment with which it has a special relationship through a particular procedure. The public concerned shall also include the associations of citizens established for the purpose

39 Ibid

40 Ibid, Article 5 paragraph 1 item 23

41 Ibid, Article 5 paragraph 1 item 32

42 Ibid, Article 5 paragraph 1 item 33

43 Ibid, Article 5 paragraph 1 item 25

of environment protection and improvement, as well as a natural person who is very likely to feel the consequences of the decision-making.⁴⁴

Particularly important are the principles established by the law, which should be considered as valuable guidelines for the environmental protection and management. The principle of high level of protection shall be the duty of everyone when undertaking activities or carrying out works to ensure a high level of protection of the environment and the human life and health.⁴⁵ According to the principle of proportionality, the system of environmental protection shall be based on the adoption and enforcement of laws, plans, programs and decisions which provide proportionality between development needs and environmental protection needs.⁴⁶ The principle of precaution stipulates that if there is a reasonable suspicion that a certain activity may cause harmful consequences on the environment, the necessary protective measures shall be taken before scientific evidence that such harmful consequences could occur becomes available.⁴⁷ The principle of prevention shall mean that measures and activities for environmental protection shall be taken before harmful consequences occur,⁴⁸ whereas the principle of cleaner production regulates that in order to reduce the risks to human life and health and the environment, as well as to increase economic and ecological efficiency, the application of a comprehensive environmental protection strategy concerning raw materials, production processes, products and services shall be encouraged.⁴⁹

The awarding of concessions is done only after a previous opinion is issued, that is, a consent by the MoEPP.⁵⁰

The LE explicitly lays down that the ownership rights and/or other real rights may be revoked and/or restricted under conditions, in a manner and procedure laid down by law, for the purpose of carrying out measures and activities for environmental protection and improvement.⁵¹

Every legal entity or natural person implementing a project, that is, activities, shall be obliged to take measures and activities for environmental protection and improvement and restoration of the environment to a satisfactory condition, in a manner determined by the decision approving the project, that is activity implementation, where

⁴⁴ Ibid, Article 5 paragraph 1 item 26

⁴⁵ Ibid, Article 6

⁴⁶ Ibid, Article 12

⁴⁷ Ibid, Article 13

⁴⁸ Ibid, Article 14

⁴⁹ Ibid, Article 15

⁵⁰ Ibid, Article 20 paragraph 4

⁵¹ Ibid, Article 25

by they shall be obliged to keep the data on the used resources (natural resources, raw materials and energy, emissions of pollutants and substances, types, characteristics and quantities of waste generated and other data).⁵²

Monitoring occupies an important place in the LE, and in addition to media monitoring, which is conducted by the MoEPP and/or municipalities through the state, that is, the local monitoring network, an obligation has been established for all legal entities and natural persons having an impact on one or more environmental media and areas and/or use natural resources, to conduct internal monitoring of the exploitation of natural resources. Thus, the internal monitoring must be performed by using devices and instruments approved in the procedure for verification of the meters. It is obligatory to submit the data of the internal monitoring to the MoEPP on a monthly basis.

Environmental protection planning is determined and directed in accordance with the overall economic, social and cultural development of the country, whereby a priority shall be given to environmental protection and improvement measures, in the interest of present and future generations. In that regard, the Government shall, upon the proposal of the MoEPP, adopt the National Environmental Action Plan of the Republic of Macedonia, which, *inter alia*, shall *contains general medium- and long-term measures for environmental and human health protection and management and provisions for management and use of natural resources, whereas the municipalities adopt local environmental action plans, which contain medium- and long-term measures and activities for the protection of biodiversity, management and use of natural resources and the consequences of economic development on the environment*.⁵³

The LE establishes three types of analyses for the environmental impact of a specific strategy/plan/program/installation/activity.

Strategic Assessment⁵⁴

The strategic assessment shall be conducted on strategies, plans and programs related to energy, water management, which create the basis for impleteneting projects for which the environmental impact assessment is conducted, that is, all planning documents that regulate the management of protected areas, for which the obligation is determined by the Government. The obligation to prepare a strategic assessment shall also apply to the changes to the mentioned planning documents, except when they determine the use of small areas of local importance and which provide for their small changes, and for which the body preparing the document shall determine that they have no significant impact on the environment and human health. The assessment of the significant impact on the environment and

⁵² Ibid, Article 28

⁵³ Ibid, Article 59-60

⁵⁴ Ibid, Article 65-75

human health, in terms of the obligation to prepare a strategic assessment, is performed on the basis of the criteria adopted by the Government upon the proposal of the MoEPP. An additional exception to the obligation to conduct a strategic assessment exists in the case of planning documents for the needs of the state defense, planning documents during the state of war or emergency and planning documents in the field of finance and the Budget of RNM and the municipal budget.

The body that prepares the planning document shall be obliged to make a decision for conducting out, that is, not conducting the strategic assessment, which shall explain the reasons for that and the scope of the strategic assessment. During the preparation of the strategic assessment, the bodies affected by the implementation of the specific planning document are obligatorily determined and they are consulted when making the decision for (not) conducting the strategic assessment, but also during its conducting. The decision, the forms and the other documents must be published on the website of the body that prepares or changes the planning document, whereby the public shall have the right to appeal within 15 days as of the publication of the decision for (not) conducting the strategic assessment to the State Commission for Decision Making in Administrative Procedure and Labor Relations Procedure in the Second Instance. In addition to the possibility to review the legality of the decision through legal mechanisms initiated by the public, an additional mechanism for mandatory control is the obligation of the body preparing or changing the planning document to submit the decision to the MoEPP, which checks whether the conducting of the strategic assessment is obligatory, that is, whether the planning document has a significant environmental impact. If the MoEPP does not make a decision within the legally prescribed deadline regarding the decision submitted by the body that prepares or changes the planning document, it shall be considered that there are no remarks.

In case the planning document envisages the implementation of a project for which a procedure for environmental impact assessment of the project is conducted at the same time, the body may decide to conduct the strategic assessment together with the environmental impact assessment procedure. Such a decision must be elaborated.

The strategic assessment procedure prepares a strategic environmental assessment report which identifies, describes and assesses the possible environmental and human health impacts of the implementation of the planning document and feasible alternatives taking into account the objectives and geographical scope of the planning document. The more detailed content of the report is prescribed by the Government.

Taking into account the importance of public consultation, the LE envisages that the public, legal entities and natural persons, the MoEPP and the bodies affected by the implementation of the planning documents may submit their opinions on the draft planning document and the environmental report to the body that prepares the planning document. There is an obligation to take into account the submitted opinions during the preparation of the planning document, for which a special report on the public consultations is compiled.

The body adopting the planning document shall be obliged to publish the decision for the adoption and to inform the stakeholders and the public about it by publishing a statement summarizing how the environmental impacts of

the planning document are integrated and how the prepared strategic environmental assessment report have taken into account the public participation opinions; the adopted planning document and the measures related to the monitoring of the effects of the planning document implementation shall be published.

The body that prepares the planning document shall be obliged, through the existing state and local networks for environmental monitoring, to monitor the effects of the planning document implementation. If a negative impact of the implementation of the plan is noted, the MoEPP should be notified.

Environmental Protection Elaborate⁵⁵

Natural persons and legal entities carrying out works and activities for which it is not envisaged to prepare an environmental impact assessment shall be obliged to prepare an environmental protection elaborate which should be approved prior to starting the activity. The Government shall, upon the proposal of the MoEPP, determine for which activities and works the approval of the elaborate is made by the MoEPP, and for which by the municipality. The form and content of the elaborates, the procedure for their approval and other details are determined by a special rulebook adopted by the MoEPP. The purpose of preparing or amending the elaborate is for natural persons and legal entities to harmonize their operations with the environmental quality standards and the prescribed emission limit values. The competent body shall, by a decision, approve or not approve the prepared elaborate, on which the legal entities and natural persons who want to carry out the specific activity or work have the right to appeal to SCDMAPLRPSI. Natural persons and legal entities may not commence carrying out the work or activity without an environmental protection elaborate approved.

Environmental Impact Assessment Study⁵⁶

Environmental Impact Assessment shall be carried out for projects that due to their nature, scope or location of implementation may have a significant impact on the environment. The assessment shall be carried out by determination, description and assessment of the impacts that the given project has or may have during its execution, operation and termination of operation on:

⁵⁵ Ibid, Article 24

⁵⁶ Ibid, Article 76-94

- human being and biological diversity,
- soil, water, air and other natural resources, as well as climate,
- historical and cultural heritage,
- the mutual impacts of the previously mentioned elements.

The Government shall determine the projects for which a mandatory environmental impact assessment study is prepared, as well as the criteria according to which it is assessed whether the generally determined projects have a significant impact on the environment, and for which an environmental impact assessment study should be prepared.

The Government may, upon the proposal of the MoEPP, decide not to prepare in whole or in part an environmental impact assessment study for the projects in case of *state of war or emergency, for the defense needs of the Republic of Macedonia, if it is determined that the implementation of the environmental impact assessment procedure has a negative effect on the defense or the need for immediate prevention of unforeseen events that could have a serious impact on human health, safety, property or the environment*. The decision of the Government and the other related documents thereto, which are listed in detailed in the LE, shall be made public thus the public shall have the opportunity to submit remarks, opinions and proposals that the Ministry of Defense must respond and submit to the MoEPP. Based on the information received, the MoEPP shall decide on the approval or rejection of the request for project implementation.

The environmental impact assessment of the project shall include description, assessment and evaluation of the direct and indirect environmental impact of its (non)implementation. When assessing the environmental impact of the project, the following shall be taken into account:

- the project preparation, execution, implementation and termination, including the results and effects arising from the project completion,
- removal of polluting substances and restoration of the affected area to its original condition, if such obligation is envisaged by special regulations;
- normal functioning of the project, as well as the likelihood of accidents.

The environmental impact assessment procedure shall begin with the notification of the intention to implement a project submitted by the investor to the MoEPP. The MoEPP shall inform the investor about the need for environmental impact assessment and determine its scope, in consultation with the municipalities on the territory of which the project shall be implemented and with all other relevant state institutions.

The investor shall be obliged to prepare the project environmental impact assessment study by hiring at least one person from the List of Experts for environmental impact assessment and by meeting the criteria in terms of its content prescribed by the MoEPP. The prepared study is submitted to the MoEPP, which conducts consultations for the prepared study with the municipality/ies on the territory of which the project shall be implemented.

The MoEPP or an expert from the List of Experts authorized by the ministry shall prepare a report on the adequacy of the project environmental impact assessment study. The report shall be prepared based on the study and the opinions received thereto, and contain information whether the study meets the legal requirements and proposes the conditions to be determined by the project implementation permit, as well as measures to prevent and reduce harmful impacts. If the study contains certain shortcomings, it shall be returned to the investor to be supplemented and finalized.

Based on the prepared documents (study and report) and the consultations related to them, the MoEPP shall issue a decision granting a consent to or rejecting the request for project implementation. The decision shall cease to create legal effect if within a period of two years after its adoption the implementation of the project has not started. Upon the request of the investor, the validity of the decision may be extended only if in the period of two years after its adoption there are no significant changes in the conditions in the affected territory, new knowledge related to the basic content of the study and new technology development, which could be used in the project. The decision, in addition to assessment of whether the legal criteria are met in terms of the content of the study, the conditions for issuing the project implementation permit and in terms of measures to prevent and reduce harmful impacts, shall also contain an assessment of:

- prevention against harmful impacts on the environment resulting from the project implementation,
- prevention, limitation, mitigation or reduction of harmful impacts,
- enhancement of the favorable impacts on the environment resulting from the project implementation,
- evaluation of the expected effects of the proposed measures.

The decision of the MoEPP for granting a consent to the project implementation is a precondition for the investor to receive a permit to implement it.

Public participation plays an important role in the development of environmental impact assessment studies. The legal entities and natural persons concerned, as well as the associations of citizens established for environmental protection and improvement shall have the right to appeal to SCDMAPLRPSI on:

- the decision of the MoEPP for granting a consent to the project implementation within 15 days as of moment when it was publicly announced, that is, within 15 days as of the moment when they found out about it, if it was not publicly announced;
- the decision of the MoEPP on the need to conduct an environmental impact assessment of the project within 8 days as of the day of its publication.

The public concerned and the associations of citizens established for environmental protection and improvement shall have the right to submit a request before a competent court to impose a temporary measure prohibiting the project implementation within 15 days as of the moment they found out about the permit, that is, the decision for project implementation. In relation to this, the MoEPP shall have an obligation to make public almost all decisions and documents related to the performance of the environmental impact assessment procedure. In addition to the opportunity to submit opinions on environmental impact assessment studies within 30 days of their publication, the MoEPP shall be **obliged** to conduct a **public hearing** on the environmental impact assessment study and to make available to the public the information related to it and to inform the associations of citizens established for environmental protection and improvement from the territory where the project is being implemented about the public hearing. As for the public hearing, the MoEPP shall be obliged to keep minute, containing a list of participants as well as the conclusions, whereby the minutes are accompanied by shorthand notes and an audio or video recording of the hearing.

Institutional framework

The most important place in the institutional framework in terms of SHPP operation is occupied by the Environmental Administration within the MoEPP. Established by Chapter XVII of the LE, the Environmental Administration is responsible for approving environmental protection elaborates prepared for the SHPPs.

Bylaws

The SHPP operation is directly or indirectly regulated by 14 bylaws adopted on the basis of the LE. In the following section of this analysis, the bylaws that directly impact the SHPP operation will be elaborated.

| <div>Title of the bylaw that needs to be adopted by the state authorities</div> <div>Obligation fulfillment status</div> | The bylaw is adopted | The bylaw is not adopted | Note |
|---|----------------------|--------------------------|------|
| Bylaw on the manner of action and the closer conditions for issuing the opinion/consent of the MoEPP for awarding a concession, that is, detailed geological, hydrogeological exploration and exploitation of mineral raw materials ⁵⁷ | | | |

⁵⁷ Ibid, Article 20 paragraph 5

| | | | |
|---|--|--|--|
| Bylaws on the form and content of the elaborate in accordance with the types of works or activities for which the elaborate is prepared, as well as in accordance with the implementers of the activity and the scope of works and activities carried out by legal entities and natural persons, the procedure for their approval and the manner of keeping the Register for approved elaborates shall be prescribed by the Minister managing the body of the state administration responsible for the affairs of the field of environment. ⁵⁸ | | | |
| Bylaw determining the works and activities for which it is obligatory to prepare an elaborate, and for the approval of which the body for performing professional affairs in the field of environment is competent ⁵⁹ | | | |
| Bylaw determining the works and activities for which it is obligatory to prepare an elaborate, and for the approval of which the mayor of the municipality, the mayor of the city of Skopje and the mayor of the municipality in the city of Skopje are competent ⁶⁰ | | | |
| National Environmental Action Plan ⁶¹ | | | |

58 Ibid, Article 24 paragraph 3

59 Ibid, Article 24 paragraph 4

60 Ibid, Article 24 paragraph 5

61 Ibid, Article 60 paragraph 1

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|--|--|--|
| Bylaw prescribing strategies, plans and programs, including changes to those strategies, plans and programs, for which it is obligatory to conduct a procedure for assessment of their impact on the environment and human health (strategic assessment) ⁶² | | |
| Bylaw on the criteria for determining whether a planning document could have a significant impact on the environment and human health ⁶³ | | |
| Bylaw on the content of the environmental report which identifies, describes and assesses the possible impacts on environment and human health of the implementation of the planning document and the feasible alternatives taking into account the objectives and geographical scope of the planning document ⁶⁴ | | |

62 Ibid, Article 65 paragraph 1

63 Ibid, Article 65 paragraph 4

64 Ibid, Article 67 paragraph 3

| | | | |
|--|--|--|--|
| Bylaw determining the projects for which it is obligatory to conduct a procedure for environmental impact assessment, the criteria on the basis of which the need for conducting an environmental impact assessment procedure is determined, in general for given projects, which could have significant impact on the environment and to determine the criteria on the basis of which the need for an environmental impact assessment procedure is determined in the case of changes in existing facilities ⁶⁵ | | | |
| Bylaw on detailed guidelines for conducting the environmental impact assessment procedure that will be taken into account in the course of conducting the procedure ⁶⁶ | | | |
| Bylaw prescribing the information that the notification for the intention to implement a project should contain ⁶⁷ | | | |
| Bylaw on the manner and procedure for determining the need for environmental impact assessment of the project ⁶⁸ | | | |

⁶⁵ Ibid, Article 77 paragraph 1

⁶⁶ Ibid, Article 79 paragraph 4

⁶⁷ Ibid, Article 80 paragraph 5

⁶⁸ Ibid, Article 81 paragraph 2

| | | |
|---|--|--|
| Bylaw on the content of the requirements to be met by the environmental impact assessment study ⁶⁹ | | |
| Bylaw on the form, content, procedure and manner of preparation of the report on the adequacy of the environmental impact assessment study of the project ⁷⁰ | | |

Decree on strategies, plans and programs, including changes to those strategies, plans and programs, for which it is obligatory to conduct a procedure for assessment of their impact on the environment and on human life and health⁷¹

The decree adopted by the Government refers to the planning documents for which it is obligatory to conduct a strategic assessment. According to the decree, strategic assessment is conducted on short-term, medium-term and long-term planning documents⁷² related to:

- long-term objectives for development of renewable energy sources (hydropower, wind energy, solar energy, geothermal energy, biomass, natural gas, biogas, biofuels, etc.) as well as individual energy activities to ensure security of supply of various types of energy⁷³;
- development priorities⁷⁴;

⁶⁹ Ibid, Article 84

⁷⁰ Ibid, Article 86 paragraph 11

⁷¹ "Official Gazette of the Republic of Macedonia" no. 153/2007 and 45/2011

⁷² Decree on strategies, plans and programs, including changes to those strategies, plans and programs for which it is obligatory to conduct a procedure on their impact on the environment and human life and health ("Official Gazette of the Republic of Macedonia" no. 153/2007 and 45/2011), Article 2

⁷³ Ibid, Article 3 paragraph 1 item 4 line 1

⁷⁴ Ibid, Article 3 paragraph 1 item 4 line 2

- determination and use of energy resources and capacities of strategic importance for the country⁷⁵;
- transformation of the energy sector, incentives for investment in energy facilities that use renewable energy sources⁷⁶;
- condition and manner for providing environmental protection and measures for implementation of protection and other elements of importance for energy development⁷⁷;
- management, treatment, protection of waters and river basins⁷⁸;
- the manner of use and utilization of water, protection against harmful effects of waters, protection of water from depletion and pollution⁷⁹;
- sources, conditions and manner of financing of water management activities, conditions and ways of performing water management activities, awarding water for use with approval (concession), interstate waters and other issues of importance for ensuring a single water regime⁸⁰;
- sustainable development of water resources, water protection and protection against harmful effects of waters⁸¹;
- rational and efficient use of waters⁸².

75 Ibid, Article 3 paragraph 1 item 4 line 4

76 Ibid, Article 3 paragraph 1 item 4 line 5

77 Ibid, Article 3 paragraph 1 item 4 line 7

78 Ibid, Article 3 paragraph 1 item 11 line 1

79 Ibid, Article 3 paragraph 1 item 11 line 3

80 Ibid, Article 3 paragraph 1 item 11 line 4

81 Ibid, Article 3 paragraph 1 item 11 line 7

82 Ibid, Article 3 paragraph 1 item 11 line 6

Decree on the criteria on the basis of which decisions are made whether given planning documents could have a significant impact on the environment and human health⁸³

The decree refers to the criteria according to which it is assessed whether a strategic assessment should be conducted for a planning object. This decree does not apply to the planning documents for which the preparation of the strategic assessment is obligatory, being set out in the decree described above.⁸⁴

Criteria on the basis of which it is determined whether a given planning document could have a significant impact on the environment and on human life and health are the following:⁸⁵

- Characteristics of the planning document, in particular:
 - the extent to which the planning document sets the framework for the implementation of projects and other activities, in terms of location, nature, size and working conditions or according to the determination of resources;
 - the extent to which the planning document impacts the other planning documents in the hierarchy;
 - the importance of the planning document for inclusion of the aspect of environmental protection, especially in terms of promoting sustainable development;
 - environmental problems relevant to the planning document;
 - the importance of the planning document for the implementation of the acquis communautaire in the field of environment (e.g. plans and programs related to waste management or water protection);

83 "Official Gazette of the Republic of Macedonia" no. 144/2007

84 Decree on the criteria on basis of which decisions are made whether given planning documents could have a significant impact on the environment and human health ("Official Gazette of the Republic of Macedonia" no. 144/2007), Article 2

85 Ibid, Article 3

- Characteristics of the impacts and the area most likely to be affected/concerned, in particular:

- probability, duration, frequency and reversal of impacts;
- the cumulative nature of the impacts on the environment and human life and health;
- cross-border nature of impacts;
- risks to human health or the environment (e.g. due to disasters/accidents);
- the extent and spatial extent of the impacts (geographical area and population size most likely to be affected);
- the value and vulnerability of the area most likely to be affected by:
 - ◆ special natural characteristics or natural heritage,
 - ◆ stricter environmental standards or emission limit values,
 - ◆ intensive land use;
- impacts on area or landscapes that have recognized status of national or international protected areas

Decree on the content of the strategic environmental assessment report⁸⁶

The decree defines the obligatory content of the strategic assessment report. The decree stipulates that the strategic assessment report must contain data on:⁸⁷

- relevant aspects of the present state of the environment and what would most likely occur if the implementation of the planning document did not occur/probable evolution without the implementation of the plan or program;
- environmental characteristics in the areas that would be significantly affected;
- other issues relevant to the planning document, including in particular those that have arisen in any of the areas of special importance for the environment, and *in particular as regards the protection of wild birds and habitats*;
- environmental protection objectives,
- potential significant impacts on the environment as a whole, including on *biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors*, material benefits, cultural heritage including architectural and archaeological heritage, landscape and interconnectedness of these factors. These impacts include secondary, cumulative, synergistic, short-term, with medium and long-term, permanent and temporary positive and negative effects;
- the measures envisaged for protection, reduction and neutralization to the greatest extent possible of all significant negative impacts on the environment from the implementation of the planning document.

86 "Official Gazette of the Republic of Macedonia" no. 153/2007

87 Decree on the content of the strategic environmental assessment report ("Official Gazette of the Republic of Macedonia" no. 153/2007), Article 2 paragraph 1

Decree on the works and activities for which it is obligatory to prepare an elaborate, and for the approval of which the body for performing professional affairs in the field of environment is competent⁸⁸

The decree defines that hydropower plants with a capacity of up to 10 M/U must prepare a environmental protection elaborate, which is approved by the MoEPP – Environmental Administration.⁸⁹

Rulebook on the form and content of the environmental protection elaborate in accordance with the types of works or activities for which the elaborate is prepared, as well as in accordance with the implementer of the activity and the scope of works and activities carried out by legal entities and natural persons, the procedure for their approval, and the manner of keeping the register of approved elaborates⁹⁰

The Rulebook regulates the obligatory content of the environmental protection elaborates depending on whether it is an entity (legal entity or natural person) that carries out activity of a larger or smaller scope.⁹¹ The Rulebook lays down that the elaborate for entities that carry out activities on a larger scale should contain data on:⁹²

- Technical-technological description of the work or activity;
- Description of the environment around the project site;

88 "Official Gazette of the Republic of Macedonia" no. 80/2009 and 36/2012

89 Decree on the works and activities for which it is obligatory to prepare a report, and for the approval of which the body for performing professional affairs in the field of environment is competent ["Official Gazette of the Republic of Macedonia" no. 80/2009 and 36/2012], Article 2 relating to Appendix Section V item 4

90 "Official Gazette of the Republic of Macedonia" no. 44/2013 and 111/2012

91 Rulebook on the form and content of the environmental protection elaborate in accordance with the types of works or activities for which the elaborate is prepared, as well as in accordance with the implementer of the activity and the scope of works and activities carried out by legal entities and natural persons, the procedure for their approval, and the manner of keeping the register of approved elaborates ["Official Gazette of the Republic of Macedonia" no. 44/2013 and 111/2012], Article 2

92 Ibid, Appendix 1

- The environmental impacts of the project through the review and assessment of important environmental impacts, such as their intensity and duration, which should be prevented or reduced by appropriate environmental protection measures. The review and assessment of impacts should include the impacts of the process of carrying out works for the project implementation (for example, the process of construction of a facility and the like), as well as the impacts that occur in the process of carrying out the work or activity;
- Sources of noise, vibration and non-ionizing radiation, their location on the site/facility, periods of operation;
- Impact of the project on biodiversity, in particular the impact on key ecosystems, habitats and plant species, fungi and animals;
- Environmental protection program with precisely defined content.

The Rulebook stipulates that the Environmental Administration and the municipalities must keep a Register of approved environmental protection elaborates in written and electronic form, which contains *the request for approval of the elaborate and the documentation attached to it, opinion and comments received after the request for approval on the elaborate, the decision by which the elaborate is approved or rejected, a copy of the certified elaborate and other documentation.*⁹³

Decree on determining the projects and the criteria on the basis of which the need for conducting an environmental impact assessment procedure is determined⁹⁴

The decree generally defines the projects for which the need for conducting an environmental impact assessment is determined. This group includes the hydropower plants.⁹⁵ At the same time, the rulebook determines the criteria according to which it should be assessed whether the environmental impact assessment procedure should be conducted for the specific project, that is:

93 Ibid, Article 6

94 "Official Gazette of the Republic of Macedonia" no. 74/2005, 109/2009, 164/2012 and 202/2016

95 Decree on determining the projects and the criteria on the basis of which the need for conducting an environmental impact assessment procedure is determined ("Official Gazette of the Republic of Macedonia" no. 74/2005, 109/2009, 164/2012 and 202/2016), Appendix II item 3

- project characteristics (cumulative impact of the project with other projects that have been implemented or are being implemented, as well as with projects - planned to be implemented; use of natural resources; other type of environmental degradation)⁹⁶;
- the location of the project with the environment (abundance, quality and regenerative capacity of natural resources in the area; absorption capacity of the environment)⁹⁷;
 - when determining the absorption capacity of the environment, the MoEPP is obliged to take into account the environmental sensitivity, especially if the location of the project is in or near:⁹⁸
 - ◆ aquatic habitats,
 - ◆ coastal zones of aquatic ecosystems,
 - ◆ areas with preserved natural ecosystems and with significant biodiversity and geodiversity,
 - ◆ nature reserves and parks,
 - ◆ areas under special protection,
 - ◆ areas in which environmental quality standards are significantly met or exceeded,
 - ◆ complex urban areas,
 - ◆ landscapes and sites of historical, cultural and archeological importance;
- potential significant impacts of the project on the environment (size of the affected geographical area and the affected population; scope and complexity of the impact; probability of impact; duration, frequency and reversibility of the impact)⁹⁹.

