

Implementation of the SEA Directive in Macedonia

Case Study

SEA

Justice and Environment 2012

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1. Introduction

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 planed 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 Strategic Environmental Assessment (SEA) Directive

The Directive on the assessment of the effects of certain plans and programs on the environment is transposed into the Law on Environment, in Chapter X. Strategies, plans and programs, including their changes, which are subject to SEA are determined by a Decree on strategies, plans and programmes, including their changes (planning documents), for which there is an obligatory procedure (SEA procedure) for assessing their impact on the environment and on human life and health. Decree defines 13 areas that are subject to a mandatory SEA. Law on environment provides second set of documents for which should be determine whether is necessary an SEA depending on their environmental impacts. This group includes all those documents which are not covered by the above mentioned Decree. Deciding whether the SEA is necessary is regulated by the Decree on the criteria for making a decision on performing strategic assessment of other strategies, plans and programs which could significantly impact the environment and human life and health.

Body that prepares the plan has an obligation to determine the possible impact form the planning document according to each criterion of the Decree and to make decisions whether SEA procedure is needed. The body that is preparing the plan should consult the authorities and the public before the decision is broth. From the very beginning, the body that is preparing the plan should publish the Decision for the document on its website. Law on Environment provides a protective mechanism in these cases, i.e. MOEPP can change the decision if it decides that the plan could have significant negative impacts on the

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

environment or wrong is determined as planning document for which is SEA is not implemented. Also the public can file a complaint against the decision of the body.

Once you determine that a planning document SEA should be carried out begins a key part of the procedure. The beginning of the preparation of the planning document is also a beginning of the preparation of strategic environmental assessment report. The body that prepares the plan document should seek opinions from the authorities in determining the scope in the SEA report. The content of the report is determined by the Decree on the content of the strategic environmental assessment. The report must contain the following information:

- A summary/overview of content, the main objectives of the plan and the connection with other relevant plans and programs/planning documents;
- Relevant aspects of the current state of the environment and what would happen if it came to implementation of the plan/no implementation of the plan;
- Other issues that are relevant to the plan, including specific those relating to any areas that are of particular importance for environment (especially in terms of protection of wild birds and habitats);
- The likely significant effects on the environment as a whole, including the biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between of these factors. These effects include secondary, cumulative, synergistic, short, medium and long-term, permanent and temporary positive and negative effects;
- The measures envisaged to prevent, reduce and offset any significant adverse environmental impacts from the implementation planning document;
- A summary/overview of the reasons for selecting the alternatives, and a description how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) that occurred in the collection necessary information;
- A description of the measures envisaged concerning monitoring in accordance with legal obligations;
- Non-technical summary.

Once prepared the draft report it is to go through the consultation phase. After the preparation of the SEA report, the body preparing the plan publishes information regarding the draft planning document and information where the public can review the document. Within 30 days of the publication of the SEA Report and draft planning document, public may submit comments and opinions that must be taken into account in the process of development of the plan document, i.e. relevant posts should be included in the SEA report. Later than 5 days before the expiry of the above mentioned period of 30 days, the body that prepares the planning document is required to organize a public hearing. The body that prepares the plan has an obligation directly (via e-mail and/or writing) to invite the public concerned at the public hearing. General public should be informed through public notices in at least one daily newspaper and on the website of the body that is preparing the planning document. All comments and views of the public hearing should be answered (individually or collectively) within 30 days. After the public hearing the body that prepares the plan should prepare a report for the public consultation process and publish it on its website. MOEPP

should check whether the opinions submitted by the public and the authorities are properly taken into account.

Within 60 days, MOEPP determines the suitability of the SEA report, and submit to the authority that adopts the plan. The final decision on the approval of the planning document should be published. Public can appeal the final decision regarding the planning document.

