PRELIMINARY REPORT ON THE IMPLEMENTATION
OF THE ENVIRONMENTAL ACQUIS
UNDER THE TREATY ESTABLISHING
THE ENERGY COMMUNITY
February 19, 2008

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I. Introduction


Following the creation of an environment unit, the Secretariat has started comprehensive fact-finding mission in December 2007 and January 2008, by addressing the competent Ministries within the Contracting Parties. The purpose was a two-fold one, namely to collect information on the law in place and to establish working contacts. By February 20, 2008, official replies have only been received from Montenegro, Serbia and Croatia (for the Bird Directive part). The data underpinning the present Preliminary Report are based on these submissions and, as far as the other Contracting Parties are concerned, on publicly available information. In order to fulfill its task under Article 67 of the Treaty, the Secretariat will further strive to obtain first-hand and up-to-date information on the legal and factual situation and calls on the Contracting Parties to assist it in this endeavor.

The present Preliminary Report has the character of an inventory, taking stock of the existing laws and procedural routines within the Contracting Parties as far as information is available. At this stage, the Report does not aim at examining compliance of the Contracting Parties’ legislation with the respective Directives.

II. The Environmental Impact Assessment Directive

1. Main features

The Environmental Impact Assessment Directive (Directive 85/337/EEC) aims at identifying and assessing environmental consequences of projects before a permit is given. Projects falling within the scope of the Directive are specified in the annexes to the Directive. In terms of network energy covered by the Treaty, Annexes I and II to the Directive include projects both in energy generation and transmission/distribution as well as gas storage. The procedure itself can be divided into five main parts.

a) Screening

Screening refers to the determination of whether an EIA is required for a specific project. The main difference between the sorts of projects described in Annex I and Annex II is that following the screening rules and procedure of the Directive is mandatory for projects the included in the former whereas the Contracting Parties enjoy more flexibility with respect to projects covered by Annex II.
b) Scoping

The term scoping describes the identification of the issues to be covered by the environmental impact statement, including when the procedure is to be carried out. Scoping provisions are of a discretionary nature (Article 3, and as far as Annex II projects are concerned, Annex III).

c) Review

In the review stage, the competent authorities are to examine the information to be supplied to them by the developer (Article 5 and Annex IV to the Directive).

d) Decision-making

The Directive requires ensuring that (domestic) authorities likely to be concerned by the project (Article 6(1)), the public concerned (Articles 6(2)-(6)), as well as other Contracting Parties likely to be significantly affected by projects with a trans-boundary impact (Article 7) are informed and given the opportunity to participate in the procedure leading up to the authorization decision.

Once the results of the consultations and the information gathered has been taken into account, and a final decision as to whether or not authorization has been granted, the public and, as the case may be, other Contracting Parties, shall be informed thereof (Article 9) and provide access to justice to members of the public concerned (Article 10a). The provisions on public participation are intended to bring the Directive in accordance with the Aarhus Convention on public participation in decision-making and access to justice in environmental matters.

2. The UN Espoo Convention

The Convention on Environmental Impact Assessment in Transboundary Context signed in 1991 in Espoo and in force since 1997, without being part of the Energy Community acquis, deals with certain aspects also covered by the Directive. From the Contracting Parties, it has been ratified by Albania and acceded to by Croatia, the Former Yugoslav Republic of Macedonia and Serbia. More information on the Espoo Convention may be found at http://www.unece.org/env/eia/welcome.html.

III. Overview of the implementation status by Contracting Party

1. Albania

a. Competent authorities

The Secretariat has not yet obtained any information.

b. Reference persons
Despite not yet nominated, the Secretariat has been informed that Mr. Gavrosh Zela is Director for Environmental Impact Assessment and Permits, Ministry of Environment, Forestry and Water Administration.

c. Primary legislation

The Secretariat has not yet obtained any information.

d. Secondary legislation

The Secretariat has not yet obtained any information.