96 Ibid, Article 5 and 6

97 Ibid, Article 5 and 7

98 Ibid, Article 8

99 Ibid, Article 5 and 9

Rulebook on the information that should be included in the notification on the intention to implement the project and the procedure for determining the need for environmental impact assessment of the project¹⁰⁰

The Rulebook determines the obligatory elements and information that the notification for the intention to implement the project should contain, that is:¹⁰¹

- Project characteristics:
 - The category to which the project proposal belongs according to the Decree described above;
 - Reasons why an environmental impact assessment is not considered necessary, a brief description of the project proposal, including the project proposal capacity or size;
 - Description of the main processes, including size, capacity, production capacity, resources invested at the beginning of the process and quantity produced; reasons for proposing the project; a plan showing the boundaries of the construction zone, including land temporarily required during construction; the spatial form of the construction zone (appearance, construction facilities, other facilities, building materials, etc.);
 - information on measures for reduction of negative impacts; other activities that may arise as a result of the project (e.g. exploitation of mineral resources, provision of new water supply, electricity generation or transmission, increased number of settlements and sewerage);

100 "Official Gazette of the Republic of Macedonia" no. 33/2006

101 Rulebook on the information that should be included in the notification on the intention to implement a project and the procedure for determining the need for environmental impact assessment of the project ("Official Gazette of the Republic of Macedonia" no. 33/2006), Article 2

- Potential impact characteristics:
 - impacts on humans, human health, biological diversity, soil, land use, material goods, water quality and hydrology, air quality, climate, noise and vibration, landscape and visual environment, natural, cultural and historical heritage, and their mutual impacts;
 - the nature of the impacts (i.e. direct, indirect, secondary, cumulative, short-term, medium-term, long-term, permanent, temporary, positive, negative);
 - scale of impact (geographical area, size of affected population/habitat/species);
 - size and scope of impact;
 - probability of impact;
 - duration, frequency and reversibility of the impact;
 - measures included in the project design to reduce, avoid or neutralize major negative impacts.

After receiving the notification, the MoEPP, guided by the criteria described in the previous decree, determines the need for environmental impact assessment of the project and notifies the investor by a decision.¹⁰²

Rulebook on the content of the requirements to be met by the environmental impact assessment study of the project¹⁰³

Rulebook lays down that the environmental impact assessment, among other information, should:¹⁰⁴

- Contain a description of the environment and its media on site;
- Contain a description of the natural, cultural and historical heritage and the landscape;
- Contain a description of the type and quantities of expected emissions, in particular air and wastewater emissions, solid waste, and other information needed to evaluate the major environmental impacts of the project;
- Contain a description of the measures for prevention, reduction and elimination of the environmental impact, as well as the measures for restoration in the original state;
- Contain a description of the environmental impacts of the project taking into account the level of development of science and the accepted evaluation methods;
- Contain a description of the features of the technology used;
- Contain a description of the alternative solutions for the implementation of the project that the investor had in mind and the main reasons for choosing the proposed alternative; the zero alternative is always included.

Rulebook on the form, content, procedure and manner of preparation of the report on the adequacy of environmental impact assessment study of the project, as well as the procedure for authorization of the persons from the list of experts on environmental impact assessment, who will prepare the report¹⁰⁵

103 "Official Gazette of the Republic of Macedonia" no. 33/2006

104 Rulebook on the content of the requirements to be met by the environmental impact assessment study of the project ["Official Gazette of the Republic of Macedonia" no. 33/2006], Article 2

105 "Official Gazette of the Republic of Macedonia" no. 33/2006

The Rulebook stipulates the form for preparing the report on the adequacy of the environmental impact assessment study of the project. According to the rulebook, the report contains information on:¹⁰⁶

- 1 Project description;
- 2 Taking into account the project alternatives;
- 3 Description of the environment affected by the project implementation;
- 4 Predicting the impacts on human health and issues related to sustainable development;
- 5 Description of the measures for reduction of impacts;
- 6 Non-technical summary;
- 7 Quality of the presentation;
- 8 Checking the prevalence of all relevant environmental impacts of the project;
- 9 Assessment of the adequacy of the interpretations of the impacts - assessment of the consistency;
- 10 Recommendations for correcting possible more serious omissions.

The MoEPP analyzes the data listed in the first 7 items of the form, and lists the findings of the analysis in items 8, 9 and 10.¹⁰⁷

¹⁰⁶ Rulebook on the form, content, procedure and manner of preparation of the report on the adequacy of environmental impact assessment study of the project, as well as the procedure for authorization of the persons from the list of experts on environment impact assessment, who will prepare the report ("Official Gazette of the Republic of Macedonia" no. 33/2006), Article 3

¹⁰⁷ Ibid, Article 4

Case Studies

Right to free access to environmental protection studies in relation to hydropower projects smaller than 10 MW

According to the LE, each hydropower project (regardless of size) is subject to environmental assessment, and those with an installed capacity of above 10 MW or projects involving reservoirs are subject to an EIA. Projects with an installed capacity of less than 10 MW, that is, low performance hydropower projects (SHPPs) are subject to the preparation of an environmental protection elaborate, on the basis of which the MoEPP approves or does not approve the project. The EIA procedure is thoroughly regulated in the LE with a specific obligation to allow access to information related to it. However, when it comes to preparing an environmental protection elaborate, the law does not provide for a specific obligation to publish the documents. The investor is obliged to submit a request for approval and to prepare an environmental protection elaborate in paper and electronic form for the MoEPP. In April 2015, the MoEPP announced that on the territory of NP "Mavrovo", 4 new SHPP projects based on environmental protection elaborate have been approved. In the same month, CSO "Front 21/42" submitted a written request to the MoEPP for access to information, namely to gain access to environmental protection elaborates and the decisions for approval of the four new SHPPs in NP "Mavrovo" in electronic format (PDF on compact disc (CD)). The MoEPP did not respond to the request within the legal deadline of 30 days, hence the CSO "Front 21/42" filed a complaint with the Commission for Access to Information in August 2015. The Commission for Access to Information determined the violation and obliged the MoEPP to respond to the request within 7 days. The MoEPP responded to the request in September 2015, but refused to provide a copy of the electronic version of the elaborates, noting that if notified in a timely manner by CSO "Front 21/42", they could be allowed a partial scrutiny into the documentation. Given the large amount of data that needed to be analyzed (usually more than 100 pages of technical documentation), CSO "Front 21/42" extended the appeal procedure to the Commission for Access to Information, which ruled in favor of CSO "Front 21 / 42 ". In the explanatory note of the decision, the Commission for Access to Information determined that the MoEPP must provide the information in the requested format, unless the information is already available in another format (prescribed by law) or if the format proposed by the Ministry is more appropriate. In any case, the Ministry must give an explanation for the decision why they did not provide the information in the requested format.

In December 2015, the Ministry submitted a response in which it denied access to information again and confirmed that the studies requested for access were subject to copyright and only after an administrative review of the conflict arising from their request, the access to them would be provided. This is not in line with the decision of the Commission for Access to Information, that is to provide full access to the required form. Namely, according to Article 4 of the Aarhus Convention, the public can request information in a certain format, e.g. in a paper copy, through electronic media, video recordings, audio recordings, etc. As a rule, the public authority must comply with

the request for access to a particular form, except under specific conditions. This provision also means that public authorities must provide copies of documents, in addition to the possibility to check the documents. In its findings in a communication ACCC/C/2008/24 (Spain), the Compliance Committee found that the Party concerned had not complied with the Convention at a time when the authorities responding to a request for access to information had failed to provide the information electronically on CD-ROMs, as required, and provided paper copies of the information instead. Additionally, this decision was contrary to the Aarhus Convention, as EIA studies (or similar studies) are prepared for the purpose of a public document in an administrative procedure and therefore the author or investor should not have the right to withhold information from public disclosure, thereby must not refer to the Intellectual Property Law.

As a result, in February 2016, CSO "Front 21/42" filed two administrative complaints with the State Administrative Inspectorate (in addition to the complaint filed to the Commission) requesting full and appropriate enforcement of the decision. Administrative complaints are used when the public authority does not respect the decision of a hierarchically higher administrative body or court. In March 2016, as a result of administrative objections from the State Administrative Inspectorate, the Ministry of Environment provided full and correct access to environmental protection elaborates. The above procedure for access to environmental information lasted 1 year.

Public participation in the decision-making process - EIA procedure for HPP "Boskov Most"

The "HPP Most" project is located on the territory of NP "Mavrovo" (more than 80% of the project will be constructed in the national park). It includes the construction of a reservoir (dam 33 m high), a hydropower plant with a total capacity of 68 MW with an annual output of about 118 GWh, a tunnel and a reservoir opening to HPPs. The project is included in Annex I of the Aarhus Convention and Annex I of the Environmental Impact Assessment (EIA) Directive. In September 2010, JSC ELEM Macedonia (state-owned electricity generation company) sent a notification to the Ministry of Environment with the intention to implement the project (letter of intent) in relation to the HPP "Boskov Most" project together with the scope of the EIA study. In April 2011, the MoEPP adopted a decision requesting an EIA study and determining the scope of the EIA for the project without consulting the public, and in July 2011, the draft EIA study was prepared and published.

The first period for submitting comments was during the summer holidays, contrary to the Aarhus Convention. The Public Participation Working Group (PWG) sent a comment to the MoEPP and the Ministry extended the consultation period until the end of September 2011. As the relevant body for implementation of the process, the Ministry of Environment and Physical Planning organized three public hearings in September 2011, two in the area concerned (NP "Mavrovo" and Debar) and one in Skopje. PWG participated in the public hearings, asked questions and commented on the content of the draft EIA study related to the project. Following the public hearing, the PWG submitted a series of comments (including comments from international experts) to the MoEPP. The main comment on the study was

the lack of significant information necessary for an accurate and objective environmental impact assessment of the project, as well as the lack of proposals to find appropriate alternative solutions.

The lack of complete and key information identified in the EIA study was also confirmed by the investor. However, the MoEPP never responded to the comments officially. As a result, the investor agreed to conduct a one-year monitoring of the environment and biodiversity at the project site before construction started in order to remove the shortcomings of the EIA study. Furthermore, based on the information received, the investor agreed to prepare additional alternatives and mitigation measures. The monitoring started in the summer of 2012, before the construction started, and it was to be completed in the summer of 2013, attended by representatives of the MoEPP.

Despite the investor's decision to establish monitoring before construction starts, the MoEPP decided to approve the project and issue a project implementation decision in October 2012. CSO "Front 21/42" filed a complaint with the SCDMAPLRPSI in 2012 within the legally prescribed deadline. SCDMAPLRPSI rejected the complaint as unfounded and approved the project implementation decision in March 2013. In April 2013, within the legally prescribed deadline, CSO "Front 21/42" filed a lawsuit against the decision of SCDMAPLRPSI with the Administrative Court. The lawsuit stated that the EIA study for HPP "Boskov Most" was incomplete - a fact that was confirmed by the need to conduct pre-construction monitoring. Another argument was the lack of proper and efficient public consultation - the comments had to be responded before the monitoring that was planned before the construction started.

The Administrative Court upheld the lawsuit as well-founded, and in the judgment found that there was no evidence of the manner in which the MoEPP included the comments from the public. Namely, in accordance with the Law on Environment, the MoEPP should have based its decision on the EIA study, especially on the report on the competence of environmental impact assessment study of the project, as well as on the public hearing and opinions received during the consultation period. When it comes to the EIA for HPP "Boskov Most", it was found that there was no evidence of the manner in which the MoEPP adopted its decision in accordance with all these legal requirements, as the list of approved/rejected comments from the consultation was missing and there was also no evidence that it was submitted to the project investor. As a consequence, the court could not justify the outcome of the consultations taken into account in the decision-making process. The judgement was adopted in December 2015 and entered into force in May 2016. The decision of the EIA for HPP "Boskov Most" was officially annulled in January 2017. The EIA procedure of the HPP "Boskov Most" project lasted 2 years (from 2010 marked as the beginning of the procedure until the approval of the EIA, 2012), and the access to justice lasted almost 5 years.

Participation in the decision-making process with cross-border impact - EIA procedure for HPP "Lukovo Pole"

The HPP "Lukovo Pole" project consists of:

- | a | construction of an intake channel approximately 20 km long, a parallel flow path for water transfer from the Korab catchment area to the reservoir of "Lukovo Pole" and the Crn Kamen River (transfer of water from the Adriatic Sea basin to the Aegean Sea);
- | b | a 70-meter-high dam at "Lukovo Pole" with a storage capacity of approximately 39 million cubic meters;
- | c | SHPP "Crn Kamen" project with about 5 MW downstream from Lukovo Pole. Between the maximum and minimum levels of the reservoir, its surface area will vary between 1.5 and 0.1 m².

The project is located in the northwestern part of RNM in the mountain range Korab at an altitude of 1,500 meters in the heart of NP "Mavrovo". Part of the project is in a zone where this type of activities is not allowed to be carried out (strict protection zone and active management zone). However, in January 2010, JSC ELEM Macedonia started preparing the documentation for initiating an EIA procedure for HPP "Lukovo Pole" and announced that it intended to implement the project (letter of intent). Based on the written application, in August 2010, the MoEPP decided to determine whether it would be necessary to prepare an EIA study.

In fact, the project involves the transfer of water from one river basin to another and as a result, the project expands close to the border with R. Albania and R. Greece. This means that the letter of intent and the decision on whether to prepare an EIA study, as well as its scope, should be translated into the relevant languages and submitted to neighboring countries through a cross-border public consultation procedure according to the Espoo Convention. In the the decision, the cross-border component was not mentioned at all, as well as its impact on the project, thus neither the decision nor the letter of intent were translated into other languages, nor were they forwarded to neighboring countries. As a consequence, the Public Participation Working Group (PWG) filed a complaint with the MoEPP, requesting the annulment of this decision and starting the procedure from beginning, including the obligation to conduct a cross-border consultation. Three years later, in August 2014, JSC ELEM Macedonia submitted a new letter of intent which included the cross-border component, but also the scope of the EIA study. PWG submitted comments regarding the scope of the EIA study. In November 2014, the MoEPP adopted a decision on the scope of the EIA study, but the comments of the PWG were not fully reflected. As a result, in December 2014, CSO "Front 21/42" filed a complaint with the SCDMAPLRPSI. In January 2017, CSO "Front 21/42" received a decision from SCDMSPLRPSI claiming that the complaint was unfounded. In February 2017, CSO "Front 21/42" filed a lawsuit with the Administrative Court, which was supplemented by the result of the decision of the Bern Convention case of 2015.

Hydropower development projects in NP "Mavrovo" presented before the relevant Commission of the Bern Convention

In March 2013, CSO "Eko-svest" filed a complaint with the Secretariat of the Bern Convention, stating the following:

- I The Macedonian government has not completed the SEA, which should have been completed before the continuation of the development of the hydropower plants in NP "Mavrovo".
- I The area around the planned construction of HPP "Boskov Most" is a critical habitat of the critically endangered Balkan lynx.
- I Part of the HPP "Lukovo Pole" project is planned to be implemented in a strictly protected zone in NP "Mavrovo".
- I Lawsuits have been filed, awaiting a decision against the MoEPP, due to the approval of an incomplete environmental impact assessment study.
- I The independent expert of EBRD, which is a sponsor of HPP "Boskov Most", found that the Bank has violated its own procedures, the environmental impact assessment is not complete to decide on the involvement of the bank in the project.

The complaint was reviewed and followed through by the Secretariat of the Bern Convention. During the meeting of the Standing Committee in December 2014, the case file was opened, which meant that it attracted the attention of the Standing Committee of the Bern Convention. Additionally, the Standing Committee instructed the Secretariat to conduct an on-site assessment in NP "Mavrovo" in 2015. The assessment was conducted in June 2015, attended by representatives of the Secretariat of the Bern Convention and the European Commission, as well as Macedonian institutions (MoEPP, the company for construction of hydropower plants - which is an investor in both projects and the management of the national park). They were accompanied by representatives of the EBRD and the Macedonian CSOs that monitored the developments in NP "Mavrovo" in the previous five years. The on-site assessment report was presented in December 2015 at the 35th session of the Standing Committee of the Bern Convention, which established that: "...the planned hydropower projects in the park are not compatible with the protection status of the park, its ecosystem and the species that exist in it, which are of great importance; and consequently, they should be abandoned." The official recommendation to the Government was to suspend all hydropower projects in the national park until an SEA procedure has been conducted. The recommendation to the international financial institutions concerned, that is, the EBRD and the World Bank, was to give up financing the planned hydropower projects.

Only several days after the recommendation was announced, the World Bank announced that the “Lukovo Pole” project had been canceled, and the EBRD remained involved in the “Boskov Most” project until early 2017, when it officially terminated the loan agreement for the project.

“Money vs. Nature” – a complaint filed with the EBRD PCM for HPP “Boskov Most”

In 2011 CSO “Eko-svest” filed a complaint with the EBRD MPA for HPP “Boskov Most” claiming the following:

- The HPP “Boskov Most” project is planned in a critical habitat, where the endangered Balkan lynx exists and it is not in line with the Bank’s environmental protection policy.
- The bank failed to assess the impact of the project and obtain all relevant information before approving it.
- The environmental impact assessment study failed to provide basic information, as well as the necessary alternative solutions and mitigation measures for the project.

The complaint was assessed as “acceptable” in 2012, and in 2013, the independent expert of PCM submitted a report confirming that the Bank had violated its prescribed rules when approving the construction of the HPP “Boskov Most”. The report states that the environmental impact assessment is not complete and if the project is planned in a protected area, as is the case with NP “Mavrovo”, an appropriate assessment should be conducted. As the assessment was not completed before the EBRD approved the project, the expert concluded that the EBRD’s environmental and social policy had been violated.

The expert recommended that the EBRD’s policies and practices be improved in the future, but the PCM is an internal process and focuses on how the bank operates thus he was not able to recommend anything beyond the already defined limit. As a result, the EBRD formally continued to support the project, although no payment was made, whereby a number of additional studies and assessments were initiated to compensate for the missing information. The compliance report provided sufficient information to the CSO to file a lawsuit and submit additional requests to the Bank, the investor and the Macedonian institutions, which helped to strengthen the campaign.

03



Water treatment, management and use are generally regulated by the Law on Waters. This law is a special law in relation to the Law on Environment.

Law on Waters

The waters are common good and in ownership of RNM, thus they shall enjoy special protection and may not be subject to ownership of other persons, but may only be awarded for use through concessions.¹⁰⁸ The manner of water protection and management is generally regulated in the Law on Waters. Water management, which is performed by the MoEPP,¹⁰⁹ is an activity of public interest, whereby all measures, standards and environmental objectives established by the Law shall be the minimum requirements to be met in the management, and if other law lays down other measures, objectives and standards, the strictest ones shall apply.¹¹⁰ The waters in the country are grouped in river basins (4 river basins in RNM) and are managed by preparing management plans for each of them.¹¹¹ The objectives of LW, and therefore the water protection system in RNM, shall be to ensure:¹¹²

- accesability to sufficient quantity of good quality water, in accordance with the principles of sustainable management of drinking water and food production, for the needs of agriculture, industry, hydropower purposes, for the needs of parks and other public spaces, tourism, navigation and others purposes,
- protection, conservation and continuous improvement of available water resources, improvement of the waterside land status, aquatic ecosystems and water-dependent ecosystems, protection and improvement of the aquatic environment through rational and sustainable use of waters, as well as progressive reduction of harmful discharges and gradual elimination of emissions of hazardous materials and substances into the waters,
- mitigation of the consequences of the harmful effects of waters and water scarcity,

108 Law on Waters ["Official Gazette of the Republic of Macedonia" no. 87/2008, 6/2009, 161/2009, 83/2010, 51/2011, 44/2012, 23/2013, 163/2013, 180/2014, 146/2015 and 52/2016 and "Official Gazette of the Republic of North Macedonia" no. 151/2021], Article 6

109 Ibid, Article 8 paragraph 2

110 Ibid, Article 3

111 Ibid, Article 7

112 Ibid, Article 2

- protection and improvement of the environment and nature, aquatic ecosystems and biological diversity and protection of human health.

The water management and protection system shall be based on the principles that are largely identical to those established in the LE. One may point out the **ecological-social and economic concept**, which according to LW shall mean that waters are part of natural processes and they should be protected as habitats of flora and fauna, and water management should ensure the achievement of public interest and in a manner to ensure sustainable water management.¹¹³ The principle of **minimizing the use of resources** lays down that when carrying out activities that may have an impact on waters and human life and health, everyone is obliged to behave carefully and to rationally to use waters, to prevent water pollution and to avoid other negative effects and risks to human life and health and to the environment.¹¹⁴

Water level, flow, direction of the flow, water velocity, drifts, physical, chemical and radioactive properties and hydrobiological composition of water are some of the basic parameters that define the quantitative and qualitative state of waters and must not be changed contrary to the laws, that is, the manner regulated by law.¹¹⁵

The water use covers several activities determined by law, including accumulation, impoundment, abstraction and redirection in order to generate electricity.¹¹⁶ Given that the use of water requires an appropriate permit, which will be explained further on in the text, if there are several requirements for the water use of the same water body, the permit shall be issued in accordance with the following priorities:¹¹⁷

- 1 Water supply to the population through the public water supply system, for the health institutions and legal entities in the field of veterinary medicine, for the needs of the defense, for the industry of food production and processing and for the livestock watering;
- 2 Irrigation of agricultural land;
- 3 Water supply for industry and commercial purposes;
- 4 Hydropower and other plant purposes;

¹¹³ Ibid, Article 5 paragraph 1 item 1

¹¹⁴ Ibid, Article 5 paragraph 1 item 4

¹¹⁵ Ibid, Article 12

¹¹⁶ Ibid, Article 13

¹¹⁷ Ibid, Article 15

- 5 The needs of parks and other public spaces;
- 6 Water bottling for commercial purposes;
- 7 Other purposes.

Strategic water management is performed by three documents:

- **National Water Strategy¹¹⁸**, which defines the long-term policy for sustainable water development, rational and cost-efficient use of waters, protection of waters against pollution and pollution control, protection and improvement of the waterside land and water habitats and protection and mitigation of the consequences of the harmful effects of waters and water scarcity. It is prepared by a great number of ministries and then submitted to the Government, which proposes it to the Assembly of the RNM for adoption. The NWS shall apply for a period of 30 years and its commitments should be taken into consideration when preparing other strategic documents;

- **The Water Management Basis¹¹⁹** shall be adopted for the purpose of NWS implementation, but also for integrated planning and implementation of programs and measures for water development in accordance with the objectives of national sustainable development and harmonization of economic development, social progress and environmental protection. It is prepared by the MoEPP for a period of 20 years and submitted to the Government, which further submits it to the Assembly of the RNM for adoption. WMB shall apply to the whole territory and in particular contains provisions for:

- current status of waters;
- present and future demands for water;
- water balance;

¹¹⁸ Ibid, Article 62

¹¹⁹ Ibid, Article 63-65

- technical and economic solutions for rational use of waters, for protection of waters against pollution and protection against harmful effects of waters on the basis of the principles of sustainable development;
- time frame for implementation of the technical and economic solutions referred to in item 4 of this paragraph;
- long-term environmental objectives and a program of measures for their achievement.

The WMB shall be revised, amended or supplemented at least every 10 years, and same as the NWS should be taken into consideration when preparing the Spatial Plan of RNM and other long-term planning documents for the development of industries and use of natural resources. Public participation is envisaged in the procedure for drafting the WMB after the announcement of the draft WMB.

■ River Basin Management Plans

River Basin Management Plans

River Basin Management Plans¹²⁰ shall be adopted for each of the river basins in RNM and they are exceptionally important in terms of issuing water use permits. They are prepared by the MoEPP for a period of 6 years, and adopted by the Government. The opinions of the River Basin Management Councils should be taken into account in the preparation of the RBMP, and although the public is involved after the publication of the draft plan, it could be considered that the intention of the LW is to involve the public early since it is regulated that at least 3 years before the beginning of the period that is subject to RBMP, the time schedule, work program for preparation of the plan and the list of consultative measures should be published; At least 2 years before the beginning of the period that is the subject of the plan, an overview of the important issues in the field of water management at the river basin level should be published, and the draft plan should be published at least 1 year before the beginning of the period of the plan. It shall be obligatory for the RBMP to be revised, amended and supplemented at least every 6 years, and in particular should contain:

120 Ibid, Article 66-69

- description of the characteristics of the river basin;
- display of significant pressures and impacts on the status of surface waters and groundwaters caused by human activities;
- information and cartographic representations of the registered protection zones;
- information and cartographic representations of water status monitoring activities and monitoring programs;
- list of environmental objectives for each water body in the river basin, including information on deviations made in accordance with the LW, the marking of artificial and heavily modified surface waters. The information shall contain the measures planned and taken for the purpose of improving the quality of waters and achieving the environmental objectives;
- economic analysis of water use, including a report on the application of the "user pays" principle;
- program of measures for achieving environmental objectives;
- more detailed programs and plans for water management of river basins and sub-basins;
- program for protection against harmful effects of the waters referred to in Article 124 of the LW, as well as the basic measures for protection against floods;
- description of activities and results of the public participation in the preparation of the plan;
- list of bodies and institutions responsible for the waters in the river basin;
- the manner in which information and documents related to the preparation and implementation of the plan are available to the public;
- fulfillment of the obligations undertaken with international agreements related to the water management ratified by the Republic of North Macedonia;
- areas in which construction or other activity that may prevent the implementation of the planned facilities and measures of public interest is prohibited;
- Other activities determined by the MoEPP.

The preparation of the RBMP should be preceded by an assessment of each river basin, which includes analysis of its characteristics, review of significant pressures and impacts of human activities on groundwater and surface water and economic analysis of water use.¹²¹

The environmental objectives, which are an integral part of the RBMP, shall be determined for each water body in the river basin area according to precisely defined criteria for surface waters and groundwaters, and in particular the type of environmental objective is taken into account depending on the characteristics of the water body as well as exceptions; the time, criteria, methods and procedure for setting environmental objectives; the deadline within which the environmental objectives should be achieved and the type and the deadline within which the measures determined in the Program of measures achieving the environmental objectives should be taken, as well as the manner and the procedure for preparation of the Program.¹²² Environmental objectives for surface waters should lead to avoidance of deteriorating water status and impacts that cause deterioration of the status of aquatic ecosystems and chemical water status; achieving good status of water bodies and aquatic ecosystems, as well as water-dependent ecosystems and achieving good chemical status and good ecological potential of water in artificial and heavily modified water bodies (elaborated in more detail in paragraph 7).¹²³ Exceptionally important is the Classification of surface waters, which is adopted by the Government, upon the proposal of the MoEPP, and which prescribes definitions for the classification of the ecological status of surface waters, which can be high, good, moderate, insufficient and bad; characteristics and minimum standards for determining the good chemical state of surface water bodies; characteristics and minimum standards for determining the good ecological status of surface water bodies; the characteristics and minimum standards for determining good chemical status and good ecological potential of heavily modified and artificial surface water bodies; substances, environmental quality standards and the manner of determining the class of chemical status of surface water bodies; environmental quality standards, environmental quality indices and other limit values, as well as the manner of determining the class of ecological status/potential of surface water bodies and the manner of classification of the status of surface water bodies. Ecological status is classified according to biological, hydromorphological, chemical and physico-chemical elements and specific pollutants.¹²⁴

¹²¹ Ibid, Article 71

¹²² Ibid, Article 72

¹²³ Ibid, Article 90

¹²⁴ Ibid, Article 90 paragraph 5

The environmental objectives set in this manner shall be achieved through the preparation of a Program of measures for achieving environmental objectives, an integral part of the RBMP, which also contains a financial plan for the implementation of measures and activities envisaged. The program contains basic and additional measures. In the group of basic measures, inter alia, are the measures:¹²⁵

- prescribed by the regulations for nature protection;
- to control the scope of construction of water management facilities;
- to determine the fees for the costs of water use;
- to encourage sustainable water use;
- for the nature protection and for the preservation and rational management of certain components of biological and landscape diversity, as well as the sustainable and rational use of natural resources.

If the environmental objectives cannot be achieved by the basic measures, the MoEPP may determine special measures, including:¹²⁶

- undertaking legal, administrative and economic or fiscal measures;
- determining codes of good practice;
- introduction of measures for restriction and control of use;
- measures for rational, efficient use and reuse of waters, including use of technologies in industry and irrigation for efficient water use and water conservation;
- measures for education, research, development and training.