1.2. SEA Case Study

National Water Strategy for Macedonia 2012 – 2042

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

The National Water Strategy for the Republic of Macedonia is a cornerstone document for planning and development of sustainable water management and development in the Republic of Macedonia in accordance with the applicable Law on Waters. Responsibilities and obligations in water management are implemented through appropriate governmental institutions. Competencies are divided into six ministries, Ministry of environment and physical planning, Ministry of agriculture, forestry and water-economy, Ministry of economy, Ministry of transport and communications, Ministry of education and science, Ministry of health and the Republic institute for health protection. MOEPP is competent body for writing the National Water Strategy. The proposal of the strategy is then adopted by the Assembly of the Republic of Macedonia.

For the strategy, MOEPP implemented a research project. The Financing structure for the research project was composed as follows:

- 60 % of the funds are donated by the Slovenian CMRS (Centre for International cooperation and development) in accordance with the donation agreement Nr. 2009/4 dated 13.4.2009
- 40 % of the funds are provided from the budget of the **Ministry of Environment and Physical Planning** the Republic of Macedonia.

- **Subject of the case**

In Macedonia waters covers 477 km², that represent 1,88 % of the territory (188 m²/ha). There are about 35 rivers, 53 natural and artificial lakes and 1.100 larger sources of water. Macedonia is divided on 16 water management divisions. According to the hydrochartic division there are four river basins: Vardar, Strumica, Crn Drim and Binachka Morava. [Vardar](#), the largest river in Aegean basin district, drains 80 % of the territory. In Macedonia there are several natural and artificial lakes. Of the natural ones, the most attractive are the tectonic lakes Ohrid, Prespa and Dojran. All of them are shared with the neighbouring countries. Groundwater generally divided in two kinds of lithological formations – Quaternary and Neogene formations with characteristic intergranular porosity and carbonate formations with karst porosity. Karst formations with porosity have minor importance for water distribution. Aquifers formed in Quaternary and Neogene formations are separated into three hydrogeological classes - 11, 12 and 13. This type of aquifers is dispersed through the whole county and cover about 5000 km² (19,5 % of total area).

Water is mainly used for: consumption by humans (drinking water supply), irrigation, industrial, technological, economic needs and for other purposes; production of electricity and other power purposes; breeding of fish; navigation; sport, recreation, bathing, tourism and accumulation, capture, extraction, use, transfer and other purposes.

- **Interested public involved**

Front 21/42 had joint actions with several national environmental NGOs regarding the strategy. Expert public (professors from Universities, experts on water management etc.) also took part in the consultations about the strategy. General public (citizens) did not show interest about the Strategy.

- **Estimated environmental impact of the strategy**

The National Water Strategy determines the long-term policy that shall ensure the following:

- Water sustainable development through meeting the needs of all customers with quality water in sufficient quantities;
- rational and economical use of water;
- protection of waters against pollution and pollution control;
- protection and enhancement of coastal lands and wetlands and
- protection and mitigation of the adverse effects of water and lack of water.

The Water Strategy of the Republic of Macedonia should set out how the water sector should look like by 2040, and some of the steps it will need to take to get there. It is a vision where rivers, canals and lakes have improved for people and ecosystems, and where it continues to provide excellent quality of drinking water. It is a vision of a sector that values and protects its water resources, use of good surface water and where flood risk is addressed with markedly greater understanding.

Unfortunately, the Strategy envisages construction of new 400 hydropower plants, as one of the strategic objectives of the Republic of Macedonia, which is defined with a strategy for energy development in order to fulfil the obligations from the Directive on Electricity Production from Renewable Energy Sources Directive (2001/77/EC). Most of the hydropower plants are planned to be built in nature protected areas.

- **Description of the SEA procedure**

In August 2011, the Ministry of Environment and Physical Planning published a Draft Water Strategy. According to the Law on Environment and Law on Waters for the Strategy MOEPP should do strategic environmental assessment, and the procedure should start together with the drafting of the strategy. Since the ministry did not implement the SEA provisions we sent letter to the ministry with request for implementation of SEA provisions and published press release that the procedure for the strategy is illegal.