2. Bosnia and Herzegovina

a. Competent authorities

The Secretariat has not yet obtained any information.

b. Reference persons

Not yet nominated.

c. Primary legislation

The Secretariat has not yet obtained any information.

d. Secondary legislation

The Secretariat has not yet obtained any information.

3. Croatia

a. Competent authorities

Imminent submission of the required information to the Secretariat has been announced.

b. Reference persons

Mr. Nenad Mikulic, Head of sector, Ministry of Environmental Protection, Physical Planning and Construction.

c. Primary legislation

An Ordinance on Environmental Impact Assessment (OG No. 59/00, 136/04) is in place. Imminent submission of the required information to the Secretariat has been announced.

d. Secondary legislation
Imminent submission of the required information to the Secretariat has been announced.

4. Former Yugoslav Republic of Macedonia

a. Competent authorities

With respect to the competent authority, the Law on Environment refers generally to the body of the state administration responsible for the affairs of the environment. Pursuant to Article 161 of the Law on Environment, a body called the Administration of Environment shall perform expert activities within the EIA procedure.

b. Reference persons

Not nominated yet

c. Primary legislation

As of 20 February 2008, the Secretariat has not yet received the requested information from the Ministry of Environment and Physical Planning of the former Yugoslav Republic of Macedonia. However, the Law on Environment is publicly available in English. It deals with “Environmental Impact Assessment of certain projects” mainly in Articles 76 to 94.

The Law follows the Directive very closely, structuring the EIA procedure in the stages screening, scoping, and assessment and evaluation of the direct and indirect impact on the environment from the project implementation or non-implementation. The procedure may be summarized as follows:

- The investor shall send a notification on his intention to implement a project, together with an opinion of the need of an EIA to the competent authority. The competent authority shall carry out a screening procedure and adopt a decision whether or not an EIA shall be carried out.
- The competent authority determines the scope of the EIA study.
- The investor submits an EIA study to the competent authority, which prepares a report on the adequacy of the study.
- The competent authority, on the basis of the EIA study, the adequacy report, the public debate and opinions obtained, shall issue a final EIA decision on.
- The decision is a prerequisite for the project implementation permit and shall be valid for two years. The decision may be appealed to the Second Instance Commission of the Government.
- A State Inspector of Environment shall enforce the investor’s obligations under the provisions related to EIA. Non-compliance is subject to fines.

d. Secondary legislation

Pursuant to Article 77 of the Environmental Law, the Government shall specify projects which are subject to a mandatory requirement for an environmental impact assessment procedure and define the criteria on the basis of which a need is identified for an environmental impact assessment of other projects specified in general terms which may
have a significant impact on the environment, as well as define the criteria on the basis of which a need is identified for an environmental impact assessment in case of changes appearing on existing projects.

Pursuant to Article 78(2) of the Law, the Government shall propose an alternative method of environmental impact assessment as regards projects which are exceptionally not subject to an environmental impact assessment.

Pursuant to Article 24(2) of the Law, the Government shall prescribe the content of the EIA elaborate to be submitted by the investor whose activities do not comprise projects which are subject to the EIA procedure.

Pursuant to Article 80(5) of the Law, the Minister shall prescribe the information to be incorporated in the project notification.

Pursuant to Article 81(2) of the Law, the Minister shall prescribe the EIA screening procedure for projects.

Pursuant to Article 84(1) of the Law, the Minister shall prescribe the content of the requirements that need to be fulfilled by the EIA study.

Pursuant to Article 85(3) of the Law, the Minister shall prescribe the additional criteria, the manner, the procedure and the compensation of expenses for enrolment in and withdrawal from the list of EIA experts.

Pursuant to Article 86(11) of the Law, the Minister shall prescribe the form, the content, the procedure and the manner of development of the adequacy report on the EIA study. Pursuant to Article 86(12) of the Law, the Minister shall prescribe the procedure for authorization of persons from the list of experts in charge of developing this report.

Pursuant to Article 90(4) of the Law, the Minister shall prescribe the content of documents as well as the manner of public consultation.

Pursuant to Article 92(3) of the Law, the Minister shall prescribe the level of the expenses for implementation of the EIA procedure to be borne by the investor.