Deviation from environmental objectives is allowed only when it is unattainable or unjustifiably expensive, thus less stringent objectives may be set. In that regard, the deviation shall be allowed only if due to:¹²⁷

¹²⁵ Ibid, Article 74 paragraph 1

¹²⁶ Ibid, Article 74 paragraph 2

¹²⁷ Ibid, Article 95

- new changes in the physical properties of a surface water body,
- changes in the level of groundwater bodies,
- undertaking measures of sustainable human development, which cause deterioration of the status from high to good status of the surface water body.

Related to the environmental objectives is the designation of protection zones, which are designated by a decision of the Government upon the proposal of the MoEPP. The proposal for establishing protection zones may also be submitted by the municipalities, which submit the proposal voted by the Council to the MoEPP, which forwards it to the Government. Protection zones, inter alia, may be established for water bodies intended for human consumption, areas designated as protected natural heritage, where the maintenance and improvement of water status is an important factor and zones intended for the protection of plant and animal species, that live or are dependent on water, and are economically significant. Depending on the water body/area for which the designation of protection zones is proposed, a proposal may be submitted by another appropriate ministry.¹²⁸ Depending on the protection zone, there are measures and activities to be determined for which it shall be allowed, that is, not allowed to be carried out.¹²⁹

Water Right

Water right is a water use permit¹³⁰, which is issued upon request submitted to the MoEPP. The water use permit in no case shall mean a right of ownership of the permit holder over the water for which the permit has been issued, nor over the facilities and plants for water use.¹³¹ For electricity generation, a water use permit must be provided.¹³² In the case of SHPPs, where a water use concession is required, the concession may not be awarded unless a water use permit is obtained in advance.¹³³ If there are status changes of the permit holder, the legal successor can inherit the permit by submitting a request to the MoEPP, for which a decision must be adopted.¹³⁴ Prior to submitting the request for obtaining a water use permit, the investor should request and obtain from the MoEPP water management

¹²⁸ Ibid, Article 96

¹²⁹ Ibid, Article 97-103

¹³⁰ Ibid, Article 26

¹³¹ Ibid, Article 25

¹³² Ibid, Article 28 paragraph 1 item 1 line 5

¹³³ Ibid, Article 23 paragraph 5

¹³⁴ Ibid, Article 27

design requirements and requirements for protection of aquatic ecosystems and water-dependent ecosystems, which must be in accordance with WMB and RBMP.¹³⁵ Along with the request for issuance of a permit, among other documents, the investor should submit a decision for an approved environmental impact assessment study, that is, a decision for approval of the environmental protection elaborate according to the LE, that is, in the case of SHPP, a decision from the MoEPP for approval of the environmental protection elaborate. LW lays down the possibility prior to the preparation of the request, the investor to start consultations with the MoEPP regarding the content and the volume of documentation that should be submitted together with the request.¹³⁶

After receiving the request, the MoEPP shall be obliged to immediately submit one copy to the ministry in charge of the activity to be carried out by the facility and/or the plant and to the mayor of the municipality on the territory of which the facility/plant will be constructed.¹³⁷ The mayor shall be obliged to submit an opinion regarding the request within 15 days of receipt, and if he/she does not submit the opinion within that deadline, it shall be deemed that he/she has agreed.¹³⁸ In order to involve the public in the procedure, the MoEPP shall be obliged to publish the request in at least one daily newspaper available on the entire territory and on its website, after which the public has a deadline of 15 days to submit opinions and remarks. Opinions and remarks submitted by the public or the bodies to which the request has been submitted (relevant ministry and the mayor/s) should be taken into account when preparing the permit, whereby the MoEPP should explain the reasons for their possible rejection.¹³⁹

The water use permit **must** be in accordance with the RBMP¹⁴⁰, thereby the request shall be rejected if it is not in accordance with the RBMP, the public interest is endangered or the provisions of an international agreement ratified by RNM are violated.¹⁴¹

The water use permit issued does not commence immediately with legal effect, but only after the review that the facility/plant meets the requirements prescribed in the permit. Such review shall be conducted by a special commission formed by the MoEPP, which shall issue a certificate to the permit holder for the review conducted. From the moment of issuing the permit until the moment when the review shall be conducted, at the request of another natural person or legal entity, the MoEPP may issue a permit for temporary water use from the same water body.¹⁴²

135 Ibid, Article 31 paragraph 1 and 2

136 Ibid, Article 32 paragraph 2

137 Ibid, Article 33 paragraph 4

138 Ibid, Article 36

139 Ibid, Article 38

140 Ibid, Article 28 paragraph 3

141 Ibid, Article 39 paragraph 1

142 Ibid, Article 41

SHPPs shall be obliged to pay a monthly¹⁴³ fee for the water use for electricity generation,¹⁴⁴ and the obligation arises at the moment when the legal effect of the permit commences.¹⁴⁵ The amount of the fee is 1% of the generation price per kilowatt-hour on the threshold of the power plant, and the Government, upon the proposal of the MoEPP, for which the Ministry of Agriculture, Forestry and Water Economy agrees, may, based on the criteria laid down in the LW, temporarily abolish the payment of the fee or to increase or decrease the fee, but not more than 20% of the amount laid down by LW (1% of the generation price per kilowatt-hour on the threshold of the power plant).¹⁴⁶ Through the Water Management Program adopted by the Government on an annual basis, the use of funds from the fees for water use is envisaged for certain activities that are precisely defined in the LW.¹⁴⁷

If the permit shall be issued for carrying out an activity of public interest, and the holder does not carry out the activity in accordance with the requirements of the permit, that is, commits a significant and continuous violation of the requirements, the MoEPP shall adopt a decision for placing the permit under temporary receivership. The decision, inter alia, determines the deadline within which the temporary receivership is performed, after the expiry of which the MoEPP shall adopt a decision for termination of the decision for temporary receivership or revocation of the permit.

In the case of SHPPs, the water use permit shall be issued for the duration of the concession.¹⁴⁸ The permit is changed ex officio or at the request of the holder, to which technical documentation on the situation and circumstances is attached, in case when there is a change of:¹⁴⁹

- quantity and/or quality of water used,
- quantity and/or quality of the water body wherefrom the water is used,
- technological process of operation.

143 Ibid, Article 213 paragraph 15

144 Ibid, Article 207

145 Ibid, Article 209

146 Ibid, Article 213

147 Ibid, Article 212 and 218

148 Ibid, Article 46 paragraph 2

149 Ibid, Article 45

If the water body is used for water supply and there is a shortage of water, the water use permit for electricity generation may be changed, whereby the permit holder is entitled to compensation for lost profit and compensation for the funds invested in water management and other facilities and plants.¹⁵⁰

The MoEPP, by a decision which determines the measures for overcoming the situation and the period for their implementation, may temporarily limit the water right if it:¹⁵¹

- endangers human health;
- endangers the natural balance of aquatic ecosystems and water-dependent ecosystems;
- limits the general water use;
- has harmful impact on the protected areas determined by the regulations for nature protection;
- due to the needs of the defense and security of the state.

The permit shall be revoked by a decision of the MoEPP if:¹⁵²

- the water is used contrary to the requirements determined by the permit;
- the holder has not paid the fee for water use;
- a misdemeanor sanction - ban on carrying out the activity related to water use has been imposed on the permit holder by a legally valid decision.

Prior to making the decision for revocation of the permit, the MoEPP should notify the holder and give him a deadline, not longer than 30 days, in which he is ordered to eliminate the cause.¹⁵³ The Government, upon the proposal of the MoEPP, may revoke the permit if the revocation provides or achieves a higher public interest than the one for which the permit was issued (some of the priorities are achieved before the one for which the permit was issued), whereby the holder shall be entitled to compensation for damages.¹⁵⁴

¹⁵⁰ Ibid, Article 50

¹⁵¹ Ibid, Article 49

¹⁵² Ibid, Article 51

¹⁵³ Ibid

¹⁵⁴ Ibid, Article 52

The permit shall be terminated if:¹⁵⁵

- the validity period of the permit has expired;
- the user has waived the rights established by the permit;
- the construction, reconstruction or extension of the facilities and plants under the permit does not begin within a period of at least two years as of the day of issuance of the permit;
- the works and activities for construction, maintenance, exploitation, modification, expansion, rehabilitation or closure of constructed water management and other facilities are not completed within the deadline determined by the permit;
- the water, without justified reasons, is not used and/or discharged continuously within a period of two years during the period of validity of the permit;
- the requirements for transferring the permit to a third party are not met;
- the permit issued is not in accordance with the amendments to the river basin management plans;
- the natural person without successors passes out;
- the permit holder is under liquidation.

Related to the water use permits is the establishment of the Water Book, which is a register in which water use permits, changes in permits, requests for issuance of a permit, protection zones, water management consents are recorded.¹⁵⁶

In order to properly apply the provisions on permits, as well as to monitor their implementation, there is a need to establish continuous monitoring of the status with water bodies. The monitoring system is regulated in Chapter VI of the LW. In addition to the general monitoring provisions, the LW contains an obligation of the users for electricity generation to measure the amount of water used to generate electricity at the points of impoundment and submit the data to the MoEPP.¹⁵⁷

¹⁵⁵ Ibid, Article 47

¹⁵⁶ Ibid, Article 160

¹⁵⁷ Ibid, Article 153

Institutional framework

The most important place in the institutional framework in terms of water management, is occupied by the MoEPP, more specifically the Department of Waters within the Environmental Administration in the MoEPP. The most important activities of the Department of Waters include the issuance of all water use permits, but also the preparation of RBMP.¹⁵⁸ The Department of Waters is organized in several units:¹⁵⁹

- Unit for Waters Planning and Development
- Unit for Concessions and Inter-Sectoral Cooperation
- Unit for Water Rights
- Unit for Vardar River Basin Management
- Unit for Crn Drim River Basin Management
- Unit for Strumica River Basin Management

The Department of Waters has a total of 20 employees, of which 6 are in the Unit for Water Rights.¹⁶⁰

In order to consider the issues of water management, harmonization and coordination of different needs and interests, as well as to propose various measures for conservation, protection and continuous improvement of the water regime on the territory of the Republic of North Macedonia, a National Water Council was established as an advisory body. The more important competencies of the National Water Council include reviewing and giving an opinion on NWMS, WMB and RBMP, giving an opinion on the need to amend the WMB and RBMP and giving an opinion on the draft laws and other regulations in the field of water management, as well as the implementation of applicable regulations in this field.¹⁶¹ The last decision to establish the National Water Council was adopted in 2009 and the council's mandate expired in 2012, and no new composition of water councils has been formed since then.

¹⁵⁸ Ibid, Article 222

¹⁵⁹ Organizational chart of the Department of Waters, MoEPP website, available at: <https://www.moepp.gov.mk/%d0%bc%d0%b8%d0%bd%d0%b8%d1%81%d1%82%d0%b5%d1%80%d1%81%d1%82%d0%b2%d0%be/%d1%81%d0%b5%d0%ba%d1%82%d0%be%d1%80-%d0%b7%d0%b0-%d0%b2%d0%be%d0%b4%d0%b8/>

¹⁶⁰ Information received at the thematic workshop with the relevant state institutions held on 11.3.2022

¹⁶¹ Law on Waters ["Official Gazette of the Republic of Macedonia" no. 87/2008, 6/2009, 161/2009, 83/2010, 51/2011, 44/2012, 23/2013, 163/2013, 180/2014, 146/2015 and 52/2016 and "Official Gazette of the Republic of North Macedonia" no. 151/2021], Article 219-221

In order to prepare and monitor the implementation of the RBMP, as well as to give opinions and proposals around the priorities of water management, the Government, upon the proposal of the MoEPP, for each river basin area, shall establish a River Basin Management Council.¹⁶² The River Basin Management Councils were first established in 2021.¹⁶³

Regarding the inspection over the application of the LW, the most important place is occupied by the competencies of the SEI, which perform the inspection through the water management inspectors and the environmental inspectors.¹⁶⁴ The LW precisely lays down the competencies of the SEI in terms of substantive and procedural aspect, that is, for which aspects the inspection is under the competence of the water management inspector, and for which under the competence of the environmental inspector.¹⁶⁵

¹⁶² Ibid, Article 223

¹⁶³ Decisions on establishing River Basin Area Management Councils, published in "Official Gazette of the Republic of North Macedonia" no. 176/2021

¹⁶⁴ Law on Waters ("Official Gazette of the Republic of Macedonia" no. 87/2008, 6/2009, 161/2009, 83/2010, 51/2011, 44/2012, 23/2013, 163/2013, 180/2014, 146/2015 and 52/2016 and „Official Gazette of the Republic of North Macedonia" no. 151/2021), Article 229

¹⁶⁵ Ibid, Article 230 and 232

Bylaws

| <div>Title of the bylaw that needs to be adopted by the state authorities</div> <div>Obligation fulfillment status</div> | The bylaw is adopted | The bylaw is not adopted | Note |
|--|----------------------|--------------------------|------|
| Bylaw determining the boundaries of the river basin areas ¹⁶⁶ | | | |
| Bylaw on the content and form of the water use application form and the necessary documentation to be attached to the request ¹⁶⁷ | | | |
| Bylaw determining the amount of the fee for issuing water management requirements in relation to obtaining a water use permit ¹⁶⁸ | | | |

¹⁶⁶ Ibid, Article 7 paragraph 3

¹⁶⁷ Ibid, Article 30 paragraph 2

¹⁶⁸ Ibid, Article 31 paragraph 8

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| Bylaw on determining the content of the public announcement for the request for water use permit received ¹⁶⁹ | | | |
| Bylaw on the form and content of the water use permit form ¹⁷⁰ | | | |
| Bylaw determining the manner of determining the amount of the concession fee ¹⁷¹ | | | |
| National Water Strategy ¹⁷² | | | The National Water Strategy (2012-2042) is in force, but it was adopted with a delay of 3 years in terms of the deadline envisaged by the Law on Waters. The State Audit Office, in "Effectiveness of policies, measures and activities in granting water right", has identified shortcomings in the process of drafting the valid National Water Strategy ¹⁷³ |

169 Ibid, Article 35 paragraph 4

170 Ibid, Article 40 paragraph 3

171 Ibid, Article 58 paragraph 6

172 Ibid, Article 62

173 Final report on the performance audit conducted on "Effectiveness in policies, measures and activities in granting water right", State Audit Office, 2019, page 38 and 39, available at: https://dzt.mk/Uploads/65_RU_Dodeluvanje_vodno_pravo_2019_KOMPLET_REDUCE.pdf

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| Water Management Basis ¹⁷⁴ | | | The Water Management Basis adopted in 1968 still applies, although according to the Law on Waters, a new Water Management Basis should have been adopted by 2012 at the latest. |
| Methodology for determining the content, manner and procedure for preparation, revision and updating of the Water Management Basis ¹⁷⁵ | | | |
| Vardar River Basin Management Plan ¹⁷⁶ | | | <i>The Draft of the Vardar River Basin Management Plan¹⁷⁷, which has been prepared for the period 2018/2019, has been published on the website of the MoEPP, but to date it has not been adopted and has not been published in the "Official Gazette"</i> |

¹⁷⁴ Law on Waters ("Official Gazette of the Republic of Macedonia" no. 87/2008, 6/2009, 161/2009, 83/2010, 51/2011, 44/2012, 23/2013, 163/2013, 180/2014, 146/2015 and 52/2016 and "Official Gazette of the Republic of North Macedonia" no. 151/2021), Article 63

¹⁷⁵ Ibid, Article 63 paragraph 7

¹⁷⁶ Ibid, Article 66

¹⁷⁷ Technical report, Draft of the Vardar River Basin Management Plan, available at: https://www.moepp.gov.mk/wp-content/uploads/2015/01/A.4.1-Agenda-VRBMP-FINAL_MK-3.pdf

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|--|--|--|---|
| Strumica River Basin Management Plan ¹⁷⁸ | | | <i>The Draft Final Report on the River Basin Management Plan 2016-2027¹⁷⁹, has been published on the website of the MoEPP, but to date it has not been adopted and has not been published in the "Official Gazette".</i> |
| Crn Drim River Basin Management Plan ¹⁸⁰ | | | |
| Juzna Morava River Basin Management Plan ¹⁸¹ | | | |
| Bylaw determining the content and the manner of preparation of river basin management plans ¹⁸² | | | |
| Bylaw determining the content and manner of preparation of information and cartographic representations of water monitoring activities, more detailed programs and plans for water management of river basins and sub-basins and the description of activities and results of public participation in the preparation of river basin management plans ¹⁸³ | | | |

178 Law on Waters ("Official Gazette of the Republic of Macedonia" no. 87/2008, 6/2009, 161/2009, 83/2010, 51/2011, 44/2012, 23/2013, 163/2013, 180/2014, 146/2015 and 52/2016 and "Official Gazette of the Republic of North Macedonia" no. 151/2021), Article 66

179 Draft final report, River Basin Management Plan 2016-2027, available at: https://www.moepp.gov.mk/wp-content/uploads/2015/01/RBMP-Strumica-2016-2027_MK.pdf

180 Law on Waters ("Official Gazette of the Republic of Macedonia" no. 87/2008, 6/2009, 161/2009, 83/2010, 51/2011, 44/2012, 23/2013, 163/2013, 180/2014, 146/2015 and 52/2016 and "Official Gazette of the Republic of North Macedonia" no. 151/2021), Article 66

181 Ibid

182 Ibid, Article 66 paragraph 9

183 Ibid, Article 66 paragraph 10

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| Methodology for river basin assessment ¹⁸⁴ | | | |
| Bylaw determining the content and the manner of preparation of the Program of measures ¹⁸⁵ | | | |
| Surface water classification ¹⁸⁶ | | | |
| Bylaw on closer regulation of the conditions for deviation from the environmental objectives ¹⁸⁷ | | | |
| Bylaw prescribing the form and content of the register of protection zones ¹⁸⁸ | | | A bylaw has been adopted only for the areas designated as protected natural heritage, whereas for the other protection zones a bylaw has not been adopted yet. |
| Bylaw determining the manner of determining and maintaining the narrower and wider protection zones and the manner of land cultivation, construction and use of facilities and carrying out other works and activities in the protection zones that may adversely affect the qualitative and quantitative status of the water body ¹⁸⁹ | | | |

¹⁸⁴ Ibid, Article 71 paragraph 3

¹⁸⁵ Ibid, Article 73 paragraph 5

¹⁸⁶ Ibid, Article 90 paragraph 2

¹⁸⁷ Ibid, Article 95 paragraph 5

¹⁸⁸ Ibid, Article 96 paragraph 8

¹⁸⁹ Ibid, Article 98 paragraph 5

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| Bylaw prescribing the content and the manner of preparation of the elaborate for determining the boundaries of the protection zones for the waters intended for human consumption ¹⁹⁰ | | | |
| Bylaw prescribing the type of professional preparation, equipment and spatial conditions to be met by the expert legal entity for preparation of the elaborate for determining the protection zones for the waters intended for human consumption ¹⁹¹ | | | |
| Methodology for determining the minimum acceptable water flow and groundwater level in terms of quantity and quality ¹⁹² | | | |
| Bylaw prescribing the criteria for selection of metering points for the state and local network for monitoring of water bodies ¹⁹³ | | | |
| Bylaw prescribing the conditions, manner and procedure for establishment and operation of all networks for monitoring the status of water bodies ¹⁹⁴ | | | |

¹⁹⁰ Ibid, Article 99 paragraph 2

¹⁹¹ Ibid, Article 99 paragraph 4

¹⁹² Ibid, Article 120 paragraph 2

¹⁹³ Ibid, Article 145 paragraph 4

¹⁹⁴ Ibid, Article 145 paragraph 5

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| Bylaw on the conditions regarding the professional staff, equipment, devices, instruments and spatial conditions for carrying out the activities that should be fulfilled by the accredited persons entrusted with performing certain types of professional works for monitoring the water bodies ¹⁹⁵ | | | |
| Methodology and determination of parameters for measuring and monitoring the quality and quantity of all water bodies except those defined in Article 148 (water intended for human consumption) and 149 (water in bathing zones) of the law ¹⁹⁶ | | | |
| Methodology and determination of reference measurement methods and parameters for measurement and monitoring the quality and quantity of water bodies in the areas protected as natural heritage ¹⁹⁷ | | | |
| Bylaw determining the closer conditions for the facilities, equipment and professional staff, the manner and the procedure for monitoring the safety of water intended for human consumption ¹⁹⁸ | | | |

¹⁹⁵ Ibid, Article 146 paragraph 7

¹⁹⁶ Ibid, Article 147 paragraph 4

¹⁹⁷ Ibid, Article 147 paragraph 7

¹⁹⁸ Ibid, Article 148 paragraph 6

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| Bylaw prescribing the detailed technical conditions, manner and procedure for monitoring the amount of water used for electricity generation ¹⁹⁹ | | | |
| Bylaw determining the technical conditions, manner and procedure for water monitoring in protected areas ²⁰⁰ | | | |
| Bylaw prescribing the closer conditions and the manner of submitting information from the monitoring of water bodies as well as the form and content of the form by which the data are submitted ²⁰¹ | | | |
| Bylaw prescribing the detailed conditions and the manner of submitting the information from the water monitoring referred to in Articles 148 (water intended for human consumption) and 149 (water in the bathing zones) of the law and on the form and content of the form by which the information is submitted ²⁰² | | | |

199 Ibid, Article 153 paragraph 2

200 Ibid, Article 155 paragraph 2

201 Ibid, Article 156 paragraph 6

202 Ibid, Article 156 paragraph 7

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| Bylaw prescribing the manner of submitting the information from the water monitoring referred to in Articles 151 (irrigation water), 152 (land drainage water), 153 (water used for electricity generation) and 154 (water for other purposes), as well as the form and content of the form by which the data are submitted ²⁰³ | | | |
| Bylaw prescribing the manner of data transfer from water monitoring in areas protected by nature protection regulations, as well as the form and content of the form by which the data are submitted ²⁰⁴ | | | |
| Water Book ²⁰⁵ | | | |

203 Ibid, Article 156 paragraph 8
204 Ibid, Article 156 paragraph 10
205 Ibid, Article 160

Bylaw prescribing the form and content of the Water Book and the manner of its establishment and maintenance²⁰⁶

There is a Rulebook on the content and manner of keeping the Water Book ("Official Gazette of the Republic of Macedonia" no. 2/1999) adopted in 1999, which is based on the Law on Waters ("Official Gazette of the Republic of Macedonia" no. 4/98), which is not in force. Although the current Article 259 of the Law on Waters prescribes that new bylaws should be drafted within 3 years, whereas the existing bylaws are in force until the entry into force of the new bylaws, this Rulebook should not be considered to be still in force, especially since its content is not in accordance with Article 160 paragraph 4 of the applicable Law on Waters. More specifically, the 1999 Rulebook in Article 2 prescribes that "The Water Book consists of a register for water management consents, a register for water management permits, a collection of documents and technical documentation", whereas Article 160 paragraph 4 of the applicable Law prescribes

206 Ibid, Article 160 paragraph 3

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| | | | that the Water Book contains, inter alia, protection zones, requests for issuance of permits, temporary receivership and other data relevant to water administrative decisions. |
| Bylaw prescribing the content of the reports, the manner and the procedure for informing the public about the data obtained from the water monitoring ²⁰⁷ | | | |
| Bylaw prescribing the manner of management and maintenance of water management facilities and plants ²⁰⁸ | | | |
| Bylaw prescribing the content and the manner of keeping and submitting the records of the water management facilities ²⁰⁹ | | | |
| Bylaw prescribing measures, activities, manner of monitoring and manner of early warning, emergency plans, as well as manner of informing the public and neighboring countries ²¹⁰ | | | |

207 Ibid, Article 162 paragraph 3

208 Ibid, Article 166 paragraph 1

209 Ibid, Article 171 paragraph 4

210 Ibid, Article 204 paragraph 5

Bylaw determining the composition, the manner of participation, the manner of nominating representatives in the Council for management of the river basin area and Council for management of parts of river basin area and the manner of operation²¹¹



*The bylaws presented in the tabular overview also include bylaws related to the protection of water supply bodies, as this is the first priority for water use.

211 Ibid, Article 223 paragraph 6

Case Studies

LACK OF REGULATION FOR MEASURING AND CONTROL OF THE AMOUNT OF WATER USED FOR ELECTRICITY GENERATION-FIELD VISIT TO THE CASCADE SHPP "TEARCE 97-99" AND SHPP "TRESONECKA RIVER"

Tearce 97-99

The cascade of small hydropower plants "Tearce 97-99" is made of four plants, which start from the intake "Tearce 97" and followed by two points where the powerhouses and the intakes of "Tearce 97-98" and "98-99" are located close to each other, and at the end is the powerhouse of "Tearce 99". It is about a total of 5.3 km of pipes, which are buried in the ground and for almost the same length of access roads constructed on Shar Mountain.

Taking into account that it is about a cascade, it should be emphasized that environmental elaborates on plants do not mention cumulative impacts. For each of the plants there is a document entitled "Strategic Impact Assessment", prepared for the projects, and not for the plans or programs, as a new spatial plan was needed for that area. However, it is not clear why they were prepared for each plant individually, or why these "Strategic Impact Assessments" do not analyze the cumulative impacts.

By the visit in September 2017, the expert team of CSO "Eko-svest" and the international CSO "Bankwatch" confirmed that the Bistrica river, above the highest intake ("Tearce 97"), which is located within the designated Emerald area, has an untouched, natural status, with well-developed waterside vegetation. The presence of adults of the sensitive species *Limnius volckmarii* (Coleoptera) is further evidence that these are favorable conditions.

However, on the same intake no. 97, it is noted that the bio-corridor of the river is interrupted - there is a new underground canal where the water soaks into the substrate of the riverbed below the canal and blocks the fish migration. About 100 m below there is another natural obstacle to migration. According to the "polluter/operator pays" principle contained in the EU Water Framework Directive, the operator should ensure the restoration of the riverbed which during the visit was partially filled with materials that were dumped in it, originating from the construction of the access road.

Although the dimensions of the fishway at the intake at "Tearce 97" are within the limits prescribed by law and the incisions and underwater openings have been made to allow the migration of small fish and aquatic species, however, they can not enter the passage. During the visit, it was determined that the biological minimum of 68 l/s was not observed, and the team estimated that only about 30-40 l / s came out of the fish passage.

In the part above and below the second intake ("Tearce 98"), there is a moderate decrease in the biological diversity, which is a sign of less favorable living conditions on that section of the Bistrica river, although it is not a drastic reduction. The worst situation in terms of biological diversity and ecological status (weak) was observed below the third intake ("Tearce 99"). The drastic reduction of invertebrate aquatic species may be due to the cumulative effect of the cascade system of the hydropower plants and the deteriorating water quality. At the intake at "Tearce 99", the team determined the existence of an additional man-made obstacle in the riverbed above the intake.

After the field visit, it was determined that the required biological minimum in the river at "Tearce 97" should be renewed, until the ecosystems recover. The current biological minimum should be examined again given the high environmental sensitivity of the area.

Tresonecka River

The hydropower plant "Tresonechka River" or "Tresonche" is located within the NP "Mavrovo", which is one of the most important points of biological diversity in the Balkans. It is protected nationally as well as internationally with its nomination for Emerald Area, Important Plant Area and Important Bird Area.

The location of the "Tresonecka River" plant is simple: there is one intake, which carries water through a 1.3 km long pipe to the powerhouse. The newly built road disturbs the area defined as a key breeding area of the Balkan lynx. This road destroyed several hectares of oak forest and provided access deep into the well-preserved valley of NP "Mavrovo". There is a large amount of excavated material as well as erosion immediately next to the road.

