

Implementation of the EIA Directive in Macedonia

Case Study

EIA

Justice and Environment 2012

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Introduction – EIA in Macedonia

Environmental impact assessment is an important procedural tool with aim to identify, analyze and evaluate the impact that could result from realization of a particular planned activity. Environmental assessment can be done for the impact of a particular project (EIA procedure)¹ or for the impact of a particular plan, program or policy (SEA procedure)². The main characteristic of these procedures is its preventive dimension. Prevention of negative environmental impact is achieved in a way that the effects are assessed before decided how, where and whether to implement a particular activity. Beside the preventive principle, these procedures include the principle of integration, the precautionary principle and the principle of public participation. The assumption is that with help of the public and the experts, authorities will have greater opportunity to make a decision that will avoid or minimize the negative impact on the environment. In 2005, with the new framework Law on Environment, Republic of Macedonia transposed provisions for assessment of the effects of certain public and private projects on the environment (Directive 85/337/EEC) and assessment of the effects of certain plans and programmes on the environment (Directive 2001/42/EC).

1.1. Transposition of Environmental Impact Assessment (EIA) Directive

The Directive on the assessment of the effects of certain public and private projects on the environment has been fully transposed into the Law on Environment in Chapter XI. According to the provisions EIA procedure must be carryout before starting with the performance of a project that can have a significant impact on the environment. Projects for which EIA is carried are determined in the “Decree on determining projects for which and criteria on the basis of which the screening for EIA should be carry out” (Official Gazette of Republic of Macedonia No. 74/05). The Decree introduces two groups of projects - projects that obligatory require EIA and projects that generally require EIA. This bylaw also defines the criteria for determining the need for EIA procedure. In certain exceptional cases the Law empowers the Government to decide not to implement the EIA procedure, what should be decided on a "case by case". However, in such situations the government should announce the decision for non-implementation of the EIA procedure in at least one daily newspaper, and the announcement should include specific information about the environment. Also, in these cases it should be considered whether it is possible to evaluate the impact on the environment after another, an alternative procedure.

¹ Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment

² Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment

Law on Environment regulates in detail the procedure for conducting EIA. The procedure begins with the submission of notification regarding the intent to implement project to the Ministry of Environment and Physical Planning (MOEPP). Further regulation of this initial step is made with the “Ordinance on the information contained in notification of intent to implement a project and the procedure for determining the need for EIA of a project”. For the possible project MOEPP has an obligation to inform citizens and civil society organizations, at the very beginning, i.e. immediately after the Ministry received a notification of intent to implement a project. MOEPP has an obligation to publish the notification in at least one daily newspaper and on its webpage. Along with the announcement of the notification, the Ministry is obliged to inform the public about the possibilities for participation in the process of adoption and (dis)approval of the project. MOEPP has obligation to publish the decision that determines whether the project is subject to the EIA procedure of its website and in a newspaper. The public concerned (citizens and/or environmental citizens associations) can appeal the decision. In the second phase in the EIA procedure, MOEPP shall determine the scope and content of the material to be analyzed in the EIA report. Opinion on the scope and the content of the environmental impact assessment should be prepared using the Checklists for EIA scoping that is filled by the developer. The Ministry should publish a summary of the opinion on the scope of the study for environmental impact assessment of the project.

Once determined the scope and content of the environmental impact assessment, the developer can start with the preparation of the EIA study. The contents of the EIA study is determined by the Ordinance on the content of the requirements that need to be fulfilled by the study on EIA. The study should include the following information:

- Description of the project along with information on the location, nature and size of project and required land area;
- Description of the environment of the project location;
- Description of the natural, cultural and historical heritage and landscape;
- Description of the type and quantity of expected emissions, especially air emissions and wastewater, solid waste, and other information necessary to evaluate major environmental impacts of the project;
- Description of the measures to prevent, reduce and eliminate the impact environment, as well as substitution measures;
- Description of the environmental impacts of the project taking into account the level of development of science and the accepted methods of evaluation;
- Description of the technology that will be used;
- Description of the alternative solutions for the realization of the project (zero alternative should also be included);
- Analysis of the difficulties (technical deficiencies or lack of knowledge) that developer or expert was faced during the preparation of the study; and
- Non-technical summary.