Pursuant to Article 93(3) of the Law, the Minister shall prescribe the procedure to be followed in trans-boundary impact assessment cases in accordance with the principle of reciprocity and with procedures regulated by ratified international agreements.

The Secretariat has not received any of the above-mentioned documents, nor has it received information on whether or not any secondary legislation has been enacted.

5. Montenegro

a. Competent authorities
According to Article 4 of the draft Law on Environmental Impact Assessment received by the Secretariat, the authorities responsible for carrying out the environmental impact assessment procedure are:

- The public/state authorities responsible for environmental protection for projects for which the permits and approvals are issued by other competent public/state authorities;
- The authorities responsible for environmental protection in the local self-government unit for other projects for which the permits and approvals are issued by other competent local self-government authorities.

**b. Reference persons**

Ms. Biljana Djurović and Ms. Lazarela Kalezić of the Ministry of Tourism and Environment of Montenegro.

**c. Primary legislation**

The Law on Environmental Impact Assessment is applied as of 1 January 2008. The Secretariat received a draft version of the Law and was informed that the final text is not available in English.

The draft law generally follows the structure and content of the Directive. The procedure may be summarized as follows:

- Where an EIA is not mandatory, the developer shall apply for a decision on the need for an EIA (screening);
- The developer shall apply for a decision on the scope and content of an EIA study (scoping) to be evaluated by an Impact Assessment Committee; that Committee makes a proposal on the EIA scope and content;
- The developer shall submit an EIA study and apply for its approval by the competent authority.
- Following public consultation, the EIA Study shall be evaluated by the Impact Assessment Committee set up by the competent authority, based on whose report the competent authority decides on approval of the Study. This decision is a mandatory precondition for commencing project implementation. It may be appealed to the head administrator.
- The developer shall obtain the project execution permit within two years from the decision.
- The Environmental Inspectorate within the competent authority shall carry out the inspection supervision over the enforcement of the Law. Non-compliance by the developer and the person responsible within the competent authority is also subject of fines.

**d. Secondary legislation**

Pursuant to Article 37 of the draft Law on Environmental Impact Assessment, by-laws based on this Law shall be enacted within six months from the date of entry into force. According to information obtained by the Secretariat, five by-laws have so far been adopted by the Government or Ministry. They are not available in English and have not yet been submitted to the Secretariat.
Pursuant to Article 5 of the draft Law, the Government shall pass the regulations prescribing
- A list of projects for which an impact assessment is mandatory
- A list of projects for which an impact assessment may be required

Pursuant to Article 10(3) of the draft Law, the public authority responsible for environmental protection issues shall regulate more precisely the content of documentation to be submitted together with the application for a decision on the need for an impact assessment.

Pursuant to Article 15(3) of the draft Law, the public authority responsible for environmental protection issues shall regulate more precisely the content of documentation to be submitted together with the application for a decision on the scope and content of an EIA study.

Pursuant to Article 18(6) of the draft Law, the public authority responsible for environmental protection issues shall regulate more precisely the content of the EIA study.

Pursuant to Article 28 of the draft Law, the Law on General administrative procedure shall apply to the decision-making procedure unless explicitly dealt with by the Law on Environmental Impact Assessment.

6. Serbia

a. Competent authorities

According to Article 2(2) of the Law on Environmental Impact Assessment, the authorities responsible for carrying out the environmental impact assessment procedure are:
- The Ministry responsible for environmental protection matters for those projects for which the permit for project implementation is under the responsibility of the Republic authority;
- The Provincial authority responsible for environmental protection matters for those projects for which the permit for project implementation is under the responsibility of the authority of the autonomous province;
- The local self-government authority responsible for environmental protection matters for those projects for which the permit for project implementation is under the responsibility of the local self-government authority.