The high value of this area was confirmed by a field visit of the expert team of CSO "Eko-svest" and the international CSO "Bankwatch" conducted in September 2017. The biological assessment determined the existence of a "healthy" sector of the Tresonecka River, in the section above the intake. The specimens confirmed the presence of subendemic species such as water moths (*Thremma anomalum*) and *Bythinella drimica drimica*, which are considered to be the "least-concern species" according to the IUCN Red List of Globally Affected Species and the European Red List of Non-Marine Mollusks. The team also found the existence of as yet unidentified representatives of leeches (*Dina* sp. Nov. 1), which complement the general impression that this area is characterized by rich biological diversity.

However, the situation differs dramatically in the area below the intake, where there is a decrease in aquatic species of invertebrates and the extinction of endemic species, including the undescribed species of leech *Dina* sp. nov. 1. The structure of the community shows a high degree of stress on the ecosystem or a weak to poor ecological status.

The most likely reason for this is the absence of water for long periods of time. The biological minimum determined by the water permit is 0.10 m³/sec. However, the black lines on the stones indicate that the water level in the previous period was about 10 to 15 cm lower compared to that determined by the on-site monitoring and that fluctuations in the water level are common or that the riverbed is dry in a certain period of the year. This assumption is confirmed by the mass presence of algae on the stones as well as the presence of Eurivalent species such as water snails of the family Lymnaeidae in the part above the powerhouse. The team of CSO "Eko-svest" managed to get photos of the river from the local activists, indicating that the riverbed is completely dry.



Nature is generally regulated by the Law on Nature Protection.

Law on Nature Protection

The Law on Nature Protection lays down that nature protection is an activity of public interest.²¹²

LNP shall aim to achieve:²¹³

- conservation and restoration of the existing biological and landscape diversity in a state of natural balance;
- providing for sustainable use of natural wealth in the interest of present and future development, without significant damage to parts of nature and with the least possible disturbances of the natural balance;
- prevention of harmful activities of natural persons and legal entities and disturbances in nature as a consequence of the technological development and performance of activities, that is, providing the most favorable conditions for protection and development of nature;
- providing for the citizens to exercise the right to a healthy environment.

The objectives set in this manner shall be achieved by:²¹⁴

- determining the components of biological and landscape diversity and the extent to which they are endangered;
- creation of conditions and undertaking measures for nature protection for the purpose of conservation and rational management of certain components of biological and landscape diversity, as well as sustainable and rational use of natural wealth;

²¹² Law on Nature Protection ("Official Gazette of the Republic of Macedonia" no. 67/2004; 14/2006; 84/2007; 35/2010; 47/2011; 148/2011; 59/2012; 13/2013; 163/2013; 41/2014; 146/2015; 39/2016; 63/2016 and 113/2018 and "Official Gazette of the Republic of North Macedonia" no. 151/2021), Article 2

²¹³ Ibid, Article 4

²¹⁴ Ibid, Article 5

- spatial planning and arrangement;
- incorporation of the conditions and measures for protection of natural wealth in natural wealth management plans in certain economic activities, such as: general and special forest management plans, general hunting management basis, pasture management program, water resources management strategy and plan, energy development strategy, geological research program and other activities;
- monitoring and preparing reports on the state of nature, informing the public about the state of nature, as well as enabling public participation in decision-making for nature protection;
- adoption and implementation of strategies, programs, action plans, management plans, conditions and measures for nature protection;
- sustainable use of natural wealth and granting the status of natural heritage, that is, proclamation of natural rarity;
- establishment of a nature protection and management system.

The nature protection is based on several principles, that is, the principle of a high level of protection; principle of integration; principle of sustainable development; principle of precaution; principle of prevention; principle the user pays; principle of public participation and principle of cooperation.²¹⁵ All principles are important in terms of the SHPP operation, however, the principle of precaution could be singled out, according to which, if based on modern scientific and technical-technological knowledge it is concluded that a certain activity or work would cause harmful consequences for nature, the necessary measures and activities shall be undertaken prior to obtaining scientific evidence that harmful consequences could occur.²¹⁶

The LNP defines several terms that are important for the correct interpretation of the legal provisions. Nature shall mean the entire biosphere, including: components of biological diversity, habitats, geological formations, minerals and fossils, as well as other physical and geographical phenomena on Earth;²¹⁷ Biological diversity shall mean the totality of living organisms as an integral part of ecosystems, including the variety within species, among the species,

²¹⁵ Ibid, Article 7

²¹⁶ Ibid, Article 7 paragraph 1 item 4

²¹⁷ Ibid, Article 6 paragraph 1 item 1

as well as the variety of ecosystems;²¹⁸ components of biological diversity shall mean species of plant, fungi and animals with their habitats, their genetic material and ecosystems,²¹⁹ whereas nature protection shall mean the permanent conservation of natural resources, gene pool and natural living conditions that are essential for human survival and meeting their economic, health, recreational, scientific and cultural needs.²²⁰

The provisions of the LNP shall apply in all cases and relations, except when it comes to elimination of a direct threat to human life and health, rescuing people and property or implementation of emergency measures related to the defense of the state.²²¹

The LNP shall prohibit the use of nature in a manner that causes *damage or destruction of biological and landscape diversity; damage to surface or groundwater geomorphological values or water pollution and change in water regime*.²²²

In case when the favorable conservation status of certain species or habitat types are endangered due to inappropriate use of natural resource, the MoEPP shall limit or fully prohibit the use of natural resource for as long as the the state of endangerment lasts.²²³

Same as the LE, the LNP refers to the nature impact assessment of the measures and activities in the preparation of development strategic, planning and program documents by state government bodies or municipal councils.²²⁴ Protected area management plans and annual programs for the implementation of these plans shall be subject to a nature impact assessment procedure.²²⁵

For the planned activities in nature, which independently, or in joint action with other activities might disturb the natural balance, a nature impact assessment shall be carried out in accordance with the LNP and other law. The nature impact assessment procedure of certain public and private projects is carried out in order to avoid or minimize the degradation of nature, such as deteriorated function of ecosystems; conservation; air, soil and water pollution and other similar activities.

²¹⁸ Ibid, Article 6 paragraph 1 item 2

²¹⁹ Ibid, Article 6 paragraph 1 item 3

²²⁰ Ibid, Article 6 paragraph 1 item 11

²²¹ Ibid, Article 9

²²² Ibid, Article 12

²²³ Ibid, Article 14

²²⁴ Ibid, Article 15

²²⁵ Ibid, Article 17

For planned activities in nature for which there is no environmental impact assessment procedure, legal entities or natural persons carrying out works or activities shall be obliged to prepare an environmental protection elaborate in order to assess the environmental impact of works or activities on the environment.²²⁶

The LNP envisages compensatory measures in case of degradation of nature, in order to protect biological diversity. Compensatory measures may include:²²⁷

- establishment of the compensatory area, which has the same or similar characteristics as the degraded area;
- establishment of another area important for the conservation of biological and landscape diversity, that is, for the protection of natural wealth;
- payment of monetary compensation in the amount of the estimated and/or inflicted damage to nature.

The protection of biological diversity shall be achieved through general measures that envisage the prohibited activities such as:²²⁸

- extermination of indigenous wild species;
- reduction of populations of wild species, destruction of their habitats or modification of their living conditions to an extent that would cause endangerment;
- deliberate disturbance of wild animals, especially during mating, breeding or hibernation or their capturing, injuring or shooting;
- deliberate removal of plants and fungi from their habitats, reduction of their population or their destruction in any way;
- deliberate damaging or destruction of habitats of wild species;
- using non-selective means of collecting and hunting of wild species.

226 Ibid, Article 18

227 Ibid, Article 19

228 Ibid, Article 20 и 21

The LNP envisages special protection of wild species, by envisaging that public roads, streets or buildings that pass through known migration routes of wild animals, shall be constructed in a manner that will allow their safe passage, and the passages themselves enjoy protection as natural values.²²⁹ As part of the special protection of wild animals the following shall be provided:

- a red list and a red book categorizing their involvement;²³⁰
- strictly protected species and protected species whereby the proclaimed strictly protected and protected wild species shall acquire the status of natural heritage.²³¹

The law envisages prohibited activities for strictly protected wild species²³² and execution of prohibited activities for strictly protected wild species, which is determined as an exception by a special act of the MoEPP.²³³

The protection of ecosystems and habitats shall be achieved through the implementation of measures and activities for nature protection, sustainable use of natural resources and spatial planning and landscaping.²³⁴

The protection, maintenance and re-establishment of biotopes and habitats shall be achieved through:²³⁵

- proclamation of protected areas,
- maintenance and management in accordance with the ecological needs of the habitats, inside and outside the protected areas,
- re-establishment of destroyed biotopes,
- undertaking measures to create biotopes.

The law lays down measures for conservation of the types of habitats in a favorable conservation status, which the natural persons and legal entities that carry out activities within the area of distribution of the types shall be obliged to comply with. The MoEPP shall be obliged to monitor the status of the types of habitats, to mark them on a map

229 Ibid, Article 21-a

230 Ibid, Article 34

231 Ibid, Article 35

232 Ibid, Article 38

233 Ibid, Article 39

234 Ibid, Article 47

235 Ibid, Article 47-a

and to assess their status. The measures for conservation of these habitats shall be determined by a bylaw adopted by the MoEPP and they shall be included in the preparation of the spatial and urban plans.²³⁶

The LNP establishes ecologically significant areas as areas that contribute to a large extent to the protection and conservation of biological diversity. Ecologically significant areas may be established within the protected areas by the act for proclamation of the protected area or by a special act of the MoEPP. The law establishes 9 types of areas for which it is obligatory to be considered ecologically significant. Areas for the conservation of wild species of birds and other species of plants and animals and their habitats, as well as the types of habitats that have been proclaimed affected and/or protected at the level of the European Union, that is, Ecologically Significant Areas for the European Union - Natura 2000 are determined as a special type of ecologically significant areas. The Government, upon the proposal of the MoEPP, shall determine the proposal of Natura 2000 areas, the conservation objectives, the manner of their management on the territory of RNM, the monitoring and other necessary rules for their protection. In order to preserve, maintain or restore to a favorable conservation status of ecologically significant areas, a national ecological network is established, which is determined by the Government, upon the proposal of the MoEPP, including the measures for protection of the areas in the ecological network.²³⁷

Waters and aquatic habitats (lakes, reservoirs, ponds, swamps and other water surfaces, as well as springs, streams, rivers and other watercourses with a coastal belt not less than 10 meters from the shoreline set at the highest water level) shall represent natural wealth and shall be preserved in their natural state.²³⁸ In this regard, the LNP, similar to the LW in terms of determining the minimum acceptable flow, shall determine the biological minimum of aquatic habitats. For the purposes of protecting the survival of natural wealth and conserving the biological and landscape diversity in aquatic habitats, it shall be forbidden to make partition of watercourses in a way that contributes to habitat degradation, reduction of the water quantity below the biological minimum, drying, encumbering of springs, swamps and other aquatic habitats. Biological minimum of aquatic habitats shall mean the lowest surface water quantity which must be provided throughout the year, except in cases when the natural flow is lower than the specified biological minimum, which enables the preservation of natural balance of aquatic habitats and the properties of watercourses that determine the characteristics of the landscape types and do not reduce the ecological status parameters of the surface water.²³⁹

²³⁶ Ibid, Article 49-50

²³⁷ Ibid, Articles 51-53

²³⁸ Ibid, Article 55

²³⁹ Ibid, Article 56

The Government of RNM, upon the proposal of the MoEPP, and upon previously obtained opinion by the National Council for Nature Protection, shall adopt a National Strategy for Nature Protection, for a period of 10 years. Within the National Strategy for Nature Protection, and for the purpose of its full implementation, five-year plans and one-year programs for implementation of these nature protection plans shall be adopted.²⁴⁰

Public participation in the preparation of regulations and documents in the field of nature protection is mandatory, especially in the preparation of acts for proclamation of a protected area, spatial planning documentation for the protected area, protected area management plans, natural wealth use plans and projects, which have an impact on nature. The public is informed by a public announcement or by individual notification to the interested entities for the act or activity that may impact the nature. Bodies, institutions, institutes and organizations responsible for performing administrative, professional and other activities in the field of nature protection shall be obliged to inform the public about nature protection and its conservation through media, lectures and publishing activity, as well as to inform the public for the existence of natural heritage and the possibility of visiting it for the purpose of education, sightseeing and recreation.²⁴¹

In addition to the general and special protection measures listed, the nature protection system also contains several types of protected areas.

Strict Nature Reserve²⁴²

An area, which, due to its significant or characteristic ecosystems, geological or physical and geographical features and/or species, acquires the status of natural heritage, primarily for the purpose of conducting scientific research or monitoring of the protection. The management of this area is done through the preparation of a management plan.

All activities shall be prohibited in the strict nature reserve except for:

- 1 Protection and control in the strict nature reserve;
- 2 Study visits for the purpose of conducting scientific research;

²⁴⁰ Ibid, Article 159-160

²⁴¹ Ibid, Article 156 and 158

²⁴² Ibid, Articles 68-71

- 3 Movement of people along designated paths and at designated places within the area for educational purposes;
- 4 Collection of seeds and seedling material, wild plants, fungi and animals for the purpose of scientific research, as well as for the renewal of populations in another area, in a manner and in a period that will not cause degradation of the ecosystem.

The MoEPP shall issue a license for carrying out the activities referred to in items 2-4.

Wilderness Area²⁴³

Usually a large unchanged or slightly changed area that has retained its natural features, where there is no permanent or significant urbanization, and it is proclaimed for the long-term protection of the ecological integrity of the natural features of the area and the possibility for future generations to enjoy the benefits of such an area. The management of this area is done through the preparation of a management plan.

All activities shall be prohibited in the wilderness except for:

- 1 Protection and control in the area of wilderness;
- 2 Study visits for the purpose of conducting scientific research and movement of people along designated paths, that is, designated locations for scientific and research purposes;
- 3 Interaction of the local population with nature within the protected area and utilization in the allowed volume of the fruits of nature;
- 4 Collection of seeds and seedling material, wild plants, fungi and animals for scientific research, as well as for the renewal of populations in another area, in a manner and in a period that will not cause degradation of the ecosystem, as well as for use in interaction of local population with nature.

The MoEPP shall issue a license for the activities referred to in items 2 and 4.

²⁴³ Ibid, Articles 71-a-71-d

National Park²⁴⁴

Large natural area on land or water, which encompasses one or more preserved or insignificantly changed ecosystems, with particular multiple natural values, which is established for the protection of ecological processes, as well as the species and ecosystem characteristics complementary to the area. The Public Institution National Park, upon a prior consent of the MoEPP, shall adopt a national park management plan, which shall prescribe special measures and activities for protection of the characteristic natural values and the original state thereof, due to which the status of natural heritage has been acquired.

In the national park, it shall be prohibited to carry out any activities, which endanger the authenticity of nature in the national park, lighting a fire on its territory, except in specially designated places defined in the management plan. In the national park, tourist-recreational activities may be carried out, as well as sustainable use of natural resources in a manner that does not endanger the survival of the species and their natural balance.

Natural Monument²⁴⁵

Part of nature with one or more natural characteristics and specific, endangered or rare features, properties or forms and has a special scientific, cultural, educational, spiritual, aesthetic and/or tourist value and function. Natural monuments may be lakes, rivers, gorges, waterfalls, springs, caves, rock formations, geological profiles, minerals and crystals, fossils, rare or indigenous trees and shrubs that are characterized by old age and specific habitat characteristics, as well as limited small areas of endemic and rare animal or plant communities significant in their scientific value.

In the natural monuments and in their immediate vicinity, it shall not be allowed to carry out activities that endanger their features and values, due to which they are proclaimed natural monuments. Measures and activities for protection of natural monuments are prescribed by the MoEPP.

²⁴⁴ Ibid, Articles 72-75

²⁴⁵ Ibid, Articles 76-78

Nature Park²⁴⁶

A nature park shall be an area that has one or more authentic, rare and characteristic components of nature (plant, fungal and animal species and communities, relief forms, hydrological values, etc.). A management plan shall be developed for the nature park management. The management plan shall determine the measures and activities for protection of the significant species, populations and communities or the physical-geographical characteristics due to which the area has acquired the status.

It shall be prohibited to undertake actions of inappropriate use of land in the nature park, as well as activities of inappropriate nature and intensity, which may impair the properties due to which the area is proclaimed a nature park.

Protected Landscape²⁴⁷

A protected landscape shall be an area where the interaction of people with nature over time has created a landscape with significant ecological, biological, cultural and other values, geographical features and has recreational, historical and scientific significance. The protected landscape management is done through the developed management plan.

Protected areas which are proclaimed within the protected landscape, shall enjoy protection in accordance with the category for which they are proclaimed.

Multipurpose Area²⁴⁸

Multipurpose area shall be an area, which is usually spreading over a relatively large area of land and/or water, which is rich in waters, forests or meadows and may be used for hunting, fishing or tourism or for reproduction of wild animals. As an exception, a protected area may be an area that is rich in waters, forests and meadows, and which is exceptionally significant for defense purposes. The multipurpose area management shall be done through a developed management plan.

²⁴⁶ Ibid, Article 79-83

²⁴⁷ Ibid, Article 84-87

²⁴⁸ Ibid, Article 88-90

The multipurpose area shall be established in accordance with the needs of nature protection and carrying out economic activities and use of natural wealth, and especially for the purpose of ensuring the integrity of the ecological network, as an ecological corridor. In order to ensure the permanent and sustainable use of natural wealth, within the multipurpose area, protection and zoning to a reasonable extent may be allowed.

Natural rarities²⁴⁹

Parts of nature may be under special protection as natural rarities due to their scientific, aesthetic, health and other significance, culture, educational and tourist-recreational function. Certain rare, endangered and endemic, plant and animal species, their parts and communities, relief forms, geological profiles, paleontological and speleological objects may be proclaimed as natural rarities. Rare, endangered and endemic plant and animal species or their parts and communities are those whose survival is endangered due to natural causes and human activity or they are rare due to their distribution. Relief forms, geological profiles, paleontological and speleological objects may be proclaimed a natural rarity if their surface area is less than 100 hectares.

The manner of natural rarity protection and management shall be prescribed by the act for proclamation of natural rarity adopted by the MoEPP.

Common rules for protected areas

For the purpose of determining the real situation and provision of an expert basis for proclaiming a certain area as protected, a Study for valorization or revalorization of the protected area shall be prepared.²⁵⁰

Upon a submitted proposal for proclaiming a certain area protected, which has received a positive opinion by the National Council for Nature Protection and a decision of the Government to proceed with the procedure, it shall be obligatory to carry out a public hearing on the area of the municipality on the territory of which the protected area is located. A report on public hearing held shall be prepared, and the public has the right to submit written remarks, proposals and suggestions within a period of 10 days after its holding.²⁵¹

²⁴⁹ Ibid, Article 90-a and 90-b

²⁵⁰ Ibid, Article 92 paragraph 5

²⁵¹ Ibid, Article 94-95

After the public hearing, the MoEPP shall prepare the final proposal for proclaiming a protected area and submit it to the Government of RNM.²⁵²

The parts of nature for which a procedure for their proclamation of protected area is conducted shall be placed under temporary protection. The temporary protection shall last for one year as of the day when the decision for its proclamation is adopted, that is, at the latest until the proclamation of the protected area.²⁵³

The act for proclamation of protected area, may establish special zones:

- **Strict protection zone** - part of the protected area with the highest interest for protection that is characterized by authentic, unchanged ecosystem characteristics or slightly changed as a result of traditional management practices. Scientific research activities shall be allowed in the strict protection zone unless they are in contradiction with the primary objectives of protection of the area, and the entity in charge of managing the protected area shall be obliged to provide constant monitoring.²⁵⁴
- **Active management zone** - a zone of high interest for protection, in which some major management interventions are needed for the purpose of restoration, revitalization or rehabilitation of habitats, ecosystems and other elements of the landscape. Activities related to habitat manipulation and species manipulation may be carried out. In the active management zone, it shall be allowed to carry out economic activities, which do not have a negative impact on the primary objective of protection, such as ecotourism or traditional extensive agriculture.²⁵⁵
- **Sustainable use zone** - a significant part of the protected area, which does not have high values for protection, with infrastructure facilities, cultural heritage sites, types of forest plantations that are not characteristic for the area, as well as settlements with surrounding agricultural land.²⁵⁶

²⁵² Ibid, Article 96

²⁵³ Ibid, Article 97

²⁵⁴ Ibid, Article 104

²⁵⁵ Ibid, Article 105

²⁵⁶ Ibid, Article 106

■ **Buffer zone** - as a rule shall be outside the boundaries of the protected area and shall have a role to protect the previous zones against external influences and threats. When carrying out economic activities within the buffer zone, it shall be obligatory to apply the protection measures in accordance with the LNP. If necessary, a buffer zone shall be established within the protected area between the zones, the protection and management regime of which are mutually exclusive.²⁵⁷

Due to the importance of the protected areas, the owners of the property or the holders of the right to use the property located in the protected area shall be obliged to preserve the natural heritage, to take care of its maintenance and to undertake the prescribed protection measures specified in the act for proclamation of a protected area, the protected area management plan and the provisions of the LNP in a timely manner. Owners and users of property in protected areas must seek the consent of the protected area management entity for all investment activities. Additional restrictions prescribed for the owners, that is, users of property in protected areas shall be a duty to enable monitoring, research and study of natural wealth for scientific purposes, but also expropriation of property for the purpose of protecting the natural heritage or part of the protected area. If the owner or user of the property is restricted in the use of the property, in accordance with the Law on Obligations, they shall be entitled to compensation for damages.²⁵⁸

Institutional framework

The most important place in the institutional framework for nature protection is occupied by the Department for Nature within the Environmental Administration in the MoEPP. The Department for Nature includes the competencies for nature protection policy making, biological and landscape diversity protection and natural heritage protection; biological and landscape diversity and natural heritage management and control; keeping a cadastre of protected areas, a register of natural heritage and records of trade and other activities relating to protected species, monitoring the nature status and supervision over the application of LNP.²⁵⁹

²⁵⁷ Ibid, Article 107

²⁵⁸ Ibid, Article 113-114

²⁵⁹ Ibid, Article 133-134

Particularly important in the protected area management are the entities for protected area management, that is the Public Institution National Park, which through the protected area management plans shall regulate the treatment, management and protection of nature and biological diversity.

For the purpose of monitoring, achieving and improving the nature protection and the use of natural wealth, the National Council for Nature Protection was established as an advisory body to the MoEPP. Among other things, the National Council shall be responsible for giving opinions on acts for the proclamation of protected areas, adoption of strategic documents regarding nature protection, adoption of the list of endangered species (red list) and measures to improve the status of endangered species (red book).²⁶⁰

The first composition of the National Council was established by a decision in 2009²⁶¹ and although its mandate lasted for 4 years, the new composition of the National Council was established in 2021.²⁶²

The inspection over the implementation of the LNP is performed by the SEI through the nature protection inspectors, who have precisely defined competencies.²⁶³

260 Ibid, Article 145-147

261 Decision on establishing a National Council for Nature Protection, "Official Gazette of the Republic of Macedonia" no. 113/09

262 Decision on establishing a National Council for Nature Protection, "Official Gazette of the Republic of North Macedonia" no. 83/2021

263 Law on Nature Protection ["Official Gazette of the Republic of Macedonia" no. 67/2004; 14/2006; 84/2007; 35/2010; 47/2011; 148/2011; 59/2012; 13/2013; 163/2013; 41/2014; 146/2015; 39/2016; 63/2016 and 113/2018 and "Official Gazette of the Republic of North Macedonia" no. 151/2021], Chapter VIII

Bylaws

SHPP operation in terms of nature protection is regulated by 16 bylaws.

| <div>Title of the bylaw that needs to be adopted by the state authorities</div> <div>Obligation fulfillment status</div> | The bylaw is adopted | The bylaw is not adopted | Note |
|---|----------------------|--------------------------|------|
| Bylaw on protection measures, ways of construction and maintenance of passages for migration routes of species of wild animals ²⁶⁴ | | | |
| Bylaw on the determination of types of habitats, including the type and extent of their endangerment and significance as laid down in the regulations of RNM, international agreements, EU regulations and Council of Europe decisions and the manner of their designation ²⁶⁵ | | | |

264 Ibid, Article 21-a paragraph 4

265 Ibid, Article 47 paragraph 2

| | | | |
|--|--|--|--|
| Bylaw on the manner of development, maintenance and marking on the map of types of habitat, the manner of determining the extent of endangerment, the manner of assessing the status and endangerment of types of habitats, as well as types of habitats for the conservation of which it is necessary to establish special areas of conservation ²⁶⁶ | | | |
| Bylaw determining the measures for conservation of the types of habitats in a favorable conservation status ²⁶⁷ | | | |
| Bylaw on adoption of a national ecological network and measures for protection of the areas from the ecological network ²⁶⁸ | | | |
| Methodology for the water quantity in aquatic habitats (biological minimum) necessary for the survival of wild species living in the habitat, as well as for the conservation of biological and landscape diversity ²⁶⁹ | | | |
| Rulebook on the measures and activities for protection of natural monuments, the form and the content of the form of the permit for carrying out special measures and activities for protection and restoration of the natural monument ²⁷⁰ | | | |

266 Ibid, Article 49 paragraph 4

267 Ibid, Article 50 paragraph 1

268 Ibid, Article 53 paragraph 4

269 Ibid, Article 56 paragraph 3

270 Ibid, Article 79 paragraph 2

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|--|--|--|--|
| Rulebook on measures and activities for the nature park protection ²⁷¹ | | | |
| Rulebook on the content of the study for valorization or revalorization of a protected area ²⁷² | | | |
| Rulebook on the content of the protected area management plans and annual programs for nature protection ²⁷³ | | | |
| Bylaw prescribing the content of the annual report on the implementation of the protected area management plans ²⁷⁴ | | | |
| Bylaw on the criteria, that is, the minimum requirements to be met by the protected area management entity in terms of the number and staffing of human resources and technical equipment required for efficient management of the protected area ²⁷⁵ | | | |
| Rulebook on records for nature protection ²⁷⁶ | | | |

271 Ibid, Article 83 paragraph 2

272 Ibid, Article 92 paragraph 6

273 Ibid, Article 98 paragraph 2

274 Ibid, Article 98 paragraph 8

275 Ibid, Article 135-a paragraph 2

276 Ibid, Article 149 paragraph 6

| | | | |
|--|--|--|---|
| National Strategy for Nature Protection (2017-2027) ²⁷⁷ | | | |
| Five-year plans for implementation of the National Strategy for Nature Protection (2017-2027) ²⁷⁸ | | | |
| One-year programs for implementation of the National Strategy for Nature Protection (2017-2027) ²⁷⁹ | | | Although the National Strategy has been adopted for the period 2017-2027, no annual programs for 2017 and 2018 have been adopted, that is, the first nature protection program has been adopted for 2019. |

Rulebook on the measures and activities for protection of the natural monuments, the form and the content of the form of the permit for carrying out special measures and activities for protection and restoration of the natural monument²⁸⁰

The Rulebook defines two types of measures to be taken in the natural monument:

- Protective measures:²⁸¹
 - creation of conditions for maintenance and protection of significant species and populations that exist or reside in the natural monument;
 - creation of conditions for maintaining the habitats in the nature monument;

²⁷⁷ Ibid, Article 159

²⁷⁸ Ibid, Article 160 paragraph 2

²⁷⁹ Ibid, Article 160 paragraph 3

²⁸⁰ "Official Gazette of the Republic of Macedonia" no. 126/2010

²⁸¹ Rulebook on the measures and activities for protection of the natural monuments, the form and the content of the form of the permit for carrying out special measures and activities for protection and restoration of natural monument ["Official Gazette of the Republic of Macedonia" no. 126/2010], Article 3

- creations of conditions for maintenance and protection of physical-geographical characteristics;
- designation of natural characteristics and specific, endangered or rare features, properties or forms found in the natural monument;
- designation of the special scientific, cultural, educational, spiritual, aesthetic and/or tourist value and function of the natural monument;
- designation of the species, habitats and physical-geographical characteristics that may be found in the natural monument;
- determination of the actions that must not be carried out for the protection of species and habitats;
- monitoring and keeping records of the status of significant species, habitats and physical-geographical characteristics in the natural monument;
- keeping records and protection of cultural heritage in the natural monument.