Once prepared the study, MOEPP has an obligation to inform the public that EIA study is ready and available for commenting in at least one daily newspaper and on the local radio and TV station. Submission of comments is allowed at least 30 days from the announcement. MOEPP is obliged to organize at least one public hearing. For the public hearing MOEPP should inform the public, especially citizens and civil society organizations from project area.

All questions, comments, remarks or opinions that will be submitted to the MOEPP (through the website, the public hearing, by mail, etc.) should be seriously considered and taken into account. MOEPP should inform the public which of the comments were taken into account or not and why.

After the preparation of the EIA study, the same should be submitted for approval to the MOEPP. At this stage, the MOEPP prepare a Report on the adequacy of the EIA study, which incorporate suggestions for terms to be set out in the permit for the project, as well as measures to prevent and reduce the harmful effects. Finally, after all these procedures, MOEPP is issuing a decision for approval or refusal of the project. The Ministry should inform the public regarding the final decision. The public concerned have the right to appeal against the decision within 15 days from the date of publication.

1.2. EIA Case Study

Hydropower plant “Boskov Most” – National park “Mavrovo”

- **Description of the developer of the project**

[The JSC Macedonian Power Plants \(ELEM\)](#), is a state-owned enterprise in the process of implementing a project for construction and management of a hydropower facility known as “Boskov Most”. The project is financed by ELEM (42 million euros) and the European Bank for Reconstruction EBRD (65 million euros).

ELEM provides around 96 % from the entire domestic production. Hence only from the mining power complexes REK Bitola and Oslomej are produced around 80%, while from hydro power plants is produce around 16%. ELEM is considered as strategically most important company in Macedonia and is the pillar of the Macedonian energetic system. The environmental vision of ELEM is that “only green future is a pink future”. According to their CSR policy, for protection, preserving and improving of the environment for the current and future generations, ELEM takes all steps for protection of the environment³. Parallel to this project, ELEM I implementing another Hydropower project, project “Lukovo Pole, the intake Korabski Vodi and the SHPP Crn Kamen” which is also situated in the National Park “Mavrovo”. Lukovo Pole Dam is going to be situated on the river Crn Kamen, on its upper course i.e. close to the estuary of the two rivers that form the river Crn Kamen. The channel will carry the waters of Korabski Vodi from the intake Projfel (Dlaboka Reka) to the reservoir “Lukovo Pole”. Projfel (Dlaboka Reka) is a zone of strict protection in the National Park “Mavrovo” what makes the planed project illegal. This project is financed by ELEM and World Bank.

The EBRD is an international financial institution that supports projects from central Europe to central Asia. Investing primarily in private sector clients whose needs cannot be fully met by the market, the Bank fosters transition towards open and democratic market economies.

³Activities such as: continuous following of the quantities of dangerous gases and particles that are emitted in the air in our thermo plants through ecological parameters; re-cultivation and forestation of the exploited coal excavations and neutralization of the waste water; protection of the flora and fauna from the influence of the hydro accumulations on micro and macro climate; global protection of people and properties from floods during planning of new as well as during analysis and exploitation of the existing hydro accumulations with preparation of adequate studies and projects etc.

EBRD provides project financing for banks, industries and businesses, both new ventures and investments in existing companies. Also EBRD works with publicly owned companies. The aim of EBRD is to promote market economies that function well – where businesses are competitive, innovation is encouraged, household incomes reflect rising employment and productivity, and where environmental and social conditions reflect peoples' needs. For each project EBRD finance, its assign a dedicated team of specialists with specific sectoral, regional, legal and environmental skills.

- **Subject of the case**

The project “Boskov Most” includes construction of a reservoir (33m-high dam), a hydropower plant (HPP) with a total capacity of 68 MW and annual generation of 118 GWh as well as a penstock stretching from the reservoir to the HPP. The Project is intended to utilise fully the hydro power potential of the tributaries that combine to make up the river Mala Reka and will include a dam and reservoir near the village of Tresonce. The 70MW Boskov Most hydro power plant is to be situated on the river Mala Reka, near the town of Debar and the municipalities of Debar, Mavrovo and Rostuse. The project’s total value is €105 million.