Articles 36 et seq. create the position of an “environmental inspector” to supervise the developer as regards compliance with his obligations under the law.

b. Reference persons

Mr. Zoran Veljkovic, Head of Department for EIA, Ministry of Environmental Protection.

c. Primary legislation
Law on Environmental Impact Assessment (Official Gazette 135/04) entered into force in 2004. The law generally follows the structure and content of the Directive. The procedure may be summarized as follows:

- The developer shall apply for a decision on the need for an EIA (screening);
- Where an EIA is mandatory, the developer shall apply for a decision on the scope and content of an EIA study (scoping);
- The developer shall submit an EIA study and apply for its approval by the competent authority.
- Following public consultation and possible amendments, the EIA Study shall be evaluated by a Technical Commission set up by the competent authority, based on which the competent authority decides on approval of the Study. This decision is a mandatory precondition for commencing project implementation. It may be appealed to a court.
- The developer shall commence the project within two years from the decision.
- A Technical Inspection Commission shall monitor the implementation of the decision approving the EIA study.
- The environmental inspector shall supervise the overall compliance of the developer with its obligations under the law. Non-compliance by the developer and the person responsible within the competent authority is also subject of fines.

d. Secondary legislation

Pursuant to Article 4 of the Law on Environmental Impact Assessment, the Government shall prescribe
- A list of projects for which an EIA is mandatory
- A list of projects for which an EIA may be required

The two lists were issued by Ministerial Decree which has not yet been submitted to the Secretariat. From the summary obtained, it seems as if they closely follow the two Annexes to the Directive when it comes to coverage of projects related to network energy.

Pursuant to Article 8(3), the Ministry for Environment shall prescribe the content of the application for a decision on the need for an impact assessment.

Pursuant to Article 12(3), the Ministry for Environment shall prescribe the content of the application for a decision on the scope and content of the EIA study.

Pursuant to Article 17(4), the Ministry for Environment shall prescribe the content of the EIA study.

Pursuant to Article 20(5), the Ministry for Environment shall prescribe the procedure for public consultation, presentation and debate.

Pursuant to Article 23(6), the Ministry for Environment shall prescribe the methods of work of the Technical Commission.

Pursuant to Article 34(2), the Ministry for Environment shall set forth the content, format and method of maintaining the public register on EIA procedures and decisions.
According to the information obtained from the Serbian authorities, those by-laws have already been adopted. Furthermore, the Ministry prepared Guidelines on the EIA procedure (apparently supported by Ministry for Foreign Affairs of Finland) describing the procedure, roles and obligations of all actors, and contain all necessary application forms. Those documents have not yet been submitted to the Secretariat.

7. UNMIK

a. Competent authorities
The Secretariat has not yet obtained any information. From the legislation publicly available it follows that the main public actors are the Ministry of Environment and Spatial Planning, the municipal authority as well as the Environmental Protection Agency (KEPA).

b. Reference persons
Not yet nominated.

c. Primary legislation

Regulation No. 2003/9 on Environmental Protection, in its Articles 20 and 21, deals with Environmental Impact Assessment. Read together with the relevant secondary legislation, the EIA procedure is very closely modeled on the EIA Directive and may be summarized as follows:

- The developer applies for an environmental consent (for construction) or permit (for operation) to be made to the municipal authority. Upon notification, the Ministry of Environment shall ask KEPA to provide a screening opinion based on which the Ministry issues a screening decision.
- The developer may apply for a scoping direction from the Ministry/KEPA on the information to be presented in the course of the procedure.
- An EIA report shall be submitted by the developer to the municipal authority. The municipal authority prepares an opinion for the decision on the environmental consent or permit. Taking into account this opinion, external expertise, public and external consultation, KEPA prepares a draft decision.
- The Ministry grants or refuses an environment consent or permit. This decision may be appealed to a court. A positive decision is a prerequisite for project realization.

d. Secondary legislation

Pursuant to Article 20(4) of the Law on Environmental Protection, the Government shall establish a list specifying projects requiring an EIA and an EIA report and the types of modifications to projects requiring an EIA and an EIA report. Pursuant to Article 20(5) of the Law on Environmental Protection, the Government shall enact secondary legislation specifying the procedures to be used in the conduct of an EIA and the type of information to be contained in an EIA report. Administrative Directive No. 09/2004 on Environmental Impact Assessment implements both provisions.