After one month pressure, on September 30th, 2011, the Ministry adopted a Decision on the Implementation of the Strategic Environmental Assessment. The Notification informing the public that the Report has been prepared and published on the website of the Ministry of Environment was posted just a week later, on October 7th, 2011. The impossibility of preparing adequate and quality Strategic Assessment Report over a 7-day period points to the irreverent approach to this environmental protection procedure. The report was copy past text from the already existing Energy Strategy SEA Study.

Regarding the Report on the Strategic Assessment of the Water Strategy we made analysis and submitted written comments. The analysis conducted by our experts in cooperation with national experts for strategic environmental assessment indicated that:

- The Report is not in accordance with the legal requirements determined by the Law on Environment and the relevant Decree on the Content of the Strategic Environmental Assessment Report (important parts of the Report are either missing or are poorly compiled, the public is not included adequately and promptly, and so forth); and
- The Report is not in compliance with the European Commission's Guidance on the Implementation of the Directive on Strategic Environmental Assessment.

Also, in our written comments, we demanded complete revision to the Strategic Assessment Report on the Water Strategy. Thereafter, we requested further public consultations in accordance with the Aarhus Convention and the Law on Environment.

Nevertheless, the MOEPP published both documents on its website and set the deadline for public consultations for November 4th. Subject to the submitted comments, the MOEPP withdrew the Strategic Assessment Report on the Water Strategy.

Instead of waiting for the new SEA report MOEPP, against law, organized 3 public presentations solely on the Strategy. At the presentation intended for citizens associations, the representatives of the competent authorities officially announced that the Strategic Assessment and the Water Strategy were going to be redrafted and that a new deadline will be set for further comments.

After the public hearings we prepared and sent another set of comments regarding the Strategy and the SEA report. Main points and requests of our comments were:

- The ministry should organize public hearing for the SEA Report and the Water Strategy as well as provision of adequate deadline for submission of comments on both documents, after they had been updated in accordance with the comments of the public;
- The ministry should supplement the chapters Water Consumption in Electricity Generation (3.2.5) and Electricity Generation (4.3.5), since both chapters fail to mention the envisaged construction of 400 small hydroelectric power plants;
- The ministry should supplement Chapter 4: Climate Change Vulnerability and to individually address the scenarios of the climate change impact on the water resources;
- The Strategy should pay particular heed to the establishment of protected water areas on different grounds, as prescribed by the Water Framework Directive;
- The development of cadastral sites for small hydro power plant construction is a necessary measure/activity in the sector for electricity generation. The sites have already been known to the Ministry of Economy but have never been disclosed to the public. The Water Strategy is supposed to give detailed account of the planned sites so as to ensure transparency and to enable adequate environmental impact assessment of the envisaged projects;
- The SEA Report should pay particular attention to the impact of the hydro power plants as well as to the cumulative effect of the water utilization in the plants. This is particularly important given the fact that many of the planned hydropower plants are located in protection areas.

On our comments we received just short answer that the Ministry will take them into account in the new draft of the Strategy.

Several months past, and since there was no new draft of the Strategy and new SEA report we sent official letter for request information about the status of the documents. In May 2012 we received answer that the Strategy and the SEA report are being revises and that as soon as they are finalized MOEPP will organize public hearings for the documents.

26th September 2012 without any official announcement, without public hearings and SEA Study, MOEPP send the Strategy to the Assembly of the Republic of Macedonia for adoption.

We sent official letter to the ministry requesting information on what legal basis did the ministry stoped the SEA procedure fot the Strategy. In the letter, again, we pointed the legal breach of the SEA provisions.

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

During the procedure we made several press releases regarding the illegalities of the SEA procedure. The general public (citizens) did not show interest regarding the Strategy.

- **Decision of the environmental authority**

MOEPP without any official document or statement stopped the SEA procedure and sent the Strategy to the Assembly. We are still waiting answer from the MOEPP to our official letter regarding the legal basis on which the ministry stopped the SEA procedure for the Strategy.

- **Current status of the case**

The Assembly of the Republic of Macedonia adopted the National Water Strategy. Public (including the environmental NGOs) were informed about the adoption of the Strategy thought the Assembly web site after the official voting for the Strategy. The Assembly did not know that the strategy should have an SEA report.

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