This project is prepared on basis of an already existent draft project made in 1980 in a Study of Small and Mini Hydropower Plants in the Republic of Macedonia. This study was never subject to any assessment related to the environmental impacts. This study is part of the following strategic documents:

- Spatial Plan of the Republic of Macedonia 2004-2014 (there was not SEA for the planning document – Law on environment in 2004 did not provides provisions for SEA);
- Strategy for Energy Development in the Republic of Macedonia until 2030 (SEA procedure started after the finalization of the strategy – it was the first SEA procedure and the SEA study was with poor quality)
- Strategy for renewable energy use till 2020 (there wasn't SEA for the Strategy – against the Law the Ministry of Economy decided not to conduct an SEA procedure for the strategy)
- Draft Study for revalorization of the National Park “Mavrovo” (what is a study for evaluation of the natural values of the Parka and is not subject to environmental impact assessment); and
- Draft Management plan for the National Park “Mavrovo” (no SEA Study for the management plan is done yet).

- **Location of the project**

More than 80% of the construction site of the project falls within the territory of the largest protected area in Macedonia, the national park “Mavrovo”. Mavrovo National Park is among country’s richest parks regarding biodiversity. The national park is home to 50 species of mammals; 129 species of birds, 11 species of amphibians (out of 15), 24 species of reptiles (out of 32) and 924 species of invertebrates. Out of the afore-mentioned species, 11 species of mammals, 45 species of birds, 2 species of amphibians and 13 species of reptiles found in the national park are listed in Appendix II of the Bern Convention (strictly protected animals), emphasizing the importance of the area for conservation of biodiversity.

The following species are residents of the park: the Dragonfly, the Apollo butterfly, the Scarce Fritillary, the Broad-fingered Crayfish, the Stone Crayfish, several species of trout (*Salmo farioides* and *Salmo montenegrinus*), the European copper skink, the Gray Wolf, the Brown Bear, the Balkan Lynx and many other protected and distinctive species.

According to the latest research results regarding the Balkan Lynx, the National “Mavrovo”, especially the project area is a stronghold of the lynx in its distribution range.

In addition, the National Park is an Emerald site and (with the accession of the Republic of Macedonia to the European Union) a future site of Natura 2000 – part of the European network of protected areas. Also the National Park “Mavrovo” is a highly valued Category II Protected Area (according to the IUCN management categories).

- **Interested public involved**

Front 21/42 had joint actions with several national environmental NGOs regarding this project. Given the fact that our institutions were “deaf” to our vital objections, we tried to put pressure on them through the foreign international associations. We shared our stands on the threatened status of Mavrovo NP with the International Union for Conservation of Nature (IUCN), Birdlife and Euronatur. All of the mentioned associations sent concerning letters to our Ministry of Environment and Physical Planning and to the investors (EBRD and ELEM) with focus on the project impact on the Balkan Lynx. Also several meetings with representatives from EBRD were held.

In order to get as much support as possible, we shared our concern with the Board of Directors of EBRD, the European Commission, the Energy Community (Energy Community of South East Europe), international nature protection organizations and other relevant institutions. On November 7th, 2011, we sent a letter of complaint to EBRD about the granting of the loan prior to the approval of EIA of the hydro power plant.

- **Estimated environmental impact of the project**

The project can have impact on the biodiversity of the National Park “Mavrovo” where the project area is situated. The main impact of the project will be on river hydrology (regarding biological minimum of the river flow), on the salmonids in the rivers that are going to be subject to an intake, on the Balkan lynx, and on the beautiful landscape of the project area. Additionally, several energy projects, including HPP “Boskov Most”, are going to be implemented on the territory of the National Park. According to the Strategy for renewable energy use till 2020 in the National Park are planned to be built 30 small hydropower plants. However, so far there is no research on the cumulative effect of all planned projects in the park.

- **Description of the EIA procedure**

As an activity, the project HPP “Boskov Most” is part of the Decree determining the projects for which and criteria on the basis of which the screening for an EIA shall be carried out (Annex I, item 12 – hydro technical facilities). Our Law on the Environment provides that Environmental Impact Assessment Study of the project must be prepared. The Study should establish, analyze and evaluate all possible alternatives to the proposed project and enable public participation in the procedure.

The Environmental Impact Assessment Study was drafted on July 8th, 2011. The Ministry of Environment and Physical Planning as an authority competent for the carrying out of the Environmental Impact Assessment organized three public hearings: one at the municipality of Mavrovo (12/09/2011), one at the municipality of Debar (13/09/2011) and one in Skopje (14/09/2011). In addition, JSC "ELEM", the contractor of the project, organized a meeting for a presentation of the Study (July, 2011).