■ Management measures:²⁸²

- establishment of a regime of prohibition for carrying out activities;
- designation of the zones in the natural monument;
- designation of the movement regime;
- restriction of movement in the natural monument;
- establishment/designation of the activities that may not be carried out in the surroundings, that is, in the immediate vicinity of the natural monument;
- establishment of the activities that may be carried out in the natural monument;
- determination of the manner of action in case of encountering wild species (animals, plants, fungi and their parts);

- establishment of the regime of sustainable use of natural resources in the natural monument;
- facilitation of conducting scientific research and monitoring of the status as primary activities related to the sustainable use of resources;
- elimination and prevention of exploitation and degradation of nature in the area proclaimed a natural monument

The Rulebook lays down that if the features and values of the natural monument are not endangered, the following activities may be undertaken:²⁸³

- determining special places within the natural monumen for the purpose of conducting educational activities for the characteristics of the natural monument and the management of wild species;
- determining the needs for scientific and research work;
- promoting the values of the natural monument;
- determining permitted activities that are carried out for tourism purposes.

The natural monument management plan may also determine undertaking of other measures and activities that, due to the specific natural values of the natural monument, contribute to achieving the objectives of acquiring the status of natural heritage of the nature park.²⁸⁴

In the permit for implementation of the special measures and activities, in addition to the general data for the area, a description of the activity or measure that is undertaken, the period in which it is undertaken and a description of the expected results shall be also stated.²⁸⁵

283 Ibid, Article 5

284 Ibid, Article 6

285 Ibid, Appendix

Rulebook on measures and activities for nature park protection²⁸⁶

The measures and activities for protection of the nature park are undertaken for the purpose of conserving the significant species, populations and communities and/or physical-geographical characteristics of the nature park due to which it acquires the status of natural heritage and are aimed at maintaining, conserving and restoring to favorable conservation status of the species and their habitats found in the nature park.²⁸⁷

The Rulebook defines two types of measures that may be laid down in the nature park management plan:²⁸⁸

- Protective measures:
 - creating conditions for maintaining the habitats in the nature park;
 - creation of conditions for maintenance and protection of significant species and populations that exist or reside in the nature park;
 - creation of conditions for maintenance and protection of physical-geographical characteristics;
 - designation of actions that must not be carried out for the protection of species and habitats;
 - monitoring and keeping records of the status of significant species, habitats and physical-geographical characteristics in the nature park;
 - keeping records and protection of cultural heritage in the nature park;
- Management measures:
 - designation of the species, habitats and physical-geographical characteristics that can be found in the nature park;

286 "Official Gazette of the Republic of Macedonia" no. 126/2010

287 Rulebook on measures and activities for nature park protection ("Official Gazette of the Republic of Macedonia" no. 126/2010), Article 2

288 Ibid, Article 3

- designation of zones in the nature park;
- determination of the regime of prohibition for carrying out activities;
- designation/restriction of the movement regime;
- establishment of the actions that may be undertaken in the nature park;
- establishment of the actions that may not be undertaken in the nature park;
- determination of the manner of action in case of encountering wild species (animals, plants, fungi and their parts);
- determination of the regime of sustainable use of natural resources in the nature park;
- facilitation of conducting scientific research and monitoring of the status as primary activities related to the sustainable use of resources;
- elimination and prevention of exploitation and degradation of nature in the area proclaimed a nature park.

The Rulebook lays down that in case the status of conservation of the species of flora and fauna of national or international significance, as well as their natural habitats are not hindered, the following activities may be undertaken:²⁸⁹

- determining the special places within the nature park for the purpose of conducting educational activities for the characteristics of the nature park and the management of the wild species;
- determining the needs for scientific and research work;
- promoting the values of the nature park;
- determining permitted activities that are carried out for tourism purposes.

Rulebook on the content of protected area management plans and annual programs for nature protection²⁹⁰

The Rulebook defines the structure and content of each of the parts of the protected area management plans:²⁹¹

- **Introduction** – inter alia, contains information on the approval of the plan/program by the MoEPP;
- **Description of the area** – is a summary of the Study for Valorization or Revalorization, and, inter alia, contains environmental information, information on socio-economic characteristics, values and threats to the area and data on the effectiveness and efficiency of existing governance and management facilities in the area;
- **Strategy** – contains a vision for the area, protection objectives, boundaries and zones (according to (re) valorization study and the act for proclamation of the area) surface area and description of the external boundaries and boundaries of the zones, protected area management programs, which, depending on the category and the purpose of protection of the area, may be:
 - *Programs for conservation and monitoring of natural heritage, especially for:*
 - ◆ biological diversity, with special measures for the conservation of wild species;
 - ◆ conservation, protection and revitalization of significant habitats and ecosystems;
 - ◆ methodology for monitoring the status of habitats and species;
 - ◆ significant elements of the physical environment (geological, geomorphological, pedological, hydrological characteristics);
 - ◆ significant landscape or landscape values;

²⁹⁰ "Official Gazette of the Republic of Macedonia" no. 26/2012

²⁹¹ Rulebook on the content of the protected area management plans and annual programs for nature protection ("Official Gazette of the Republic of Macedonia" no. 26/2012), Articles 3-8

- *Programs for sustainable use of natural resources in the area;*
- *Forest habitat and ecosystem management programs;*
- *Cultural heritage management programs;*
- *Programs for development of sustainable tourism and recreation;*
- *Local development programs (with an emphasis on maintaining traditional economic activities);*
- *Information, public awareness and education programs;*
- *Programs for management, governance, financing and administration;*

■ **Operational plan** - contains sub-programs with clearly defined objectives, which are developed for each of the programs listed above. An implementation plan is prepared for each program and/or sub-program, containing: necessary actions to achieve the objective of the (sub) program and their priority, indicators for implementation of each action, five-year time frame for each action and an entity responsible for implementation of the action and stakeholders to be involved;

■ **Protected area governance and management** - contains a *governance and management plan*, a *plan for human and other resources* (human resources, equipment and infrastructure and assets and financing plan) and an *annual program for nature protection* (actions to be implemented within each program and/or sub-program of the management plan in the current year with an indicator for implementation of the action and responsible person/body for implementation; necessary human resources and equipment, as well as necessary trainings for implementation of the actions; necessary funds for implementation of each action (especially salaries for employees and ongoing maintenance/costs); planned activities for cooperation/consultation with stakeholders; ongoing projects or projects expected to start in the current year; other activities in the protected area and other sources of funding);

■ **Annexes**

Rulebook on the content of the study for valorization or revalorization of a protected area²⁹²

The Rulebook determines the structure and content of the parts of the (re)valorization studies:²⁹³

■ Introduction

Description – inter alias, contains information on: plans impacting the area (LED, LEAP, plans and projects related to forestry, hunting, water management and pasture use, spatial and urban plans, infrastructure plans, energy plans, plans for use of mineral raw materials, etc.), *existing area management activities, environmental information* (geology/lithology, geomorphology, hydrology/hydrography, climate and climate change, soil/substrates, bio-geographical features, flora, fauna, ecosystems and habitats, phytocenological communities and types of landscapes), *information on socio-economic characteristics* (local communities in the area or the immediate vicinity, the purpose of the land and economic activities carried out or impacting the area, existing and planned transport, energy and telecommunication infrastructure, cultural heritage in the area, the use of area for recreational and tourist activities and informative and educational activities);

Assessment – contains information on the *values of the area* natural values, including information on identified significant ecosystems, habitats and species according to Macedonian, international rules and accurately listed EU directives, the significance of cultural heritage, social and economic values related to the contribution of the area to the development and sustainability of traditional economic activities, national and international significance, which is assessed in relation to the existence of species and habitats that are part of regional and global registers (including Emerald, Ramsar, World Natural Heritage and Natura 2000), *threats faced by the area and the effectiveness and efficiency of governance and management capacities*;²⁹⁴

292 "Official Gazette of the Republic of Macedonia" no. 26/2012

293 Rulebook on the content of the study for valorization and revalorization of a protected area ("Official Gazette of the Republic of Macedonia" no. 26/2012), Articles 3-8

294 The revalorization studies contain an assessment of the effectiveness and efficiency of the current management

- **Strategy** - contains *recommendations for the area protection and explanation; proposal for boundaries and zones* (external boundaries and zones within the area) and *recommendations for basic objectives of the future management and protection of the area*;
- **Area governance and management** - contains *a recommendation on minimum human and other resources for efficient protection and general revenue and expenditure guidelines for area management*,²⁹⁵
- **Documentation** – inter alia, contains tables with species and habitats.

Rulebook on records for nature protection²⁹⁶

The Rulebook defines the establishment, management, content (documents contained in each form),²⁹⁷ updating and maintenance of the Cadastre of Protected Areas (contains a list of protected areas, a list of parts of nature under temporary protection, a list of protected areas the protection of which has been abolished and a collection of acts proclaiming protected areas or revoking the protection)²⁹⁸ and the Register of Natural Heritage (contains a register of speleological objects; a register of common minerals; a register of common fossils; a register of strictly protected and protected wild species; a register of wild species under temporary protection; register of natural rarities and register of collections of ex situ protection).²⁹⁹

The Cadastre of Protected Areas and the Register of Natural Heritage are kept in written and electronic form.³⁰⁰

Access to the electronic database is **free**, except for data classified as confidential.³⁰¹

295 The revalorization studies additionally contain an assessment of the financial sustainability of the area

296 "Official Gazette of the Republic of Macedonia" no. 102/2012

297 Rulebook on records for nature protection ("Official Gazette of the Republic of Macedonia" no. 102/2012), Article 1

298 Ibid, Article 2

299 Ibid, Article 8

300 Ibid, Article 13

301 Ibid, Article 14

Case Studies

The right to free access to information versus the intellectual property right: access to expert reports on the biodiversity of NP "Mavrovo"

In 2011, the Public Enterprise for Management of NP "Mavrovo" started a procedure for revalorization and re-proclamation of NP "Mavrovo" a protected area, Category II - national park. The revalorization process is a professional and scientific assessment of the natural heritage values and serves to confirm, extend, strengthen or reduce the scope and effect of protection, including its exclusion or cessation. The first document prepared in this procedure, according to the LNP, was the revalorization study supported by 12 individual expert reports on each aspect of the park's biodiversity. The draft study for revalorization was published in September 2011, while the public hearing was scheduled for October 19, 2011, as an obligatory part of this procedure, and five individual expert reports were available online. However, the final zoning proposal in the study for valorization of NP "Mavrovo" did not correspond to the individual expert reports, and the inconsistencies in the documents were particularly visible at the locations where the hydropower projects were planned. Two HPP projects were included in the study, along with maps attached that clearly show how they fit perfectly in areas where infrastructure activities are not strictly prohibited.

The Public Participation Working Group (PWG) was part of the public hearing and pointed out that there were differences between the expert reports and the zones set in the valorization study, thus PINP "Mavrovo" withdrew all expert reports from the Internet and claimed that the study was based on expert assessment. In May 2012, PINP "Mavrovo" decided to reject all comments of PWG as unfounded and to proceed with the procedure. In June 2012, CSO "Front 21/42" submitted a written request to PINP "Mavrovo" in order to gain access to all expert reports arising from the valorization study to provide hard evidence that there were differences in the documents. According to the Macedonian national law and the Aarhus Convention, in this case the public authority must respond to the request within 30 days of receipt, but still, CSO "Front 21/42" did not receive any response within the legal deadline. According to the LE and the Law on Free Access to Public Information, if the national authority does not respond to the request within the legal deadline, it shall be considered rejected and a complaint may be filed. If the access to information procedure is unsatisfactory, a complaint may be filed with the Commission for Protection of the Right to Free Access to Public Information. Consequently, CSO "Front 21/42" filed a complaint with the Commission for Access to Information in July 2012. The Commission for Access to Information found a violation and ordered the PINP "Mavrovo" to respond to the request within 7 days, but the PINP "Mavrovo" still decided to reject the request for access to expert reports by a decision given in writing in September 2012. In the decision, PINP "Mavrovo" stated that there was an exception in the right of access to information, which referred to intellectual property right, thus the information may not be made public. This decision is contrary to the provisions of the Aarhus Convention, as well as the LE and the Law on Free Access to Public Information, namely:

- PINP "Mavrovo" is a body that has environmental information related to the natural values of the park and has the obligation to collect and disclose environmental information, such as, for example, expert reports (Article 5 of the Aarhus Convention); PINP "Mavrovo" committed a procedural violation.

- I the requested information was already available in the public domain (PINP "Mavrovo" withdrew the reports after the public hearing);
- I the decision regarding the national park was in conflict with the idea of protection of copyrights and trademarks (intellectual property rights). Oxfam Italy (as an entity whose rights are protected) has limited protection (fixed term), and the right to protection should, in fact, protect the economic reward (benefit) through market transactions, which include intellectual property rights. Thus, the publication of reports (or enabling access to them) may not be in conflict with intellectual property rights
- I especially taking into account that PINP "Mavrovo" may decide to enable access to information, and seek monetary compensation;
- I the decision does not contain an obligatory public interest test.

In October 2012, CSO "Front 21/42" filed a second complaint against the decision of PINP "Mavrovo" with the Commission for Access to Information. The Commission for Access to Information found that "according to the Aarhus Convention, this information should be publicly disclosed". Additionally, the Commission confirmed the fact that PINP "Mavrovo" did not conduct the obligatory public interest test, which must be conducted in accordance with national laws, as well as the Aarhus Convention, and therefore PINP "Mavrovo" committed a procedural violation.

In December 2012, PINP "Mavrovo" adopted a new decision regarding the request for access to information and once again refused access to information, and at the same time conducted a public interest test and once again decided to refuse access due to conflict with the intellectual property right. This new refusal of access together with the public interest test was challenged first before the Commission for Access to Information in January 2013 and then before the Administrative Court in April 2013. In February 2015, the Administrative Court rejected the lawsuit of the CSO "Front 21/42" as unfounded and upheld the first instance decision, and delivered the judgement in February 2017 with the explanation that PINP "Mavrovo" has the right not to publish the information due to conflict with the intellectual property right, as well as on the basis of the conducted public interest test. However, the judgment did not provide an explanation for the fact that the information was previously available in the public domain, or that the public interest test did not justify the protection of intellectual property rights. Subsequently, CSO "Front 21/42" started preparing an international complaint (communication to the Aarhus Convention Compliance Committee), but before sending the communication, PINP "Mavrovo" decided to withdraw its decision and give full access to the reports. The above procedure for access to environmental information lasted more than 5 years.

Public participation in the adoption of a legislative act - Law on re-proclamation of NP "Mavrovo"

In February 2015, the Ministry of Environment (MoEPP) announced the draft law for re-proclamation of NP "Mavrovo" a protected area category II - national park. This procedure was envisaged by the Law on Nature Protection (LNP), requiring revalorization of natural values of protected areas (in order to confirm or delete them), new zoning and a new law on re-proclamation in accordance with the updated status of the area. The information regarding the draft law on re-proclamation, published by the MoEPP and NP "Mavrovo", included the following documents:

- I draft version of the Law on Re-proclamation,
- I map of the territory of the park with a new proposal for demarcation of protection zones,
- I Regulatory Impact Assessment (RIA), including decisions adopted by the institution and the public concerned.

The re-zoning proposal and the draft law on re-proclamation were not in line with the IUCN criteria for protected areas, as well as with the LNP, as the draft law included articles that directly regulate the construction of hydropower projects. The announcement of the draft law did not contain information about the consultation period, nor information about where and when the public hearing would take place. The minimum period for commenting on any legal act in RNM is 20 days according to the Methodology for Regulatory Impact Assessment. According to the LE, draft laws related to the environment should be available for scrutiny for at least 30 days. It is also obligatory to hold a public hearing on draft laws related to the environment in accordance with the LE. Hence, CSO "Front 21/42" submitted a written comment regarding the above omissions to the MoEPP by e-mail and requested to be informed directly (by e-mail) about all further steps related to the draft law. The Ministry responded within one day by a notification that the consultation period lasted 30 days as of the date of publication of the information and that they would organize a public hearing during the consultation period. A few days later, CSO "Front 21/42" was officially, in writing, invited to a public hearing. The public hearing was held on March 5, 2015 in NP "Mavrovo", starting with a presentation by the public authorities, and then followed by a discussion. The room in which the public hearing was held did not have adequate space capacity, that is, it had a capacity for up to 15 people, while the list of speakers from CSOs consisted of over 50 participants. The public hearing was scheduled to last only one hour and as soon as the time expired, despite the fact that there were several speakers, the MoEPP interrupted the public hearing without giving an appropriate explanation or information whether a second public hearing would be held. This is a serious violation of the Aarhus Convention and the LE. In March 2015, within the given deadline and after the public hearing, CSO "Front 21/42" submitted comments to the MoEPP. The comments were divided into two chapters - one regarding the violation of the procedure (there was no proper public hearing, consultation period, etc.) and one chapter on the

content of the draft law on re-proclamation (conflict with the IUCN criteria, Law on Environment, etc.). A few months later we were informed that the MoEPP had terminated the procedure for the draft law.

Three years later, in 2018, CSO "Front 21/42" and CSO "Eko-svest" initiated and organized a meeting with the Deputy Minister of Environment regarding the legal protection of NP "Mavrovo". The Deputy Minister agreed that the procedure for the Draft Law on Re-proclamation must be repeated and that the Draft Law must be revised in order to meet the IUCN criteria. As a result, the Deputy Minister sent an official letter to the Secretariat of the Bern Convention on the Conservation of European Wildlife and Natural Habitats, requesting expert assistance in reviewing the draft law. The Secretariat of the Bern Convention sent a notification that it would provide three experts and organize a joint visit with the participation of all relevant stakeholders (including local CSOs) in the period of spring/summer 2019.

At the same time, with the participation of CSOs, in the course of 2020, it was agreed to agree on the Terms of Reference of an expert team that would conduct a detailed analysis of the status of protected areas, protection of NP "Mavrovo" and the Balkan lynx, as well as strategic commitments for construction of hydropower plants in the country. The Terms of Reference was officially adopted by the Ministry of Environment and Physical Planning as well as the Secretariat of the Bern Convention in the course of 2020, and at the end of the year, at a session of the Committee, it was decided for the visit to take place online -meetings as a result of the pandemic.

The expert mission took place in May 2021, followed by a detailed report and 13 recommendations with guidelines for the Government and institutions for improving nature protection and protected area management. One of these recommendations is specifically aimed at the re-proclamation of NP "Mavrovo" and emphasizes the need to accelerate the process and adopt a law and management plan. In the period of preparation of this analysis, the Ministry of Environment and Physical Planning initiates the resumption of the procedure in coordination with the NP "Mavrovo" management.

Protected area management

Conserved or insignificantly altered ecosystems, with special natural values, are protected by proclaiming such areas national parks, in order to protect the ecological processes, species and ecosystem characteristics complementary to the area.³⁰² Activities that endanger the authenticity of nature shall be prohibited in the NP,³⁰³ whereas the holders of the right to use or property owners, when undertaking investment activities, must first seek the consent of the entities in charge of the NP management.³⁰⁴ The NP shall be managed by a public institution established by the Government,³⁰⁵ which for the purposes of management adopts a management plan³⁰⁶ of precisely defined content.³⁰⁷

Mavrovo, by the Law on proclamation of the forest areas around Mavrovo Lake a national park ("Official Gazette of the PRM" No. 10/49), was proclaimed a national park. In 2015, a draft law was prepared for the re-proclamation of Mavrovo as NP, but as can be seen from the previous case study, the law has not been adopted yet. The decision to establish a public institution for management and protection of the "Mavrovo" National Park envisages that the public institution shall be established, inter alia, for the purpose of:

- Sustainable use of natural wealth in the interest of present and future development, without significant damage to parts of nature and with the least possible disturbances of the natural balance;
- Creating conditions and undertaking measures for protection of the National Park for the purpose of conservation and sustainable management of certain components of biological and landscape diversity;
- Undertaking measures to protect the established zones in the National Park;

³⁰² Ibid, Article 72

³⁰³ Ibid, Article 75

³⁰⁴ Ibid, Article 113

³⁰⁵ Ibid, Article 136

³⁰⁶ Ibid, Article 73

³⁰⁷ Ibid, Article 98

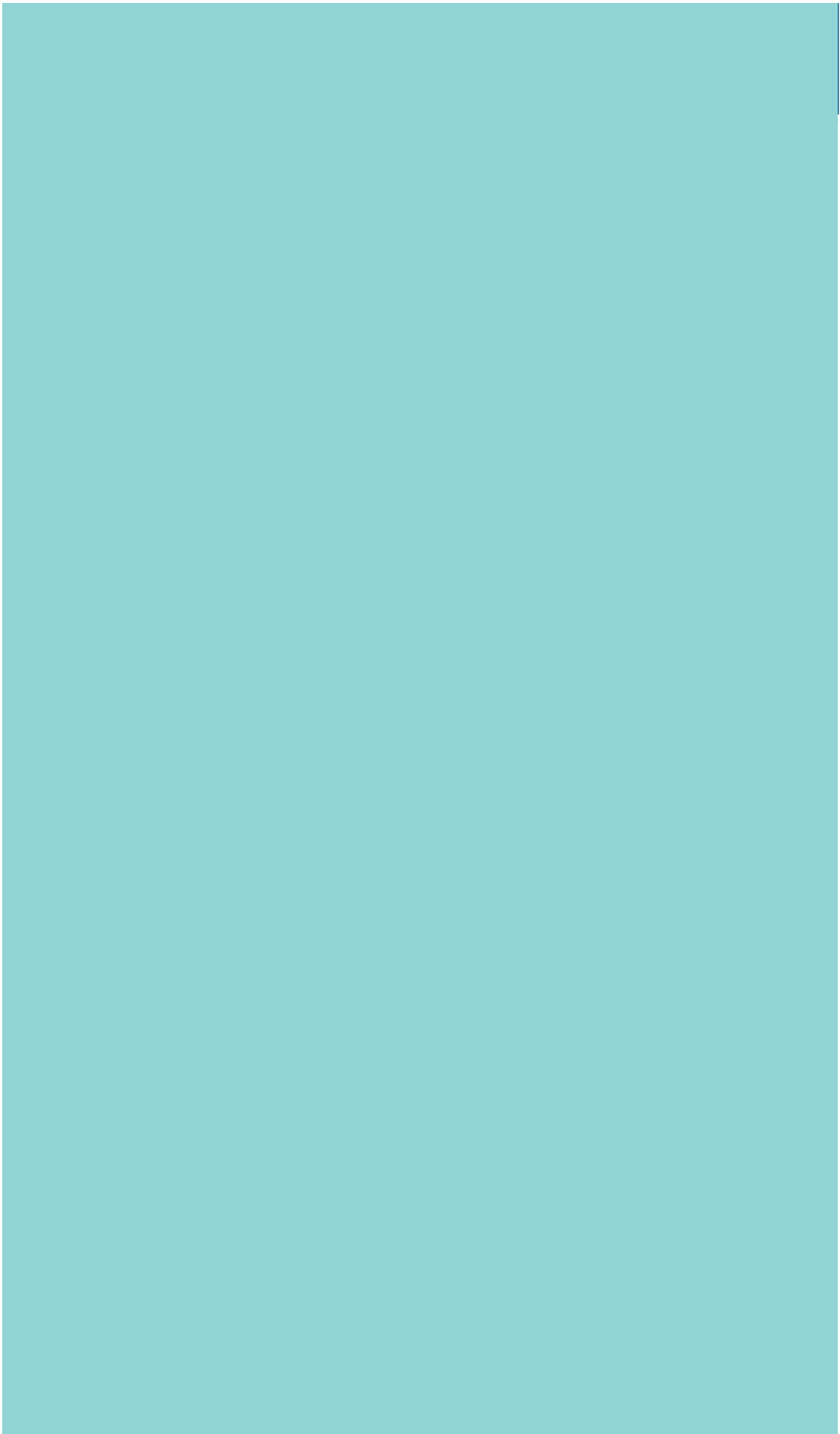
- Prevention of harmful activities by natural persons and legal entities and other disturbances in the National Park as a consequence of technological development and carrying out activities, that is, providing maximum favorable conditions for nature protection and development;
- Construction of infrastructure and landscaping of springs, fountains, picnic sites and spaces for recreation, etc.

Although the LNP envisages the adoption of a Management Plan for NP "Mavrovo", it has not been adopted yet.

MYLA contacted the Municipality of Mavrovo and Rostushe and PINP "Mavrovo", Mavrovi Anovi requesting information on the number of cases in which the municipality requested an opinion from PINP in the procedures for issuing approval for the construction of SHPPs. According to the information received, the municipality issued approval for the construction of 2 SHPPs, which were later cancelled due to untimely start of construction, but did not seek the opinion of PINP,³⁰⁸ although it was obliged to do so. The PINP submitted information that the municipality does not submit requests for opinions in procedures for issuing building permits, but submits requests for opinions in procedures for legalization of illegally constructed buildings.³⁰⁹

308 Submission of information no. 09-90/2 as of 22.2.2022 by the Municipality of Mavrovo and Rostushe

309 Decision no. 03-120/2 as of 24.2.2022a by Public Institution National Park MAVROVO



05



The Energy Law is the basic law which regulates the energy sector. Taking into account the nature of the activity of SHPPs, there is no doubt that the EL impacts their operation.

Energy Law

EL was adopted in 2018 and ever since then it has been amended in 2019.³¹⁰ The law, inter alia, regulates the construction of energy facilities and the electricity markets.³¹¹ Some of the objectives of the law are the following:³¹²

- Encouraging the use of energy from renewable sources through appropriate and effective financial and other support measures for the purpose of achieving the objectives of the renewable energy policy and ensure security of energy supply;
- Environmental protection and climate change mitigation against negative impacts of carrying out energy activities.

SHPPs are included in the renewable energy sources, being defined by EL as non-fossil energy sources such as hydro, wind, solar, aerothermal, hydrothermal and geothermal energy, biomass, landfill gas, biogas and gas obtained from wastewater treatment plants and biomass.³¹³ EL defines producers of electricity from renewable sources that use one of the support measures, as preferential producers of electricity.³¹⁴

EL establishes 11 energy policy goals, inter alia, including:³¹⁵

- Encouraging the use of renewable energy sources;
- Protection of public health, environment and climate change mitigation against harmful impacts arising from carrying out energy activities.