Pursuant to Article 20(6) of the Law on Environmental Protection, the Government shall enact secondary legislation specifying the requirements to be fulfilled in order to obtain an
EIA license (for experts). This has been done through Administrative Decision No. 3/2004 on licensing persons and enterprises for conducting Environmental Impact Assessment reports.

Administration Instruction No. 25 Protocol No. 22/03 establishes the Environmental Protection Agency KEPA.

Administration Instruction No. 65 Protocol No. 26/05 lays down rules on the issuance of the environmental permit.

III. The Birds Directive

The main aim of the Directive 79/409/EEC (Birds Directive) is the long-term conservation of all species of naturally occurring wild birds in the territory of the European Union.

The Directive focuses on two major issues: the protection of birds’ habitat and the establishment of rules for their management, control and exploitation (hunting, capture, killing and sale).

Article 4 of the Directive is a central element as it foresees the establishment of a network of Special Protection Areas (SPAs) scientifically identified as critical for the survival of particularly vulnerable species of birds listed in Annex I of the Directive (4.1) and for regularly occurring migratory species (4.2).

Article 4(2) in particular, requires to establish a legal protection regime for regularly occurring migratory species not listed in Annex I taking into account their areas of breeding, moulting, wintering and their staging posts along the migratory routes.

The special conservation measures for the protection areas are described by article 6 paragraph (2), (3) and (4) of the Directive 92/43/EEC (Habitat Directive) as they have replaced the obligations pursuant to article 4.4 of the Birds Directive.

In particular, according to article 6(3) of the Habitat Directive any plan or project likely to have a significant effect on a special protection area either individually or in combination with other plans or projects, should be subject to a preventive appropriate assessment of its implications in view of the site’s conservation objectives.

V. Overview of the implementation status by Contracting Party

1. Albania

a. Competent authorities

The Secretariat has not yet obtained any information.

b. Reference persons
Not yet nominated.

c. Primary legislation

The Secretariat has not yet obtained any information.

d. Secondary legislation

The Secretariat has not yet obtained any information.

2. Bosnia and Herzegovina

a. Competent authorities

The Secretariat has not yet obtained any information.

b. Reference persons

Not yet nominated.

c. Primary legislation

The Secretariat has not yet obtained any information.

d. Secondary legislation

The Secretariat has not yet obtained any information.

3. Croatia

a. Competent Authorities

The Ministry of Culture, Directorate for Nature Protection is responsible for implementation of the Nature Protection Act (NPA).

b. Reference Persons

Ministry of Culture, Runjaninova 2, 10000 Zagreb; Zoran Šikić, State Secretary, Tel: +385 1 4866 315, Fax: + 385 1 4866 385, e-mail: zoran.sikic@min-kulture.hr; Ivana Jelenić, Head of the Biodiversity Department, Tel: +385 4866 122, Fax: + 385 4866 100, e-mail: ivana.jelenic@min-kulture.hr

c. Primary legislation

Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (Birds Directive) is fully transposed, by the Nature Protection Act (OG 70/05) and regulations and
ordinances adopted pursuant to it, especially the Regulation on proclamation of ecological network of the Republic of Croatia (OG 109/07) and the Ordinance on the nature impact assessment (OG 89/07)

d. Secondary Legislation

According to the Article 58 of the NPA, in October 2007 the Government has designated, at the proposal of the Ministry of Culture, the ecological network (EN) with the system of ecologically important sites and ecological corridors - Regulation on proclamation of the ecological network of the Republic of Croatia (OG 109/07).


Ordinance on the nature impact assessment (OG 89/07) provides a mechanism for assessment of projects which are likely to have a significant impact on the EN. Nature impact assessment (NIA) is mandatory for all projects which individually or in combination with other projects may have a significant impact on the EN. The Ministry of Culture carries out the assessment procedure. The Screening phase of the assessment can be carried out by the Ministry or in certain cases also by the Administrative bodies in the Counties. Other phases of the NIA, namely the Main Assessment, Assessment of other feasible options and the Establishment of overriding public interest and compensation measures, are in the competence of the Ministry.