On August 9th, 2011, we drafted and sent a missive setting forth our comments on the Study and its social aspects. The missive was sent to MEPP, ELEM, EU Delegation in Macedonia and the European Bank for Reconstruction and Development.

The main point of our comments was that the Study is incomplete and is intended to justify the Project.

The Study itself, in accordance with the national and European legislation, should objectively analyze possible alternatives and their environmental impacts. When the negative consequences of the implementation of the project override the benefits, a zero alternative should be accepted i.e. non-realization of the project. Alternatives are not being considered to justify the already reached technical decision for the project as we believe was the case with the Study of the project "Boskov Most".

The Study lacks substantial information essential for accurate and objective environmental impact assessment of the project. Inter alia, the Study fails: to point out that the riparian forest phytocoenoses (page 132) are priority habitats for EU, to indicate if other habitats/species are prioritized and to outline the particular measures which would be undertaken in accordance with the European directives on protection of future Natura 2000 sites; to determine the project's impact on the Otter (*Lutra lutra*) for which the Habitats Directive provides special area of conservation; to provide adequate analysis of the noise impact on the animals, especially those living and feeding in the affected region; to provide analysis of the impact of the potential water temperature changes on the trout and the other fishes (having in mind that they are cold-water fishes). Lastly, the study fails to provide analysis of the cumulative effects of the planned projects from all concerning aspects and fails to prescribe measures for reduction of the potentially serious cumulative effects. The analysis of the cumulative effects of the project "Boskov Most" along with all existing and planned projects in the national park must include analysis of the cumulative effects on all mediums, the micro climate (the evaporation of the hydro power plants), the biological diversity (in accordance with the sensitivity of the species to change of the environment), the area, the social aspects etc.

The fact that HPP "Boskov Most" is situated in part of the Park which allows sustainable development does not imply that it allows changing of the character of the park itself. On the contrary, Article 75 of the Law on Environment expressly forbids all activities that may endanger the natural values of the national park. Pursuant to the aforementioned article, the sustainable utilization of the natural resources of the national park must not endanger the survival of the species and their natural balance.

Moreover, since MOEPP failed to respond to our comments, while the deadline for response was expiring, we had to schedule a meeting with the Ministry i.e. the Office for Environment regarding the project. On our request, on 28/09/2011, we held a meeting with the Director of the Office for Environment and representatives of the departments of the Ministry of Environment and Physical Planning. At the meeting, the Director of Administration announced that the Study of the Environmental Impact Assessment and social aspects of the project HPP “Boskov Most” has been withdrawn for revision and that MEPP is going to respond to our comments upon the receipt of the new revised Study. The issue for cessation of this process until the adoption of the Law on re-declaration of “Mavrovo” NP and the Park Management Plan was raised at the meeting as well. Failing to conduct a reevaluation of the Park and lacking essential information, the conduct of adequate environmental impact assessment was considered impossible.

Regarding the submitted comments, part of our comments were accepted regarding the lack of data. EBRD and ELEM agreed with the need for further research on the project area (one year monitoring of the environment in the project area). During the one year monitoring process no constructional activities are allowed.

The main request postponement of the approval of the project “Boskov Most” until the Management Plan for the Park and its strategic environmental assessment are prepared and the monitoring of the project area is finished were rejected.

- **Actions of the public during the procedure**

Having in mind the current situation in Macedonia, economic decline, low employment rate etc, the general public and the local citizens around the project area did not see the project as a threat to environment or as possible lost of natural heritage. Additionally, ELEM’s expensive PR policy presented the project as a great economic development in Macedonia. From the environmental NGO’s there were several press releases on national and international newspapers. However, campaign against the project has not been placed yet.

- **Decision of the environmental authority**

On 1st of October 2012, with overstepping of all legal deadlines, MOEPP issued Report on the adequacy of the EIA Study for HPP “Boskov Most“. We expect the decision for approval of the project any time now.

- **Current status of the case**

ELEM hired experts for conducting the one year monitoring of the project area. The monitoring team started with the monitoring activities in August 2012. No construction activities are allowed before the end of the monitoring.

We plan to file a complaint against the decision of the MOEPP for approval of the project, because the Study is incomplete and it’s should not be approved before the monitoring of the project area is completed.

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