³¹⁰ Energy Law ("Official Gazette of the Republic of Macedonia" no. 96/2018 and "Official Gazette of the Republic of North Macedonia" no. 96/2019)

³¹¹ Ibid, Article 1 item 2 and 4

³¹² Ibid, Article 2 item 7 and 8

³¹³ Ibid, Article 3 paragraph 1 item 38

³¹⁴ Ibid, Article 3 paragraph 1 item 50

³¹⁵ Ibid, Article 10

The Energy Development Strategy, as a basic document for the energy policy of the country, inter alia, determines:³¹⁶

- The potential of renewable energy sources and measures to support the use of renewable energy sources, for the purpose of increasing the share of energy produced from renewable sources in the gross final energy consumption;
- Incentive measures for increasing energy efficiency;
- The conditions and manners for ensuring environmental protection and climate change mitigation, as well as measures for implementation of protection.

For the EDS implementation, the Government shall adopt a Program for implementation envisaging the dynamics of EDS implementation, the measures for implementation on annual level, the obligations of each of the state bodies, entities carrying out regulated energy activities and energy companies providing public service and necessary funds, sources and method of financing.³¹⁷

The Energy Regulatory Commission, as an independent and non-profit regulatory body that controls the manner of carrying out energy activities, shall have the authority to adopt the electricity market rules and electricity supply rules, decisions on the use of electricity feed-in tariffs and decisions for acquisition of a temporary status of a preferential producer using a feed-in tariff and the status of a preferential producer using a feed-in tariff. ERC shall be obliged to keep a register of preferential electricity producers that use the preferential tariff.³¹⁸

Electricity generation is envisaged as an energy activity.³¹⁹ In order to start their activity, SHPPs should have a license for carrying out an energy activity provided by the ERC, the duration of which may be from 3 to 35 years, depending on the type of energy activity, type and scope of the obligation to provide public service in carrying out energy activity, the volume of funds required for carrying out the energy activity, the duration of the right to use the respective energy resource, as well as the request submitted by the entity that carries out the energy activity. The procedure, conditions and manner of issuing licenses and other related details shall be regulated by a special rulebook, which is adopted by the ERC. The duration of the license may be extended upon a request of its holder submitted to the ERC no later than 60 days before the expiration of the license validity.

³¹⁶ Ibid, Article 11

³¹⁷ Ibid, Article 12

³¹⁸ Ibid, Article 24

³¹⁹ Ibid, Article 4

In case of extension, the license holders for regulated energy activity shall be obliged, 1 year before the expiration of the license validity, to inform the ERC about the intention to request an extension of the license. The issued license may not be transferred to another person except when:³²⁰

- The energy activity shall be carried out on the basis of a concession for use of natural resources, whereby the grantor has made a decision for transfer of the concession rights;
- A new company was established during the implementation of a procedure for legal separation of a vertically integrated company.

By decision of the ERC, the activity may be carried out by a subsidiary of a foreign entity in RNM, the founder of which has been issued a license or other appropriate document for conducting trade or supplying electricity in the country which is a contracting party or participant in the Energy Community Treaty, based on the principle of reciprocity.³²¹

In the case when the investor has acquired the right to construct a facility or system on the basis of a concession awarded for goods of general interest, upon his request ERC shall adopt make a decision to issue a temporary license before obtaining approval for use of the energy facility, that is, prior to receiving a report on technical inspection of the facility by a supervising engineer.³²² Upon the request of the investor, and based on the manner, conditions and procedure prescribed by the electricity network rules, the ERC may issue him a trial license valid for 9 months. This trial license may be extended only under conditions, in a manner and in a procedure in accordance with the Rulebook on Licenses.³²³

The ERC may, by a decision, suspend the license for carrying out energy activity in case when the entity that carries out the activity has been banned from carrying out the activity for a certain period or in cases when ERC has found an irregularity in terms of Article 26 of the EL and it has undertaken obligatory measures.

The license for carrying out energy activity shall be revoked if the license holder:³²⁴

³²⁰ Ibid, Articles 38, 39, 41 and 46

³²¹ Ibid, Article 40

³²² Ibid, Article 42

³²³ Ibid, Article 43

³²⁴ Ibid, Article 50

- does not commence carrying out energy activity for which the license has been issued within the deadline determined by the license;
- does not carry out the activity for which the license has been issued in a manner and under conditions prescribed by law;
- does not adhere to the decisions and/or does not execute the individual acts adopted by the ERC in its operation;
- does not act upon the request of the competent authorities for elimination of the shortcomings in the operation that led or might lead to termination of the service provision in a manner prescribed by law or to reduction of quality, continuity, confidentiality or reliability of the service provision within a certain period of time;
- ceased to meet the conditions for carrying out the energy activity for which the license has been issued.

Prior to initiating the procedure for revocation of the license, ERC shall request from the entity an explanation regarding the reasons for revocation of the license. Based on the given explanation, ERC shall decide on initiating a procedure for revocation of the license and at the same time shall decide on the measures and activities that the license holder should fulfill in order to eliminate the reasons for which the procedure has been initiated, as well as the time frame in which they should be implemented. If the license holder does not provide an explanation within the deadline set by the ERC, his license shall be revoked by a decision.³²⁵

Unlike all other new energy facilities for the construction of which there is no need for an authorization, taking into account the SHPP capacity (up to 10 MW), EL prescribes that such authorization is not required for construction.³²⁶ At the same time, EL prescribes that authorization for construction of energy facilities shall not be required if the performance of the energy activity - production of the respective type of energy is conditioned by providing a concession for the use of natural resources. In such cases, the conditions for construction of the respective energy facility shall be determined in the concession contract.³²⁷ It is important to note that one of the criteria for obtaining authorization for construction of a new energy facility is the environmental protection,³²⁸ whereby the applicant for

325 Ibid

326 Ibid, Article 52 paragraph 2 item 1

327 Ibid, Article 52 paragraph 3

328 Ibid, Article 53 paragraph 1 item 4

the authorization should also submit the decision approving the environmental impact assessment elaborate, that is, the environmental impact assessment study together with the documents.³²⁹

Particularly important for the SHPP operation is EL section entitled Renewable Energy Sources.

Based on the proposal of the MoE, the Government shall adopt an Action Plan for Renewable Energy Sources for a period of 10 years, which shall contain an overview and assessment of the situation in the energy sector and renewable energy market, comparative analysis, goals and dynamics of the indicative trajectory, sectoral goals and annual forecasts and measures for achieving the goals by determining the holders, deadlines and means of implementation. The MoE shall have an obligation to monitor the Action Plan and to prepare implementation reports every 2 years, which shall be submitted to the Government.³³⁰

Upon the proposal of the MoE, the Government shall adopt a decision setting the national goals for this area.³³¹

- national mandatory targets for the share of energy generated from renewable sources in the gross final energy consumption;
- national mandatory targets for the share of energy generated from renewable sources in the final energy consumption in transport.

For the purpose of achieving the national mandatory targets the Government.³³²

- shall introduce and implement measures that ensure that the share of energy generated from renewable sources is equal to or greater than the national mandatory target, for which the MoE shall adopt a special calculation methodology;
- shall determine the scope of support for energy from renewable sources generated in a contracting party of the Energy Community.

MoE shall more closely prescribe the types of power plants for electricity generation from renewable energy sources by a special rulebook on renewable energy sources.³³³

³²⁹ Ibid, Article 55 paragraph 1 item 3

³³⁰ Ibid, Article 172

³³¹ Ibid, Article 173

³³² Ibid

³³³ Ibid, Article 185

SHPPs may use support measures if they install equipment and systems for production of energy from renewable sources that meet the relevant technical specifications prescribed by the MoE. Support measures may include:³³⁴

- investment support;
- tax and customs relief;
- introduction of special obligations of electricity suppliers for the purchase of electricity generated from renewable sources;
- introduction of obligations for traders with petroleum products and transport fuels for sale of biofuels on the market;
- issuing guarantees for the origin of electricity generated from renewable sources;
- feed-in tariffs and premiums for sold electricity generated from renewable energy sources;
- introduction of the possibility for electricity generation from renewable sources intended for self-consumption and handing over the surplus to the electricity distribution system;
- compensation for encouraging the share of renewable energy sources.

Support measures must be aimed at achieving some of the goals defined in the EL, inter alia, including reducing the costs of energy generation from renewable sources and production of biofuels and increasing the share of renewable energy sources in gross final energy consumption.

EL specifically elaborates on the acquisition of preferential producer status and the use of a premium or feed-in tariff as a result of that status. The manner, conditions and procedure for acquiring the status of preferential producer are regulated by the Decree on measures to support the electricity generation from renewable energy sources, adopted by the Government, upon the proposal of the MoE.³³⁵

The Government, upon a proposal of the MoE and a previously adopted decision by the Commission for Protection of Competition, shall adopt an annual program for financial support for the electricity generation by preferential producers using premium. The program shall determine the total installed capacity of the power plants by type of technologies for which a premium of a renewable source shall be awarded after a tendering procedure, the total

³³⁴ Ibid, Article 186

³³⁵ Ibid, Article 187

installed capacity of the existing power plants of preferential producers using a premium for which state aid is awarded and the amount of state aid for the electricity generated.³³⁶ The granting of the right to use the premium begins by conducting a tendering procedure for granting this right to the preferential producers. The selected tenderer in the tendering procedure, after fulfilling the conditions for acquiring the status of preferential producer, construction of the power plant within the deadline specified in the contract for the right to use premium concluded with the MoE and submission of the license for carrying out energy activity, submits a request to the MoE for conclusion of a premium use contract. The preferential producer who has acquired the right to use the premium may not use a feed-in tariff and is not entitled to a guaranteed purchase of the energy produced. In addition to the obligations of all producers, producers that use premiums have additional obligations - to sell the energy produced on the electricity market, to submit forecasts for electricity generation to the MoE and during the operation to comply with the obligations of the premium use contract.³³⁷

The manner of acquiring the status of a preferential producer and the manner and procedure for adopting a decision for using a feed-in tariff shall be regulated by an ERC rulebook. Similar to the procedure for using the premium, SHPP should submit to the ERC a request for issuance of a decision for acquiring the status of a preferential producer and a request for the use of a feed-in tariff for electricity. If, in the course of the procedure, EARNM issues a certificate, that is, if SHPP is constructed and meets the requirements and installed capacity in accordance with the Decree on measures to support the electricity generation from renewable energy sources, and if SHPP has a license to carry out energy activity for electricity generation, ERC shall issue a decision for acquiring the status of a preferential producer and a decision for using a feed-in tariff for electricity. The producers that use the feed-in tariff have additional obligations, that is, to sell the electricity generated only to the electricity market operator and to submit electricity generation plans to the electricity market operator. The preferential producer using a feed-in tariff, shall have a guaranteed purchase of the electricity by the electricity market operator with which it should conclude a power purchase agreement at the feed-in tariff.³³⁸

Electricity suppliers and/or traders shall be obliged, in the bills, invoices and promotional materials that they deliver to the consumers, to provide information, inter alia, on the percentage of electricity generated by the preferential producers using feed-in tariffs or share of RES energy produced by installations or extended capacities of existing installations that have been commissioned after 18 December 2012 and list the environmental or other energy benefits of RES energy.³³⁹

³³⁶ Ibid, Article 187 paragraph 5

³³⁷ Ibid, Article 188 and 189

³³⁸ Ibid, Article 191-193

³³⁹ Ibid, Article 194

Institutional framework

The implementation of the legislation in the field of energy covers the activities of several institutions.

The Ministry of Economy, through the Energy Department, shall be responsible for making policies in the area (laws and bylaws) and for preparing strategic documents, including monitoring their implementation. The MoE oversees the implementation of the EL and EARNM.³⁴⁰

Established by the EL,³⁴¹ the Energy and Water Services Regulatory Commission is an independent, non-profit regulatory body, which regulates and controls the manner of carrying out energy activities. Among the many competencies of the ERC, it adopts the electricity market rules, the electricity supply rules, the rules for preferential producers using the feed-in tariff, the rules for issuing licenses. Among the most important competencies of the ERC are the issuance, monitoring and revocation of licenses for carrying out energy activity, adopting decisions on the use of feed-in tariffs for electricity, decisions for obtaining temporary status of preferential producer using feed-in tariff for electricity and the status of preferential producer using feed-in tariff for electricity and register of preferential producers using feed-in tariff for electricity.³⁴²

The Energy Agency of the Republic of North Macedonia is an independent body established to support the implementation of energy policy, which has specifically defined activities in terms of renewable energy sources. According to EL, EARNM shall adopt a decision for registration of power plants that generate electricity from renewable energy sources and issue a certificate that the power plant that generates electricity from renewable sources is constructed and it meets the requirements laid down by laws.³⁴³ According to the Law on Establishment of the Energy Agency of the Republic of Macedonia, the competencies of EARNM are expanded, that is, it gives initiatives, proposes and coordinates development of studies and projects for energy efficiency and use of renewable energy sources; proposes and engages in the implementation of measures to reduce energy losses in energy systems and increase efficiency in exploitation; encourages the use of renewable energy sources and proposes and engages in the incorporation of environmental protection measures in energy projects.³⁴⁴

³⁴⁰ Ibid, Article 206

³⁴¹ Ibid, Chapter III

³⁴² Ibid, Article 24

³⁴³ Ibid, Article 184

³⁴⁴ Law on Establishment of the Energy Agency of the Republic of Macedonia ["Official Gazette of the Republic of Macedonia" no. 62/2005, 41/2014 and 83/2018], Article 4

Bylaws

The SHPP operation, in the area of electricity generation, is more closely regulated by several bylaws adopted on the basis of EL.

| Title of the bylaw that needs to be adopted by the state authorities | Obligation fulfillment status | | Note |
|---|-------------------------------|--------------------------|---|
| | The bylaw is adopted | The bylaw is not adopted | |
| Energy Development Strategy of the Republic of North Macedonia until 2040 ³⁴⁵ | | | |
| Program for Implementation of the Energy Development Strategy of the Republic of North Macedonia ³⁴⁶ | | | <p>The last Program was adopted in 2013 and covers the period from 2013 to 2017, and is related to EDS until 2030.</p> <p>The Program for Implementation EDS until 2040 has been developed, but has not been adopted yet. SEA has been prepared for it.³⁴⁷</p> |

³⁴⁵ Energy Law ["Official Gazette of the Republic of Macedonia" no. 96/2018 and "Official Gazette of the Republic of North Macedonia" no. 96/2019], Article 11

³⁴⁶ Ibid, Article 12

³⁴⁷ Information received at the thematic workshop with the competent institutions held on 11.3.2022

Action Plan for Renewable Energy Sources of the Republic of Macedonia³⁴⁸

The action plan refers to the period until 2025, with a vision until 2030, and it is in relation to the EDS until 2030 and the Strategy for Utilization of Renewable Energy Sources which is not envisaged by the new EL

At the moment, amendment to the EL is envisaged, and the draft law amending the EL has been published on ENER and it is in the stage of consultations, that is, review of the opinions and remarks received from the public. The envisaged amendments to the EL envisage the adoption of a National Energy and Climate Plan instead of the Action Plan for Renewable Energy Sources. The National Energy and Climate Plan has been developed.³⁴⁹

³⁴⁸ Energy Law ["Official Gazette of the Republic of Macedonia" no. 96/2018 and "Official Gazette of the Republic of North Macedonia" no. 96/2019], Article 172

³⁴⁹ Information received at the thematic workshop with the competent institutions held on 11.3.2022

| | | | |
|--|--|--|--|
| Decision on the national mandatory targets for the share of energy produced from renewable sources in the gross final energy consumption and for share of energy produced from renewable sources in the final energy consumption in transport ³⁵⁰ | | | <p>The decision establishes targets to be achieved by 2020, and no decision has been adopted for the period after 2020.</p> <p>It is necessary for such a decision to be adopted by the Energy Community, which will be the basis for the decision of the MoE.³⁵¹</p> |
| Rulebook on the methodology for calculating the share of energy produced from renewable sources in gross final energy consumption ³⁵² | | | |
| Rulebook on renewable energy sources ³⁵³ | | | |
| Decree on measures to support the electricity generation from renewable energy sources ³⁵⁴ | | | |
| Rulebook on preferential producers using feed-in tariff ³⁵⁵ | | | |

350 Energy Law ["Official Gazette of the Republic of Macedonia" no. 96/2018 and "Official Gazette of the Republic of North Macedonia" no. 96/2019], Article 173

351 Information received at the thematic workshop with the competent institutions held on 11.3.2022

352 Energy Law ["Official Gazette of the Republic of Macedonia" no. 96/2018 and "Official Gazette of the Republic of North Macedonia" no. 96/2019], Article 173 paragraph 4

353 Ibid, Article 185 paragraph 1

354 Ibid, Article 187 paragraph 3

355 Ibid, Article 191 paragraph 1

| | | | |
|---|--|--|--|
| Rulebook on Licenses ³⁵⁶ | | | |
| Rulebook on electricity market ³⁵⁷ | | | |

Energy Development Strategy of the Republic of North Macedonia until 2040³⁵⁸

As a strategic document adopted by the Government of RNM, EDS defines 3 different scenarios (reference, moderate and green scenario) to achieve the vision of **a secure, efficient, environmentally friendly and competitive energy system that is capable to support the sustainable economic growth of the country.**

³⁵⁶ Ibid, Article 41

³⁵⁷ Ibid, Article 92

³⁵⁸ "Official Gazette of the Republic of North Macedonia" no. 25/2020

Overview of scenarios for the development of Macedonian energy system until 2040

| | | Reference scenario | Moderate Transition scenario | Green scenario |
|-----------------------|------------------------------|---|---|---|
| Vision | | Transition from conventional energy based on current policy and least cost principles | Progressive transition from conventional energy based on new policy and least cost principle | Radical transition from conventional energy based on new policy and lignite phase out |
| Assumption highlights | Demand drivers | <ul style="list-style-type: none"> Macedonian GDP growth to reach neighboring EU countries' GDP per capita levels of today by 2040 Current energy efficiency policies Penetration of EVs | <ul style="list-style-type: none"> Same GDP growth as for reference Energy efficiency based on enhanced policy (in line with EU Directives/EnC guidelines) Higher penetration of EVs | <ul style="list-style-type: none"> Same GDP growth as for reference Same as moderate transition but more incentives and advanced technologies Highest penetration of EVs |
| | Generation investments focus | <ul style="list-style-type: none"> Lignite PP revitalization choice based on least cost principles High focus on RES | <ul style="list-style-type: none"> Lignite PP revitalization choice based on least cost principles Further focus on RES technology investments | <ul style="list-style-type: none"> Lignite PP revitalization choice based on least cost principles Extreme focus on RES investments |
| | ETS entrance | 2027 | 2025 | 2023 |
| | Commodity prices (WEO 2017) | Based on current policies scenario | Based on new policy scenario | Based on the sustainable development scenario |
| | Fuel Supply/Availability | <ul style="list-style-type: none"> Lignite production capped at a maximum level of annual supply expected (~ 5 M tons 2018-2035, ~ 3 M tons 2035-2040) Hydro production and wind/solar in line with historical trends and adjusted for new entering power plants Cross Border Capacities (electricity and gas) evolution in line with the ENTSO-E, ENTSO-G and EnC Sustainable consumption of biomass Battery storage (EVs and pump storage) | | |







EDS provides a roadmap, whereby specifying for each policy and strategic measure the level of priority for a different scenario, the estimated time frame and the responsible administrative level for implementation. Each scenario is composed of different policies and measures to achieve the strategic goals. The developed policies and measures are categorized along five energy pillars and provide answers on how to tackle specific challenges and leverage on new opportunities.

EDS envisages decarbonisation as one of the five energy pillars, whereby it is envisaged to have a the strategic goal of significantly increasing the share of RES in the gross final energy consumption of in a sustainable manner.³⁵⁹ Energy policy until 2040 should significantly increase the share of RES.³⁶⁰

359 Energy Development Strategy of the Republic of North Macedonia until 2040 ("Official Gazette of the Republic of North Macedonia" no. 25/2020), page 38

360 Energy Development Strategy of the Republic of North Macedonia until 2040 ("Official Gazette of the Republic of North Macedonia" no. 25/2020), page 39

Summary of integrated energy results in 2030 and 2040

| | Energy pillar | Indicator | Metric | Year 2030 | | | Year 2040 | | |
|---|--|--|---|--------------------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|
| | | | | Reference | Moderate transition | Green | Reference | Moderate transition | Green |
| 1 | Energy efficiency | Energy efficiency  | % reduction of primary and final energy consumption vs. BAU | -15.3% primary -10.3% final | -31.2% primary -16.6% final | -34.5% primary -20.8% final | -34.9% primary -14.2% final | -47.9% primary -21.7% final | -51.8% primary -27.5% final |
| 2 | Integration and security of energy markets | Energy dependence  | % of net import primary energy consumption | 48,7% | 61,9% | 59,1% | 51,0% | 61,9% | 55,3% |
| 3 | Decarbonisation | GHG emissions  | % reduction vs. 2005 and vs. BAU | -20,9% -22,9% vs. BAU | -57,2% -58,3% vs. BAU | -64,7% -65,3% vs. BAU | -8,1% -35,6% vs. BAU | -43,3% -60,2% vs. BAU | -61,5% -72,8% vs. BAU |
| | | RES share  | % of RES in gross final energy consumption | 33% | 38% | 40% | 35% | 39% | 45% |
| 4 | R&I and competitiveness | Total system costs  | Bn. EUR in 2030 and 2040 with cumulative | 3,8 41,0 | 3,3 38,3 | 3,2 37,3 | 5,1 86,5 | 4,8 81,2 | 4,5 78,1 |
| 5 | Legal & regulatory aspects | Legal & regulatory compliance  | EnC acquis harmonization & implementation | Full compliance | | | Full compliance | | |

EDS generally emphasizes photovoltaic power plants and wind power plants as sources for increasing the share of RES, whereby not considering hydropower projects located in protected areas, whereas in terms of SHPPs points out that they should be carefully assessed for their construction in order to avoid the risk of disproportionate environmental impact compared to the electricity generated.³⁶¹ In terms of support through feed-in tariffs and premiums, EDS determines that the highest support should come in the period of 2020-2025, whereby the highest support is envisaged for photovoltaic plants, the second place is for SHPPs and third place is for wind power plants.³⁶²

Decree on measures to support the electricity generation from renewable energy sources³⁶³

The decree defines the objectives of measures to support electricity generation from renewable sources:³⁶⁴

- encouraging investments for optimal utilization of the available potential of renewable energy sources in the Republic of Macedonia and achieving the national mandatory targets for the share of renewable energy sources in the total consumption, in accordance with the Decision on national mandatory targets for the share of renewable energy produced from renewable sources in the gross final energy consumption and the share of energy produced from renewable sources in the final energy consumption in transport;
- conditions for sustainable operation of the preferential producers by providing average annual revenues necessary to reimburse the investment and operating costs of the power plant and ensuring an adequate return on capital;
- conditions for environmental protection and climate change mitigation.

The decree lays down that hydropower plants may use a feed-in tariff as a support measure, and they must obtain the status of preferential producer, that is, their capacity should not exceed 10 MW, and the equipment and facilities for electricity generation and connection to the electricity transmission or electricity distribution system to represent a technical-technological functional unit and the power plant to have a connection to the respective system with an independent measuring point, which is exclusively intended for the power plant. SHPPs acquire the temporary

361 Energy Development Strategy of the Republic of North Macedonia until 2040 ["Official Gazette of the Republic of North Macedonia" no. 25/2020], page 60

362 Energy Development Strategy of the Republic of North Macedonia until 2040 ["Official Gazette of the Republic of North Macedonia" no. 25/2020], page 61

363 "Official Gazette of the Republic of North Macedonia" no. 29/2019, 278/2019 and 236/2021

364 Decree on measures to support the electricity generation from renewable energy sources ["Official Gazette of the Republic of North Macedonia" no. 29/2019, 278/2019 and 236/2021], Article 2

status of a preferential producer, given that they have concluded a concession contract, which is envisaged as a requirement by law.³⁶⁵

The feed-in tariff for SHPPs may not be used for a period longer than 20 years. The Decree provides a formula for calculating the feed-in tariff for SHPPs.³⁶⁶

According to the Decree, SHPPs should submit data to the EARNM on the technical parameters of the plant, electricity delivered, and if they use fuels for its production, to submit data on fuels consumed, their specific energy value and source of supply. If EARNM suspects that the provisions for acquiring the status of a preferential producer have been violated, it may request the SHPP or other competent authorities to provide appropriate data for proper determination of the factual situation. If EARNM still suspects a violation of the provisions of the Decree, it submits an initiative to the inspectorate responsible for technical inspection for performing extraordinary inspection.³⁶⁷

Rulebook on Licenses³⁶⁸

Adopted on the basis of the new EL, the Rulebook regulates the procedure and conditions for obtaining a license for carrying out an energy activity. The Rulebook lists the electricity generation among the energy activities that require a license.³⁶⁹

The Rulebook regulates three types of licenses issued by the ERC: 1. license for carrying out an energy activity, 2. temporary license and 3. trial operation license. A temporary license is issued, inter alia, if the investor has acquired the right to construct a facility or system on the basis of a concession awarded for goods of general interest.³⁷⁰

The procedure for issuing any of these 3 types of licenses is almost the same. It is important to note that the Rulebook provides for the ERC an opportunity to engage organizations, institutions and professionals in the license issuing process. Interested natural persons and legal entities, institutions and organizations may submit proposals, opinions and suggestions and scrutinize the documentation related to the draft decision on granting a license, except for documents of a confidential nature. If, after holding the preparatory session, there is a need for additional determination of the factual situation based on the submitted proposals, opinions, suggestions or conclusions from

³⁶⁵ Ibid, Article 4 and 5

³⁶⁶ Ibid, Article 8

³⁶⁷ Ibid, Article 21 and 22

³⁶⁸ "Official Gazette of the Republic of North Macedonia" no. 51/2019, 54/2019, 214/2019, 114/2020, 246/2020 and 44/2021

³⁶⁹ Rulebook on Licenses ("Official Gazette of the Republic of North Macedonia" no. 51/2019, 54/2019, 214/2019, 114/2020, 246/2020 and 44/2021), Article 3

³⁷⁰ Ibid, Article 14

the session, the ERC may ask the applicant to comment on them or submit additional documents. ERC invites the applicant as well as the authorized representatives of the interested parties to attend the preparatory session, as part of the license issuing process. If, based on the documentation, proposals, suggestions and opinions of the stakeholders as well as the conclusions from the discussion at the preparatory session, it is determined that the conditions are not met, the ERC adopts a decision to reject the request due to non-fulfillment of the license.³⁷¹

The Rulebook additionally envisages a shortened procedure for obtaining a license. The shortened procedure includes decision-making without a preparatory session and in case of issuance of a trial operation license or issuance of a temporary license, as well as for change, extension, transfer, suspension, revocation or termination of a license.³⁷²

The Rulebook regulates the content of the license, whereby stating that it also contains provisions on the conditions and the manner of executing the prescribed obligations when carrying out the energy activity.³⁷³

The license may be changed ex officio by the ERC in cases where:³⁷⁴

- the laws and bylaws that regulate the performance of the energy activity for which the license has been issued have changed;
- the obligation to provide public service is imposed on the license holder;
- the license holder has been selected/nominated as a universal supplier;
- a bankruptcy procedure with personal management has been opened against the license holder and
- internal changes have occurred in the license holder (change of company, seat, ownership structure, authorized person/s).

371 Ibid, Article 7-12

372 Ibid, Article 32

373 Ibid, Article 17

374 Ibid, Article 21

In terms of the suspension, revocation and termination of the license, the Rulebook envisages the same reasons as the EL.