For a project which may have a significant impact on the EN and for which Environmental Impact Assessment (EIA) is mandatory in accordance with special regulation (Environmental Act), NIA shall be provided as part of the EIA pursuant to the special regulation.

4. The Former Yugoslav Republic of Macedonia

a. Competent authorities

The Secretariat has not yet obtained any information.

b. Reference persons

Not yet nominated.

c. Primary legislation

The Secretariat has not yet obtained any information.

d. Secondary legislation

The Secretariat has not yet obtained any information.
5. **Montenegro**

a. **Competent Authorities**
The Ministry of Tourism and Environment is in charge of both Directive 85/337/EEC and 79/409/EEC

b. **Reference Person:**
Jelena Rabrenović tel: +382 81 482 330, e-mail: jellenarpg@yahoo.com)

c. **Primary Legislation:**
The Directive 79/409/CEE is going to be transposed into a Law on Nature Protection, which should be adopted by the end of the first quarter of 2008.

6. **Serbia**

a. **Competent Authorities**
Competent authorities for transposition and implementation of Directive 79/409/CEE are the Ministry of Environmental Protection and the Ministry of Agriculture, Forestry and Water Management. In addition, the Institute for Nature Protection performs tasks relating to: research and studies in domain of nature protection in order to implement regimes of protection, preparation of project report concerning nature protection and assessment of natural values.

b. **Reference persons**
Mrs. Marija Mladenovic, advisor at Department for Protection of Biological Resources, Ministry of Environmental Protection (marija.mladenovic@ekoserb.sr.gov.yu, phone/fax: +381 11 3131 569).

c. **Primary Legislation**
Directive 79/409/CEE has been transposed into the Law on Environmental protection (Official Gazette 66/91 - Articles 40-60; Official Gazette of RS 135/04), and Law on Hunting Management (Official Gazette 39/93). New Laws on Nature Protection and on Hunting Management and Wild Animals are under drafting. They will be harmonized with “Birds” and “Habitats” Directives.

d. **Secondary legislation**
On the basis of the Law on Environmental Protection a Decree of the Government was adopted in 1993, by which some species of birds (i.e. rare, endangered or threatened with extinction) are protected as nature rarities. By this Decree 274 bird species are protected, regimes of strict protection has been determined, i.e. prohibitions of killing, disturbing, catching, hunting, destroying nests, killing hatchlings, etc. Due to the state of the species and need to preserve biological diversity in the Republic of Serbia numerous habitats of those species are protected, as nature reserves (strict and special). On the basis of the Law on Hunting Management some species of wild birds are permanently protected. The Law also determines protection measures, preservation of species, etc. (Relating articles: 4, 5, 6, 7, 11, 13, 14, 27-33, 39-57).
7. **UNMIK**

*a. Competent authorities*

The Secretariat has not yet obtained any information.

*b. Reference persons*

Not yet nominated.

c. **Primary legislation**

The Secretariat has not yet obtained any information.

d. **Secondary legislation**

The Secretariat has not yet obtained any information.

VI. **Outlook**

The present Preliminary Report constitutes work in progress and is, at this point in time, is summary in nature and not exhaustive. It will be continuously updated as more and more detailed information is received. To this end, the Secretariat’s environmental unit will continue to collaborate closely with the competent authorities within the Contracting Parties. Contracting Parties wishing to get in touch with the Secretariat, including commenting on the Preliminary Report, are invited to contact Dirk Buschle (Environmental Impact Assessment) at dirk.buschle@energy-community.org or Claudia Cordié (Wild Birds) at claudia.cordie@energy-community.org

In a second stage, which will certainly overlap with the fact-finding stage, the Secretariat will assess in detail compliance of domestic legislation and practice with the requirements of Energy Community law.

Further to the two Directives subject to the present report, the Secretariat will collect data on the state of play regarding implementation of Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC, which is to be implemented by the Contracting Parties by the end of 2011 pursuant to Annex II to the Treaty.