The control over the license holders is performed by the ERC, which in essence has the role of an inspectorate in relation to the application of the Rulebook. ERC supervises through the regular and extraordinary reports on operations that the license holder submits to the ERC, direct inspection and control of the license holder's operations or through a report or information from other state bodies, organizations, institutions, legal entities and natural persons or through the media.³⁷⁵

License holders shall be obliged to submit an annual report on operations by March 31, which must include data on measures taken to protect the environment, human life and health and monitoring of the operations.³⁷⁶

Case Studies

Development of the National Energy Development Strategy of the Republic of North Macedonia

In 2009, the Macedonian Government began preparing the national EDS. The document was prepared by the MASA under the coordination of the MoE in order to monitor the long-term development of the energy sector in RNM in an efficient manner, which will ensure secure and quality energy supply to consumers. This long-term development includes the construction of more than 10 large HPPs and over 400 small hydropower projects (SHPPs) on each river in N. Macedonia, and almost half of the hydropower plants are planned to be constructed in protected areas. Priority HPPs envisaged by the strategy are: HPP "Lukovo Pole" and HPP "Boskov Most" - located in NP "Mavrovo", and in addition, another 20 SHPPs are also planned to be constructed on the territory of NP "Mavrovo". In the process of preparing the strategy, the Ministry of Economy is obliged to conduct the SEA procedure and to provide for early public participation in the process. According to the LE, the MoE should adopt a decision on the preparation of the national EDS and a decision on conducting a SEA procedure. The MoE, together with the SEA decision, designates the public concerned (relevant bodies, as well as CSOs) and informs them, that is, enables their early information and participation. However, for the preparation of a national energy development strategy, the MoE did not adopt or publish any decision. CSOs were unofficially informed by the MASA, that worked on that project.

³⁷⁵ Ibid, Article 30-a and Chapter X

³⁷⁶ Ibid, Article 42

Accordingly, the CSO "Front 21/42" together with other CSOs submitted an open letter to the MoE, requesting direct participation in the adoption, as well as in the implementation of the SEA procedure (including the preparation of the SEA report). In June 2009 (just before the start of the summer holidays), the MoE published the draft version of the national EDS and announced a period of 30 days for comments. The strategy was prepared and published without a SEA report, which is required by law and which is considered essential information. The relevance of the report in the preparation of the strategy is confirmed by the fact that both documents should be prepared at the same time and the SEA report should influence the development of scenarios in the strategy. Hence, CSOs sent another alarming letter to the MoE requesting the suspension of the draft national energy development strategy, until a SEA report is prepared. In February 2010, the MoE published a draft SEA report and announced a period of 30 days for consultations. The draft SEA report was incomplete since the report did not analyze many of the alternative solutions, did not assess the cumulative effects, did not contain a non-technical summary, etc. When it comes to hydropower projects in NP "Mavrovo", the SEA report emphasizes the following: "HPP "Crn Kamen" and the "Lukovo Pole" reservoir and HPP "Boskov Most" are located in NP "Mavrovo", which is a candidate for Emerald, which means that in the future, with the accession of RNM to the European Union, it will be in Natura 2000. The fact that the EU will not allow degradation of Natura 2000 areas should be taken into account. In addition, the projects are in conflict with the Law on Nature Protection". This remark was not reflected in the national Energy Development Strategy. Only 8 days after the publication of the SEA report, the MoEPP held a public hearing with only one representative of the public - from the CSO "Front 21/42". CSO "Front 21/42" submitted comments on the draft strategy.

On April 20, 2010, the Government announced the adoption of the National Energy Development Strategy. The final version of the strategy did not differ from the first draft that was previously published, and the MoE never officially responded to the comments.

In 2015, the MoE started the revision of the National Energy Development Strategy (for the period from 2015 to 2035), which is obligatory in accordance with the Energy Law. As for the revised draft strategy, the MoE prepared a draft SEA report, which addressed the problem regarding the development of hydropower plants in protected areas, especially regarding the plans for construction of HPPs in NP "Mavrovo". However, the problems related to hydropower identified in the SEA report were not reflected in the revised draft energy development strategy. The public consultation procedure for the revised draft strategy and the draft SEA report was again not properly implemented, that is, it was not in accordance with the Aarhus Convention. Namely, the consultation period regarding the documents, including the public hearing, was scheduled for July during the summer holidays (which is contrary to the Aarhus Convention) and the "public concerned", including CSOs, were not invited to participate in the public hearing. Due to the lack of appropriate public consultation, the CSO "Front 21/42" and CSO "Eko-vest" requested a public hearing in the Macedonian Assembly. Public hearings and oversight hearings are a legal instrument, and with their help, the Assembly may formally assess the implementation of laws and other activities of government and state bodies. In December 2015, the Assembly organized a public hearing for the general public and civil society organizations. During the debate, CSO "Front 21/42" and CSO "Eko-vest" requested a revision of the National Strategy for Energy Development, in accordance with the remarks of the SEA report, as well as a provision of an appropriate

and effective public consultation. The MoE has promised to organize a new public consultation process on the revised strategy. However, the MoE does not organize new public consultations and public hearing, nor did it revise the draft strategy. Consequently, the strategy was never formally adopted by the Government. As a result of this dispute, the MoEPP and the MoE did not announce new public calls for concession offers for HPPs and SHPPs located in NP "Mavrovo".

In August 2018, the MoE started preparing the new national EDS, this time with the timely engagement of CSOs - in accordance with the provisions of the Aarhus Convention on Early Public Participation. The MoE engaged the CSOs in the procedure, considering them as the public concerned from the very beginning. This is another positive result of the constant monitoring and engagement of CSOs in the process. Expert civil society organizations from the country and the region were also involved in the consultations. As a result, the main components of the strategy were debated and discussed with the team that prepared the document on a regular basis. At the same time, all documentation was made available to CSOs. In parallel, a procedure for preparation of an SEA for the EDS was initiated. From the very beginning, CSOs were involved by having an opportunity to contribute by submitting opinions, comments, documentation and studies that could be a solid basis for the development of the Strategy.

In November 2019, the EDS and the Strategic Assessment Report were published on the MoE website and two public hearings were organized with the participation of a great number of stakeholders. CSOs provided their specific remarks at the public hearing in writing and many of them were accepted.

The strategy was officially adopted by the Government in December 2019. As a result of the constructive cooperation between government institutions and CSOs, all subsequent plans and strategies were consulted with CSOs despite the years of pandemic.

06



European Union law

The expected start of EU membership negotiations includes a phase of harmonization of Macedonian law with EU law. In this regard, this section of the analysis will provide an overview of EU Directives related to the SHPP operation.

Directive on the assessment of the effects of certain plans and programmes on the environment (2001/42 / EC)³⁷⁷

The Directive provides a legal framework for the planning documents for which a procedure for assessment of their effects on the environment should be conducted, that is, criteria according to which on a case-by-case basis it should be assessed whether a specific planning document should be subject to a procedure for assessment of its effects on the environment. The Directive provides for an overview of the criteria for assessing whether a particular planning document may have an impact on the environment and the information to be contained in the environmental impact assessment report of the planning document. Monitoring and public participation are particularly emphasized in the Directive.

Directive on the assessment of the effects of certain public or private projects on the environment (2011/92 / EU)³⁷⁸

The Directive establishes the criteria according to which Member States should assess whether an environmental impact assessment procedure should be carried out for a particular project, the manner in which the environmental impact assessment procedure should be carried out, the information and data to be analyzed, and public involvement in the whole process. The Directive allows for the Member States, on a case-by-case basis or on a certain threshold, to determine projects for which no procedure should be carried out, that is, other type of procedure different from the environmental impact assessment should be carried out. In order to ensure the quality of environmental impact assessment procedures, States should have or be able to access appropriate expertise to examine environmental impact assessment reports.

³⁷⁷ Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32001L0042&qid=1648129306667>

³⁷⁸ Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02011L0092-20140515>

Member States shall be obliged to provide the public concerned with access to a procedure for assessing the substantive or procedural legality of decisions and (non)actions related to public participation, before a court or other independent body.

Water Framework Directive (2000/60/EC)³⁷⁹

The EU Water Framework Directive lays down the general boundaries of water management and protection. Some of the objectives of the Directive are the following:³⁸⁰

- prevents further deterioration and protects and enhances the status of aquatic ecosystems and, with regard to their water needs terrestrial ecosystems and wetlands directly depending on aquatic ecosystems;
- promotes sustainable water use based on long-term protection of available water resources;
- aims at enhanced protection and improvement of the aquatic environment, inter alia, through specific measures for progressive reduction or phasing-out of discharges, emissions, emissions and losses of priority hazardous substances.

The Directive establishes river basin management plans as documents for water body management for a period of 15 years.³⁸¹ In this regard, the Directive establishes an obligation to review the water bodies, which should be performed at least every 6 years.³⁸² At the same time, the Directive envisages two types of strategies, a strategy against pollution of water and strategy to prevent and control pollution of groundwater.³⁸³

The directive establishes environmental objectives for surface waters, and if the following conditions are met, it is allowed, at most twice, to extend the deadlines for their achievement.³⁸⁴

379 Directive 2000/60/EC establishing a framework for Community action in the field of water policy, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02000L0060-20141120>

380 Ibid, Article 1

381 Ibid, Article 13 paragraph 7

382 Ibid, Article 5

383 Ibid, Article 16 and 17

384 Ibid, Article 4 paragraph 4

- if all necessary improvements in the status of bodies of water cannot reasonably be achieved for following reasons:
 - the scope, that is, the scale of improvements required can only be achieved in phases exceeding the timescale, for reasons of technical feasibility;
 - completing the improvements within the timescale would be disproportionately expensive;
 - natural conditions do not allow timely improvement of the status of the body of water;
- extension of deadline, and the reasons for it, are specifically set out and explained in the river basin management plans;
- a summary of the measures from the programs of measures envisaged as necessary for achieving the objectives in the extended deadline, the reasons for any significant delay in making these measures operational and the expected timetable for their implementation are set out in the river basin management plans. A review of the implementation of these measures and a summary of any additional measures shall be included in updates of the river basin management plans.

The Directive allows for less stringent environmental objectives to be set for bodies of water affected by human activity or if their natural condition is such that achieving more stringent objectives would be infeasible or disproportionately expensive and if the specific conditions laid down in the Directive are met.³⁸⁵ The Directive lays down the basic and additional measures to be taken to achieve the environmental objectives.³⁸⁶

³⁸⁵ Ibid paragraph 5

³⁸⁶ Ibid, Article 11

Monitoring as an important aspect of water protection and management is laid down in Article 8 of the Directive, whereas Article 14 which regulates access to information and public participation lays down that the public shall have at least 6 months to submit opinions when preparing river basin management plans and in the implementation of other obligations under the Directive, where the Member States shall be obliged to publish the specified documents, within specific deadlines.³⁸⁷

**Directive on the conservation of natural habitats and of wild fauna and flora
[92/43/EEC]³⁸⁸**

The Directive establishes Natura 2000 as a network for the identification and protection of habitat types as defined in the Annexes to the Directive, which should enable the protection or restoration to a favorable conservation status of natural habitats and habitats of species of flora and fauna. The management, that is, the establishment of protection measures are defined in the management plans (special or integrated in other types of planning documents), and the member states should take appropriate measures to avoid deterioration of the condition of the natural habitats and the habitats of the species, as well as measures for disturbances of species for which protected areas have been designated).³⁸⁹ All projects and activities which individually or in combination with other projects and activities have a significant effect on habitats, shall be subject to environmental impact assessment, and if the project, which is necessary to achieve the public interest, causes a negative impact on habitats, States shall take all measures necessary to ensure that the coherence of Natura 2000 is not compromised.³⁹⁰ Member States shall endeavor in their land-use and development plans, and, in particular, with a view to improving the ecological coherence of Natura 2000, to encourage the management of features (which by virtue of their linear and continuous structure (such as rivers and their banks or traditional systems for making field boundaries) or their function (such as ponds or small woods) are essential for migration, dispersal and genetic exchange of wild species) on the landscapes that are of great importance for the wild flora and fauna.³⁹¹

³⁸⁷ Ibid, Article 14

³⁸⁸ Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01992L0043-20130701>

³⁸⁹ Ibid, Article 6

³⁹⁰ Ibid

³⁹¹ Ibid, Article 10

The Directive establishes measures to be taken for the protection of different habitat types according to the annexes³⁹², and additionally in a situation when the obligatory surveillance of habitat protection is necessary³⁹³, they shall take measures to maintain a favorable conservation status when taking specimens of wild fauna and flora and their exploitation.³⁹⁴

Directive on the promotion of the use of energy from renewable sources (2018/2001)³⁹⁵

The Directive defines a support system for the use of energy from renewable sources and an “obligation for energy from renewable sources”. The Directive lays down that the share of energy from renewable energy sources in the gross final consumption of the EU by 2030 shall be at least 32%³⁹⁶, whereas the Member States, as part of their national climate and energy plans shall set targets to contribute to achieving the target defined in this manner,³⁹⁷ whereby the contribution of each Member State must not be less than the minimum set by the directive itself.³⁹⁸ The Directive, in Annex 2, provides a methodology and formula that Member States may use in the preparation of national plans for the purpose of calculating the share of hydropower and wind energy. In order to achieve the targets set by the Member States for the contribution of energy from renewable sources and to facilitate a just transition of carbon intensive regions, the directive lays down that the EU shall provide additional funds for activities that, inter alia, shall contribute to reducing the cost of capital for renewable energy projects and developing projects and programs for integrating renewable sources in the energy system, for increasing its flexibility and maintaining its stability.³⁹⁹

Referring to the support schemes for renewable energy sources, the Directive lays down that they shall be in a manner that shall support the achievement of the general EU target for the share of renewable energy in final consumption and support the contribution of each Member State in achieving the target at EU level.⁴⁰⁰

³⁹² Ibid, Article 12 and 13

³⁹³ Ibid, Article 11

³⁹⁴ Ibid, Article 14

³⁹⁵ Directive 2018/2001 on the promotion of the use of energy from renewable sources, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02018L2001-20181221>

³⁹⁶ Ibid, Article 3 paragraph 1

³⁹⁷ Ibid, Article 3 paragraph 2

³⁹⁸ Ibid, Article 3 paragraph 4

³⁹⁹ Ibid, Article 3 paragraph 5

⁴⁰⁰ Ibid, Article 4 paragraph 1

Member States may limit tendering procedures to support specific technologies for all producers of electricity from renewable sources that would lead to suboptimal results in view of:

- long-term potential of a particular technology
- the need to achieve diversification
- grid integration costs
- network constraints and grid stability

Where support for electricity from renewable sources is granted to producer by means of tendering procedures, Member States shall be required to establish and publish transparent criteria for participation and clear dates and rules for delivery of the project, as well as to publish information about previous tendering procedures, including project realization rate.⁴⁰¹ Referring to the stability of financial support, the Directive lays down that Member States shall be required to publish a long-term schedule anticipating the expected allocation of support for at least 5 years, and in the case of budgetary planning constraints, for the following 3 years. That schedules shall generally include an indicative timing, the frequency of tendering procedures, the expected capacity and budget or maximum unitary support expected to be allocated, and the expected eligible technologies, if applicable. That schedules shall be updated annually or reflect recent market developments or expected allocation of support. At the same time, Member States shall, at least every 5 years, assess the effectiveness of their support schemes for electricity from renewable sources and their distributive effects on consumers and investments. That assessment shall take into account the effect of possible changes to the support schemes and on long-term planning for support schemes.⁴⁰²

401 Ibid, Article 4 paragraph 6

402 Ibid, Article 6 paragraph 3 and 4

Although the Directive contains provisions relating to co-operation between Member States, which are not applicable to RNM as RNM is not yet a member of the EU, the Directive emphasizes the effectiveness of projects and their contribution to achieving the target for the share of renewable energy in final consumption.⁴⁰³

Information on support schemes and certification schemes, including information on net benefit, costs and energy efficiency of equipment and systems shall be available to the public.⁴⁰⁴

Directive stipulates that guarantees of origin is taken into account for support schemes. According to the Directive, the market value of guarantees of origin is taken into account in cases where financial assistance is provided through a tender or through a green certificate trading system; when the market value of the guarantee of origin is administratively taken into account in determining the level of financial support or when the guarantees of origin are not issued directly to the producer but to a supplier or consumer who buys the energy from renewable sources either in the market or in long-term renewables power purchase agreements.⁴⁰⁵

Guidelines for the Implementation of the Green Agenda for the Western Balkans⁴⁰⁶

The Guidelines for the Implementation of the Green Agenda for the Western Balkans determine certain areas and activities to which the Western Balkan countries should be committed, in order to implement the Green Agenda

In terms of energy transition, energy efficiency, which is a prerequisite for achieving decarbonisation at the lowest possible cost, must be integrated into all future energy-related policies and investment decisions, while the preparation of a National Energy and Climate Plan and Targets will demonstrate a commitment to tackle the issue, targeting the sectors with the highest energy savings potential.⁴⁰⁷

⁴⁰³ Ibid, Articles 9-12

⁴⁰⁴ Ibid, Article 18

⁴⁰⁵ Ibid, Article 19 paragraph 2

⁴⁰⁶ Available at: https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-10/green_agenda_for_the_western_balkans_en.pdf

⁴⁰⁷ Ibid, page 4

In terms of the waters, the Guidelines identify the implementation of the water related legislation as a key task, which requires more investment in water infrastructure and a governance structure for sustainable water management (monitoring and reporting, planning, coordination across relevant sectors, impact assessment capacity, etc.). More precisely, priority could initially go to investment in monitoring infrastructure based on the mapping of the needs at river basins, followed by the development and implementation of appropriate measures to reduce pressures on water bodies.⁴⁰⁸

The guidelines identify the need to strengthen the administrative capacity of competent authorities responsible for environmental assessments for strategic planning, programs and projects, with the involvement of the civil society as well as of environmental central and local authorities is essential. The transposition of EU legislation and its implementation is key to achieving a high level of environmental protection, therefore, strengthening capacities of competent authorities of the Western Balkans to monitor, promote and enforce their compliance with environmental obligations is crucial.⁴⁰⁹

Aarhus Convention⁴¹⁰

Adopted in 1998, the Aarhus Convention is one of the most important international documents the pillars of which are access to environmental information, public participation and access to legal protection in environmental matters. The Convention recognizes that people have the right to take part in basic decisions affecting their lives. It also recognizes that the quality of these decisions can be improved through the active involvement of the public concerned.⁴¹¹ Public participation is regulated by Article 6 of the Convention. The scope of the second pillar (public participation) is different and rather broader than the scope of environmental impact assessments. For example, Article 6 covers reconsideration or updating of the operating conditions of specific activities, which in many countries, unless related to a major change in the activity, is not subject to an EIA but rather to environmental permitting, e.g. the permits required by Member States under the Industrial Emissions Directive.⁴¹² While public participation is in fact a mandatory part of environmental impact assessment procedures, an environmental impact assessment procedure is not a mandatory part of public participation, given the broader scope of the Aarhus Convention.⁴¹³

⁴⁰⁸ Ibid, page 11

⁴⁰⁹ Ibid, page 16

⁴¹⁰ Available at: <https://unece.org/DAM/env/pp/documents/cep43e.pdf>

⁴¹¹ The Aarhus Convention An Implementation Guide, UN Economic Commission for Europe, page 126, available at: <https://unece.org/environment-policy/publications/aarhus-convention-implementation-guide-second-edition>

⁴¹² Ibid, page 122

⁴¹³ Ibid

EIA and SEA procedures, regulated at national and international level, cannot be considered to fully implement the Convention's public participation requirements. However, environmental impact assessment is a very useful tool in ensuring effective public participation in decision-making process: without environmental impact assessment documentation, the public usually have no easy access to reports and studies evaluating the environmental and health risks of an activity. Thus, such documentation helps the public to develop and express their own science-based opinions on the proposed activities, plans or policies.⁴¹⁴ Considering whether a particular process falls under Article 6 (public participation in decisions on specific activities) or Article 7 (public participation in environmental plans, programs and policies), decisions typically contain (1) an individual decision issued by a public authority, (2) usually adopted upon an individual application for a permit, (3) permitting a particular activity (development project) to be undertaken by the applicant, (4) in a specific place and under specific conditions and (5) usually following the general requirements set by the plans or programs set under the legislation for that particular activity, fall within the scope of Article 6.⁴¹⁵ Given that EIA procedure often involves the most detailed examination of the environmental consequences of proceeding with a proposed activity, the findings of the EIA often play a significant role in decision making (proceeding with the proposed activity).⁴¹⁶ In the procedure ACCC / C / 2008/24 (Spain), the Compliance Committee under the Aarhus Convention noted that "The Convention does not make the EIA a mandatory part of public participation; it only requires that when public participation is provided under an EIA procedure in accordance with national legislation, such public participation must apply the provisions of Article 6. Thus, under the Convention, public participation is a mandatory part of the EIA, but an EIA is not necessarily a part of public participation".⁴¹⁷

The obligation to provide opportunities for public participation may apply to different environmentally significant decisions in the course of a particular approval process, depending on what kind of permit system a Party uses. As a result, in implementing the Convention, Parties may be obliged to establish mechanisms to guarantee the participation of the public at several steps along the way in the conception, initiation, development, operation and even closing-down of projects, facilities or other activities which may have a significant effect on the environment. The key question is whether the particular decision-making meets the requirements set out in Article 6, paragraph 11. The Compliance Committee has held that the names of decisions under domestic law of a Party is not decisive in determining how they should be categorized under the Convention, rather this is to be determined by the legal functions and effects of the decision.⁴¹⁸

⁴¹⁴ Ibid, page 123

⁴¹⁵ Ibid, page 124

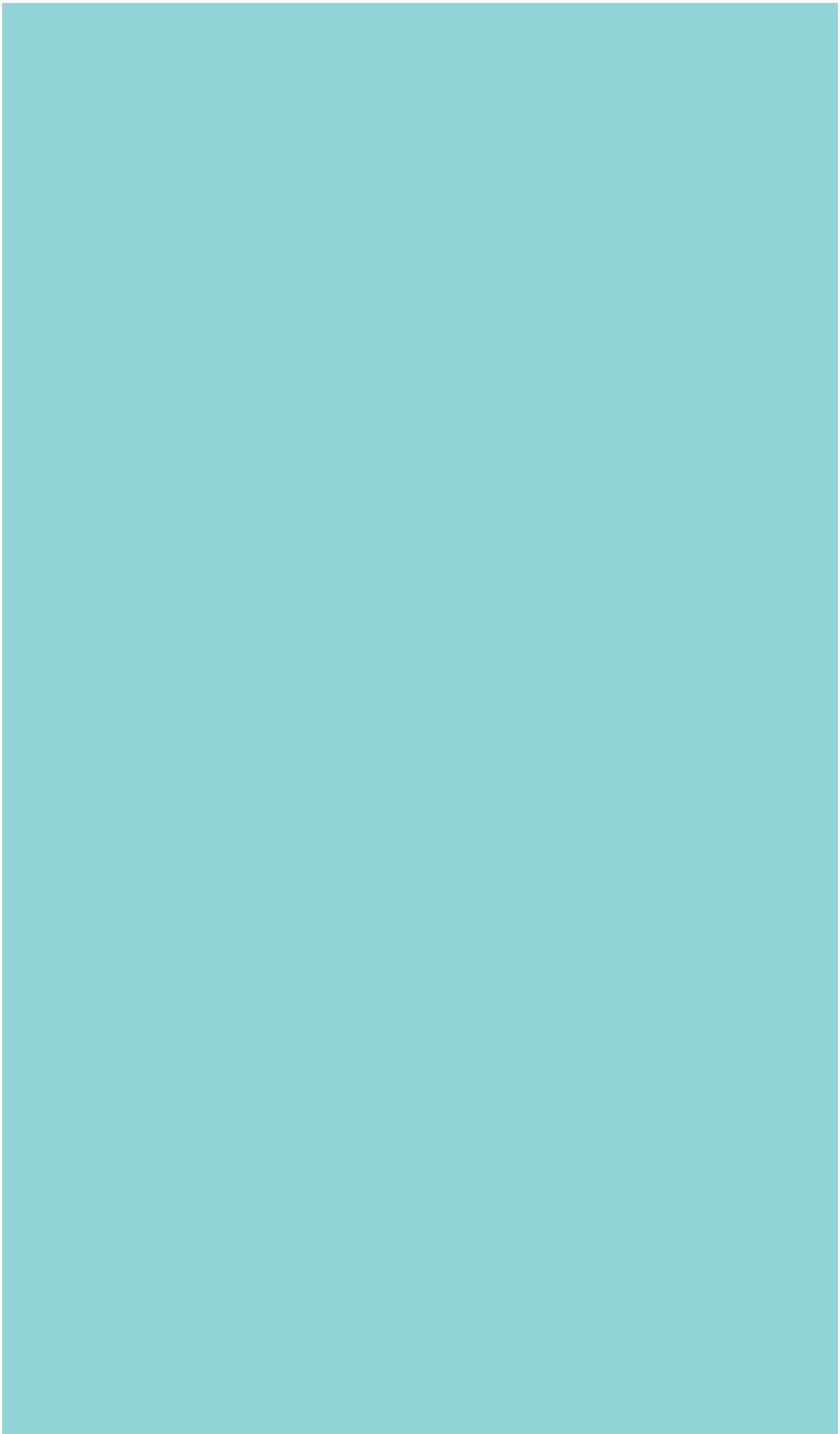
⁴¹⁶ Ibid, page 127

⁴¹⁷ Ibid

⁴¹⁸ Ibid, page 128

Considering the public participation in the "OVOS / expertiza" system (similar to the environmental protection elaborate system), in the case of ACCC/C/ 2009/37 (Belarus) the Compliance Committee held that the OVOS and the "state environmental expertiza" should be considered jointly as a decision-making process involving a form of EIA procedure, and that the conclusions of the "state environmental expertiza" should be considered as a decision whether to permit an activity. The Committee held, however, that relying on the project developer at the OVOS stage to carry out public participation (the entity collects all necessary information related to the potential environmental impact from the proposed activities and prepares the relevant impact assessment documentation) is not in line with the Convention. The Committee recommended appropriate changes to be made in the Party concerned's legal framework. The Committee also held that since the organization of so-called "public environmental expertiza" was not a mandatory part of the decision-making, it could not be considered as a primary tool to ensure the implementation of Article 6 of the Convention, but it may have a role as an additional measure to complement the public participation required as a mandatory part of the decision-making.⁴¹⁹

419 Ibid, page 129



07



European Commission North Macedonia 2021 Progress Report⁴²⁰

The European Commission has determined that the amended national renewable energy action plan is in line with the revised binding target of 23% of energy coming from RES by 2020 and 24% by 2025. In 2019, the share of RES was only 17.46%.⁴²¹

The European Commission assessed that the Energy Law is fully aligned with the Renewables Energy Directive, but that the Government should reconsider the decision to keep the feed-in tariffs for SHPPs, which either do not require support or have negative environmental impact. Investments in hydropower should be compliant with the EU *acquis communautaire*.⁴²²

The implementation of Environmental Impact Assessments and Strategic Environmental Assessments Directives needs to be improved, notably the public participation and the quality of reports.⁴²³

Regarding the water quality management, the European Commission has determined that a system for monitoring quality and quantity of surface and groundwater needs to be established, administrative capacity and inter-institutional coordination needs to be strengthened and more efforts are required to reduce non-revenue water use and to implement the full “cost recovery” principle.⁴²⁴

Regarding the nature protection, some progress was made, whereas the Draft Law on Nature Protection, which is aligned with the Birds and Habitats Directives, is awaiting adoption.⁴²⁵

⁴²⁰ Available at: https://ec.europa.eu/neighbourhood-enlargement/north-macedonia-report-2021_en

⁴²¹ Ibid, page 93

⁴²² Ibid

⁴²³ Ibid, page 94

⁴²⁴ Ibid, page 95

⁴²⁵ Ibid

State Audit Office

In October 2021, the State Audit Office published the Final Compliance Audit Report on "Exploitation of water resources in electricity generation"⁴²⁶ which addresses the SHPP operation.

According to the Report, the public calls for 61% of the total number of concessions awarded to SHPPs were published in the period from 2007 to 2011 prior to the adoption of the strategic documents, based on a 1982 Study, for which no environmental impact assessment was conducted. Thus, these SHPPs are guaranteed purchase of the entire electricity generation at feed-in tariffs, being significantly higher than average market prices. Namely, the average feed-in tariff is around 5 thousand denars (81 euros) for one MWh of electricity, which is almost twice as much as the realized market price of the reference electricity exchange, which in the period from 2012 to 2020 ranges from 2.1 to 3.1 thousand denars. As a result, SHPP preferential producers for the same period were paid over 90 million euros, which is about 41 million euros more than the market value of electricity generated as a result of the use of feed-in tariffs. At the same time, these SHPPs with 195.7 GWh produced had only 4% share in the total domestic electricity generation in 2020.⁴²⁷

Regarding the public calls for awarding concessions for construction of SHPPs, in relation to the operation of the MoE, the procedures that were conducted are not based on a study for a concession project and no environmental impact assessment has been made thereto; for the procedures of the first, second and third public call, no decisions have been adopted for initiating a procedure for awarding a concession; The first 3 procedures are based on the 1982 Study, and when announcing the calls, the possible changes of the hydrological substrates in the meantime were not taken into account and no additional and detailed research was conducted for each location. Regarding the awarding of concessions for construction of SHPPs, when this activity was transferred under the competence of the MoEPP, the public calls for concessions for 80 SHPPs in 2014 and 35 SHPPs in 2016 were conducted on the basis of a feasibility study for which no environmental impact assessment was conducted, and the public calls for a total of 33 SHPPs in 2016 and 2018 are not in the form prescribed by a decree and no environmental impact assessment has been conducted thereto.⁴²⁸

⁴²⁶ Available at: https://dzt.mk/sites/default/files/2021-12/1_70_RU_Eksploatacija_vodni_resursi_proizvodstvo_elektricna_energija_2021_KOMPLET.pdf

⁴²⁷ Ibid, page 10 and 11

⁴²⁸ Ibid, page 14

Regarding the issuance of water use permits, the SAO found that the Department of Waters does not have sufficient staff and material and technical capacities to fully fulfill the competencies arising from the LW, there is no software support, there is no proper division of competencies and powers or an internal act to regulate the course of the flow and approval of the documentation.⁴²⁹ In the absence of RBMP, the employees of the Department cannot perform a technical check of the impact of the water use proposal, nor to consider the cumulative impact of two or more water use proposals. A Water Book has not been established so far.⁴³⁰

For none of the SHPPs was the review of the fulfillment of the conditions of the permit conducted as a precondition for commencement of the legal effect of the water use permit, due to non-functionality or expired mandate of the Commission. In 2021, a new Commission was established to inspect facilities and plants.⁴³¹

Regarding the environmental protection elaborates, the SAO found that when approving the reports, only planning and other official documents are taken into account, such as decisions on protected areas and the like, without considering the factual situation. Namely, due to lack of data submitted, the planned activities of other competent institutions in that area are not taken into account, as well as the existence of water supply systems in smaller settlements, built with self-contribution by citizens, which are not handed over to municipal management, nor have a water use permit, and are essential for the local population. The locations of the intakes are often in inaccessible and impassable places, thus during the construction of the pipeline and the access road to the facility, the environment is damaged, which is not properly foreseen in the elaborates. Namely, the decisions for their approval state that the SHPP construction and operation will not have significant impacts on the environment.⁴³²

Regarding the collection of the water right fee, the MoEPP does not monitor the collection of the water right fee and has not undertaken activities for obtaining data from the Ministry of Finance on the collection of all fees under the competence of MoEPP for 2020, including the water use fee.⁴³³

⁴²⁹ Ibid, page 18

⁴³⁰ Ibid, page 19

⁴³¹ Ibid

⁴³² Ibid, page 21 and 22

⁴³³ Ibid, page 34

08



1

Macedonian legislation is largely harmonized with the EU legislation, but greater commitments are needed for its proper implementation.

2

The state does not have a long-term plan for managing environmental resources and media. Some of the strategic documents envisaged in the legislation have not been adopted.

1)

Greater efforts are needed in the preparation of important strategic documents (National Environmental Action Plan, Water Management Basis, River Basin Management Plans, Five-year Plan for Implementation of the National Strategy for Nature Protection, Program for Implementation of the Energy Development Strategy of RNM, Action Plan for Renewable Energy Sources).

3

Many of the bylaws arising from the laws governing the SHPP operation have not been adopted, in particular the bylaws arising from the Law on Waters. Therefore, the state has not yet 1) established an adequate system for monitoring water bodies, in particular monitoring of electricity producers as a separate part of the monitoring, 2) there is no way to calculate "minimum acceptable water flow" or "biological minimum", which leads to the fact that these criteria in the water use permits do not correspond to the real situation.

1)

Macedonian legislation does not envisage a sanction for failure to adopt bylaws, including strategic documents. This matter should be part of the administrative-judicial protection, however, in the country, no lawsuit has been filed before the Administrative Court, requiring the court to decide on such issues and there is no case law established. The Administrative Court should decide on eventual lawsuits filed on such issues and have a proactive role, as indicated by the recently published expert text, reviewing such situations in terms of the Law on Ambient Air Quality.⁴³⁴

4

It is necessary to consider the digitalization of the procedure for issuing permits, that is, approving environmental protection elaborates and EIA, following the example of the "E-urbanism" portal.

434 Expert text: (administrative) judicial protection of the right to quality ambient air, published in the journal "Legal Dialogue" no. 23, available at: <https://www.ihr.org.mk/storage/app/media/Legal%20Dialogue/pravendijalog23.pdf>

Concessions

1

Many of the SHPP concessions have not been awarded in accordance with Article 16 of the Law on Concessions and Public-Private Partnerships, which envisages an environmental impact assessment as part of the preparatory work prior to the announcement of the call for awarding water use concessions.

1)

The state must prepare all the documents that should precede the announcement of the call for concessions, in particular the provisions for the implementation of environmental impact procedures (strategic environmental assessment and environmental impact assessment).

2

A positive step in the field of awarding concessions is the obligation to hold a public hearing and mandatory involvement of the public concerned in the preparation of the feasibility study, which is envisaged by the amendments to the Law on Waters⁴³⁵, which are in the consultation stage on ENER.

⁴³⁵ Law amending the Law on Waters, available on ENER at the following link: https://ener.gov.mk/Default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=72850

Environment

1

Although the Law on Environment and its bylaws are in line with the EU Directives, greater commitment is needed for proper implementation.

In the course of preparing this analysis, the MoEPP provided two elaborates on the environmental impact for 2 SHPPs, however, based on the case studies in this analysis, as well as the other available analyses⁴³⁶, a general conclusion can be drawn regarding the need for increasing the knowledge and capacity of public authorities in achieving access to information.

1)

Representatives of state institutions, in accordance with the Law on Free Access to Public Information, which is a special law on this issue relating to the LE, must apply the "harm test", according to which they will assess whether a specific request prevails the realization of the public interest if the information is published. Documents and information that according to the LE should be made public (SEA, EIA and environmental protection elaborates) should not be treated as intellectual property information. Even if such documents constitute intellectual property information, their publication may lead to the prevention and detection of environmental endangerment. Therefore, in explaining the decisions to accept or reject the requests for free access to information, the officials must refer to the manner in which the "harm test" was conducted and the reasons why it has been assessed that the private interest prevailed over the public interest.

436 Case Study: Spillage of fuel oil from "Blagoj Gorev" factory in the Vardar river, page 4, available at: <http://myla.org.mk/wp-content/uploads/pdf/izlevanje-mazut-od-fabrikata-blagoj-gorev-vo-vardar-studija-na-slucaj.pdf>

2

Regarding Article 65 of the Law on Environment, in terms of paragraph 19, envisaging that if the MoEPP does not adopt a decision within the legally prescribed period after receiving the decision and the documents determining whether the SEA is conducted for the planning document, it shall be considered that the MoEPP has no remarks, it is necessary to change this concept. Although the Law on General Administrative Procedure envisages this concept for such situations, we still consider that it is necessary to actively and substantially involve all competent state institutions in the environmental impact assessment procedures. It is expected that the change of this concept would contribute to increasing the control and the quality of implementation of such procedures.

3

Regarding Article 24 of the Law on Environment, which establishes the environmental protection elaborate:

1)

The law does not envisage mandatory publication of documents regarding the procedure for approval of elaborates, therefore the legal protection is limited to legal entities and natural persons conducting a certain activity for which this elaborate should be prepared, that is, the public concerned has no opportunity for legal protection. Such a conclusion is obtained when interpreting the provisions of Article 24 in correlation with the provisions of the EIA, where these aspects are regulated in more detail.

2)

Although the law and bylaws envisage keeping an electronic register of approved environmental protection elaborates, they are not publicly available, in particular relating to local self-government units.⁴³⁷

3)

Unlike the procedure for environmental impact assessment, the procedure for preparation and approval of environmental protection elaborates does not envisage the public participation. Although Directive 2011/92/EU envisages that states have the right to assess whether for some projects instead of environmental impact assessment, some other forms shall be used, that is, in the case of RNM, an environmental protection elaborate, the Directive does not prohibit that this other form of assessment include public participation. The provisions of the Aarhus Convention are also in line with the provisions of the Directive.

437 Case Study: Bregalnica river painted white, page 5, available at:
<http://myla.org.mk/wp-content/uploads/pdf/studija-na-slucaj-bregalnica.pdf>

The LE, like the Aarhus Convention, does not provide a definition of "significant impact", but in the relevant bylaws it has implemented guidelines⁴³⁸ for determining the "significant impact", according to which the SHPP is one of the projects for which the EIA is not conducted. However, taking into account the impact of the SHPPs on the environment, which is also determined by the SAO, the implementation of the relevant legal rules is questionable. Although the Convention allows (Article 6 paragraph 1 item b) for certain projects, on the basis of criteria or deciding on a case-by-case basis, not to apply Article 6, still considering the "OVOS/expertiza" system, which is similar to Article 24, it lays down that the Party shall accordingly amend the legislation for the full implementation of the Convention. The Law on Waters, regarding the documents to be submitted to the request for water right, envisages a decision to be submitted for approval of an environmental protection elaborate or EIA, on the basis of which it can be concluded that the Macedonian laws give the same importance to both the EIA and the environmental protection elaborate, and the difference is only in the procedure for preparation and the volume of necessary research. Looking through the prism of SHPPs for which an environmental protection elaborate is prepared, whereby these projects have a significant impact on the environment, the public participation in the process would be purposeful and justified. Although the public is involved in the process of issuing a water right permit, however, in this procedure, the public could not give their opinions and remarks regarding the content of the elaborate, but only regarding the water right permit. As a result, it is necessary to **amend** Article 24 of the Law on Environment in order to envisage the public participation. In order to maintain the simplified procedure for preparation and approval of elaborates relating to EIA, public participation may be envisaged by providing written opinions and comments for which an appropriate explanation should be given for their (non) acceptance, unlike EIA, where a public hearing is mandatory.

4

The quality of the environmental protection elaborates should be increased in a manner that will realistically reflect the terrain and the circumstances under which the SHPP would be constructed, the impact that the given SHPP will have and the measures to reduce such impact. The recommendation mainly refers to the entities that prepare the environmental protection elaborates.

438 The Aarhus Convention An Implementation Guide, Un Economic Commission for Europe, page 133, available at: <https://unece.org/environment-policy/publications/aarhus-convention-implementation-guide-second-edition>

Waters

1

Amendments to the Law on Waters are needed in terms of:

- 1) Defining "public interest", "minimum acceptable flow" and "fishways";
- 2) Article 15 on water use priorities, which is applied in deciding on water right when several requests for the same water body have been submitted at the same time, should refer to general water management priorities and they should be applied in all situations, and not only when deciding on water right;
- 3) Article 32 should provide for obligatory consultation with the MoEPP on the scope of documentation, that should be attached to the request for a water right permit for projects of SHPP construction;
- 4) Regarding the procedure for issuing a water right permit, the request must be submitted and an opinion must be required to be provided by the entities that manage protected areas according to the Law on Nature Protection, and the municipalities and entities that manage protected areas must submit consent instead of an opinion, which will change the concept that if these entities do not submit consent, they are considered to have agreed to the request.

1)

The LW envisages public announcement of the request for water use permit and the right of the public to submit written opinions and remarks regarding the request, but it is not explicitly envisaged that the decision is publicly announced, that is, the information for issuing the permit. The LW lays down that the permit applicant shall have the right to appeal to the second instance body within 15 days as of the receipt of the decision, but since the decision is not made public, the amendments to the LW on this day should be considered, in a manner which will obligatorily envisage that the MoEPP publicly announces on its website and in at least one daily newspaper that a certain request has been approved, whereby the public has the right to appeal to the second instance body within 15 days as of the day of the announcement. Taking into account that the public concerned has a legal interest in such procedures, in this manner the public concerned would be provided access to legal mechanisms for reviewing the decision for issuing a permit.

5)

Article 45 of the LW should allow the public to submit requests for amendment of the water right permit, as well as to regulate the manner and documentation to be submitted for this purpose.

6)

Regarding the preparation of the National Water Strategy, it is necessary to supplement the LW in a way that the manner of preparation, revision and amendment of the strategy will be regulated by the methodology adopted by the MoEPP.

2

Water Management Basis as of 1968 is still applied in RNM, although the LW envisaged that the new Water Management Basis was to be adopted by 2012. Taking into account that the Water Management Basis together with the River Basin Management Plans have an impact on the issuance of water use permits, as well as the awarding of water use concessions, the sustainable water management is brought into question.

1)

MoEPP should commence the process of preparing a new Water Management Basis as soon as possible.

3

No River Basin Management Plan has been prepared in RNM. Taking into account that the Plans are the most important document in issuing water right permits and monitoring their implementation, the situation under which water right permits are issued must not be maintained without a valid River Basin Management Plan. The lack of plans prevents the officials in the Department of Waters from performing a technical check on the impact of the water use proposal and considering the cumulative impacts of two or more water use proposals.

1)

A positive step in the preparation of the RBMP is the published Plan for public consultation in the preparation and approval of River Basin Management Plans, containing also a time frame for the preparation of the RBMP.

1) There is a need for an effective implementation of the Plan.

2)

A positive step is the establishment of the River Basin Management Councils, although their establishment is delayed and although their role is mainly advisory. Based on the information received from the MoEPP, to date some sub-basins management plans have been prepared, but the preparation of the RBMP is a long process, which has not been completed yet, whereby for the preparation of the RBMP, the capacities are engaged through foreign donors' projects.

2)

Due to the importance and role of RBMP, they need to be developed and adopted as soon as possible.

4

A positive step in terms of issuing permits for the exercise of water right, in terms of establishing uninterrupted water supply to the population, is the practice and insistence of the MoEPP, in the procedures for awarding concessions and water right permits, for the opinion of municipalities to include consultations with the local population. In order to ensure uninterrupted water supply to the population, it is necessary to hand over the water supply sources to the municipalities for their proper protection, which has been noted in several SAO reports, but also prompt action of public water supply enterprises in relation to the obligations given by the SEI.

5

Although Article 41 of the Law on Waters envisages an obligatory review of compliance with the requirements of the water use permit, by a special Commission, prior to commencement of its legal effect, to date it has not been performed for any SHPP, whereas a new commission for review was established in 2021. It could be concluded that throughout this period, SHPPs have been operating without a valid water right permit, that is, this situation has been tolerated continuously.

1)

The SEI and the Commission should urgently conduct extraordinary oversight of all SHPPs in order to verify that they meet the requirements in the permits. If it is determined that the SHPPs do not meet the requirements of the permit, the SEI should act in accordance with Article 232 of the Law on Waters in order to conclude that the specific SHPP does not have a water right permit and to act in accordance with its legal competencies.

2)

Although the amendments to the Law on Waters, which has not yet been adopted, but it has been published on ENER⁴³⁹ and is in the consultation stage, envisage the amendment to Article 41 in terms of its further regulation, it should be clearly and precisely formulated in view of clearly and unequivocally stating that the permit for temporary water use refers to another natural person or legal entity, different from the one for which the review should be performed by the special Commission.

439 Law amending the Law on Waters, available on ENER on the following link: https://ener.gov.mk/Default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=72850

1) It is necessary to regulate in Article 41 of the LW the deadline within which the review by the special Commission should be performed at the latest. It is expected that such a change would contribute to a more efficient performance of the review.

2) It is necessary for Article 41 of the LW to envisage the legal consequence of the non-performance of the review by the special commission, that is, the non-commencement of the legal effect of the water right permit.

6

Most of the bylaws related to water monitoring have not been adopted yet. The MoEPP should prepare and adopt all bylaws for water monitoring as soon as possible and establish an efficient system for monitoring water use. This in particular refers to the bylaw on monitoring water used for electricity generation. The adoption of the bylaws will also contribute to the achievement of the goals of the Guidelines for the Implementation of the Green Agenda for the Western Balkans.

1)

Based on the information received from the MoEPP, it has been indicated that the water used for electricity generation is constantly monitored, which is usually done in the turbines, thus it is known at any time how much water is used for this purpose. However, in order to have a unified monitoring for this purpose, a specific bylaw would have to be adopted.

7

The methodology for determining the minimum acceptable water flow and groundwater level in terms of quantity and quality is of exceptional importance for the conservation of the natural water balance and for the protection of ecosystems, but has not yet been adopted. MoEPP should develop and adopt the methodology for minimum acceptable flow as soon as possible.

8

The Department of Waters is faced with a lack of staff and an internal act regulating the course of the flow and the approval of the documentation. It could not be expected that 20 employees in the Department efficiently and timely perform the large number of competencies they have, and the same applies to the issuance of water right permits within the Unit for Water Rights, where only 6 officials are employed.

1)

The MoEPP should take urgent actions to address these problems that keep on arising continuously.

9

RNM should allocate a larger budget for equipping and staffing the State Environmental Inspectorate.

1)

It is planned to increase the number of water management inspectors (currently 2), by 2 additional water management inspectors, thus the SEI is expected to be able to perform its competencies. Regarding the environmental inspectors, the SEI has sufficient inspectors to perform its competences.

2)

At the moment, there is a debate for reorganization of the inspection system and centralization of the inspection in certain areas. If such a change is implemented, the SEI would receive an additional number of inspectors, which would significantly increase their staff capacity.

3)

At the moment, SEI uses the vehicles of investors to perform inspections on SHPPs, which are usually located on heavily accessible terrain. Therefore, a significant investment is needed in the technical capacity of the SEI, that is, vehicles.

4)

A positive step in terms of the technical capacities of the inspectorates is the announced EU twinning project for inspection equipment.

5)

SEI digitizes its operation and actively uses the "E-inspector" portal, and additionally there is an ongoing development of an electronic register, in which all entities that have A integrated environmental permit, B integrated environmental permit, as well as all entities that have approved environmental protection elaborate, regardless of whether it is approved by the MoEPP or the municipalities will be entered.

10

The bylaw for establishment of the Water Book has not been adopted.

1)

It is necessary to adopt the bylaw for establishing the Water Book.

2)

Although the bylaw has not been adopted yet, a positive step in this regard is the information received from the MoEPP that the Water Book will be published in the course of March 2022. However, the preparation of the Water Book should be preceded by the adoption of a bylaw, on the basis of which it will be prepared.

11

The MoEPP should review the SHPPs in terms of payment of the water use fee and consequently apply Article 51 of the Law on Waters, that is, revoke the water use permit for the SHPPs that will not fully pay the fee.

Nature

1

Although according to the bylaw, the Cadastre of Protected Areas and the Register of Natural Heritage are kept electronically, they are not publicly available.

2

The methodology for the quantity of water in the aquatic habitats (biological minimum) necessary for the survival of the wild species living there, as well as for the conservation of the biological and landscape diversity, is extremely important in view of the SHPP operation and reducing their negative impact on the species. Although it is envisaged by the Law on Nature Protection, it has not yet been adopted. The MoEPP should develop and adopt the methodology as soon as possible.

3

The system for implementation of the National Strategy for Nature Protection 2017-2027 envisages adoption of five-year and one-year programs for its implementation. To date, a five-year program for implementation of the Strategy has not been adopted, whereas the first one-year program was adopted in 2019, that is, 2 years after the commencement of its implementation.

1)

In order to properly implement the National Strategy for Nature Protection 2017-2027, it is necessary to adopt a five-year program.

4

One third of the existing small hydropower plants is constructed in some of the most picturesque river valleys in strictly protected and significant areas such as: Pelister, Mavrovo, Shar Planina, Karadzica, Dautica, Kozuf, Maleshevo region and many others. Small hydropower plants constructed in protected areas together produce only 1.2% of the country's total annual electricity generation. The construction of small hydropower plants has no economic justification and leaves irreparable consequences on the environment and nature, to the extent that it threatens the survival of aquatic ecosystems and protected and endemic species, as well as humans.

5

Greater commitment of all stakeholders is needed in the implementation of the LNP in view of the establishment and functioning of the national parks, in particular NP "Mavrovo" in the case of which no Law on re-proclamation of the national park is adopted, there is no valid national park management plan, and the municipality does not submit requests for opinion by the PINP when issuing permits for SHPP construction.

6

North Macedonia must take urgent, appropriate and strengthened action to implement the recommendations of the Standing Committee of the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention)⁴⁴⁰ adopted in December 2021, including a suspension and cancellation of approved and planned concessions and a ban on hydropower plants in national parks, protected areas, potential Natura 2000 areas, as their implementation will cause problems in compliance with the Bern Convention; proper implementation of the Water Framework Directive in terms of biological minimum and prevention of water use to an extent that will affect protected areas; strengthening environmental impact assessment processes; accelerating the process for the valorization study for "Mavrovo" National Park and strengthening the efforts for re-proclamation and adoption of the new law for "Mavrovo" National Park, as well as preparation of a comprehensive and effective management plan for NP "Mavrovo".

⁴⁴⁰ Recommendation no. 221 (2021) of the Standing Committee, adopted on 3rd December 2021, on conservation measures within the national parks in North Macedonia, including in relation to Mavrovo National Park, Lake Ohrid and Galichica National Park, available at: <https://rm.coe.int/2021-rec-211e-north-macedonia-case-files/1680a4c288>

Energy

- 1 All existing small hydropower plants together produce only 4.2% of the country's total annual electricity generation. The same amount of electricity can be saved by better energy efficiency, without destroying rivers and untouched nature.
- 2 Every family in the country, every month pays 6% of the monthly electricity bill, to subsidize the electricity generation from renewable sources. Annually, citizens pay 16 million euros for electricity generated by small hydropower plants. SHPPs generate electricity in a period of the year when it is not most needed by households in the country. The electricity generated cannot be stored and sold on the free market.
- 3 Although a new Energy Development Strategy has been adopted, the Program for its implementation has not been adopted yet, that is, the Program for implementation of the previous Strategy is still in force.
 - 1) It is necessary to adopt the prepared Program for Implementation of EDS.
- 4 A new Action Plan for Renewable Energy Sources, which will be in line with the new Energy Development Strategy has not yet been adopted. An Action Plan is currently being implemented, and it refers to the previous Energy Development Strategy and the Strategy for Utilization of Renewable Energy Sources, which is not envisaged by the applicable Energy Law, therefore it should not be applied. Taking into account that the Action Plan for Renewable Energy Sources should contain an assessment of the situation in the energy and the market of renewable energy sources, targets and dynamics of the indicative trajectory, sectoral targets and annual forecasts and measures for achieving the targets, deadlines and means for implementation, the importance of this document is indisputably emphasized. Its adoption will contribute to the substantial implementation of Directive 2018/2001, which notes that support for renewable energy sources should be designed to increase their share of gross final consumption. Although the Energy Development Strategy sets targets for RES share in the gross final consumption, an Action Plan intended only for RES is exceptionally important.

1)

Although the envisaged amendments to the EL envisage the adoption of a National Energy and Climate Plan instead of the Action Plan, a systemic problem is the fact that in the period since the adoption and entry into force of the EL, no strategic document has been prepared in the country, and it must have been prepared.

2)

After the adoption of the strategic document in this area, the Ministry of Economy should adequately monitor its implementation and prepare reports on its implementation.

5

SHPPs, in 2020, had a share of only 4% in the total domestic electricity generation and they were given support in the amount of EUR 41 million more than the market value of the electricity generated as a result of the use of feed-in tariff. Based on the the text of Directive 2018/2001 it can be concluded that the design of assistance and support to RES producers should be viewed through the prism of their contribution to total production, and therefore the Directive itself refers to the tendering procedure as the most appropriate for awarding assistance to RES producers, which in the Macedonian Energy Law is envisaged for premiums. At the same time, the Energy Development Strategy regarding SHPPs points out that their construction should be carefully assessed to avoid the risk of disproportionate environmental impact compared to the electricity generated. The other analyses of this area also point to these conclusions.⁴⁴¹

1)

Given that the concession contracts contain provisions on support, and taking into account the opinion of the Energy Community submitted to the MoE, which recommends, but does not prohibit, the change of the support system to have a retroactive effect, it is indisputable that the eventual change of the support system from a system of feed-in tariffs to a system of premiums would have fiscal implications. The state should make a detailed harm-benefit analysis of such changes, that is, whether the fiscal implications are to a such an extent greater in terms of environmental protection and economic viability of supporting SHPPs through the system of feed-in tariffs. It would be useful to open a wide and inclusive public debate through which a national position on this issue would be built.

441 Analysis of the state aid in renewable energy sources in The Republic of North Macedonia, August 2021, available at: <https://ekosvest.com.mk/wp-content/uploads/2021/09/Analiza-na-DP-za-OIE-vo-RSM-CEA-2021.pdf>

2)

It is necessary to revise the SHPP support system in such a way that instead of feed-in tariffs, the system of premiums, which takes into account the applied technology in granting assistance, will be used. In that regard, it is necessary to amend Articles 8 and 11 of the Decree on support for the electricity generation from renewable energy sources in such a way that SHPP support will be provided through premiums instead of feed-in tariffs.

3)

It is necessary for the state, in accordance with Directive 2018/2001, to evaluate the effectiveness of the support schemes for electricity generation from renewable energy sources every 5 years.

6

Although one of the objectives of the Decree on support for electricity generation from renewable energy sources is that measures to support renewable energy sources should provide, inter alia, "environmental protection conditions", given the negative impact of SHPPs on nature, consideration should be given to introducing additional conditions in the implementation of support measures, which would effectively contribute for SHPPs to reduce its negative impact on the environment.

7

The Rulebook on Licenses envisages public participation (Article 11), which may, inter alia, scrutinize the documentation until the preparatory session is held. Public participation is applied in the procedures for issuing a license and temporary license (Article 14), but it is not envisaged to be applied in issuing a trial operation license (Article 16), although the procedure states that interested parties are invited to the preparatory session for issuance of a trial license.

1)

In order to provide an opportunity for the preparation of the interested parties through scrutiny into the request and the documentation for the trial operation license, and for their efficient inclusion, it is necessary to amend Article 16, paragraph 4 of the Rulebook and to state that in the procedure for issuing a trial operation license Article 11 shall apply. This amendment would also prevent the eventual formalistic interpretation of the provisions for issuing trial operation licenses and the eventual prevention of interested parties from scrutinizing the documentation prior to the preparatory session.