PRACTICE YOUR ENVIRONMENTAL RIGHTS – LEGAL TOOLS AND MECHANISMS

get inspired by the Story of
Mavrovo National Park and save your rivers

Practice your environmental rights - legal tools and mechanisms

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February, 2019

FRONT 21|42

Еко-свест

EURONATUR

RiverWatch

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Imprint: This publication is produced within the "Save the Blue Heart of Europe" campaign, organized by EuroNatur – European Nature Heritage Foundation (euronatur.org) and Riverwatch – Society for the Protection of rivers (riverwatch.eu/en/).

Supported by Manfred-Hermsen-Stiftung

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CONTENTS:

INTRODUCTION

This toolkit is dedicated to national and international CSOs and activists that dare to stand for preservation of the last free-flowing rivers on the Balkans. It will guide you step-by-step through our fight against hydropower developments in the Mavrovo National Park. Furthermore, it will give an adequate explanation of the legal tools that were used to preserve one of Europe's oldest national park.

It contains descriptions of your power and rights in the decision-making processes behind hydropower development. Moreover, it will provide additional clarification on how to employ them under the Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters (Aarhus Convention), the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention), and the adopted environmental and social policies of the international financial institutions which provide financial assistance for hydropower projects (i.e. World Bank and EBRD).

The toolkit also contains collection of case studies derived from our own direct experiences in the protection of the Mavrovo National Park in R. Macedonia. Moreover, the case studies will help you understand whether the legal framework for nature protection or hydropower project permitting is incomplete, or inadequately used, so that you can prepare yourself for the obstacles in practicing your rights.

In the last section you will find selection of events and actions that can be used as supplements to your legal procedures in order to keep the public informed. In addition, it will offer assistance solutions to gather local support or to put pressure on decision makers.

We genuinely hope that you will be inspired to take action. Together, we can make a difference in order to preserve the last free-flowing rivers in Europe!

Follow the yellow coloured box for practical tips for your possible actions.

THE MAVROVO NATIONAL PARK - VALUES AND THREATS

Mavrovo National Park (NP) is one of the oldest national parks in Europe, established in 1949 due to its ”exceptional natural beauty, historical and scientific importance of forests and forest areas“ surrounding Mavrovsko Pole. In 1952, the territory of Mavrovo NP has been increased for six times, i.e. from 11,750 ha to approximately 73,088 ha.

In terms of biodiversity, Mavrovo NP is one of the richest national park in R. Macedonia. It is home to about 50 mammal species including wolf, brown bear, fox, wild cat and Balkan lynx; 129 bird species, 11 species of amphibians, 24 species of reptiles and 924 species of invertebrates, as well as 1,435 plant species. Some of the species (14 species of mammals, 45 species of birds, 5 amphibians and 18 species of reptiles) are listed in Appendix II[1] of the Bern Convention on the Conservation of European Wildlife and Natural Habitats (BC), 65 species are listed in the Annex I[2] & II[3] of the European Union (EU) Habitats Directive and 19 species are under EU Birds Directive.

Figure 1. Mount Korab, Mavrovo NP
Photo by: Metodija Velevski

It is one of the last reproductive areas of the Balkan lynx (*lynx lynx balcanicus*), subspecies of the Eurasian lynx classified as Critically Endangered by the International Union for Conservation of Nature (IUCN), of which only 20 - 39 mature individuals are believed to remain in total (Fig. 2 and Fig. 3). This indicates the significance of Mavrovo NP when it comes to biodiversity conservation. Hence, it is even of greater importance to preserve the quality of the habitats that sustain and host each of these important species. Mavrovo NP has been identified as a/an: Important bird area; important plant area; Prime butterfly area. It is part of the Macedonian Ecological Network and a candidate Emerald site (predefined to become Natura 2000 site upon Macedonia admission to EU).

[1] BC - Annex II = strictly protected fauna species

[2] HD - Annex I = natural habitat types of community interest whose conservation requires the designation of special areas of conservation

[3] HD - Annex II = animal and plant species of community interest whose conservation requires the designation of special areas of conservation

Figure 2. Balkan lynx (Lynx lynx balcanicus)
Photo by: Macedonian Ecological Society, 2013

Figure 3. Baby Balkan lynx, near Mavrovo NP
Photo by: Panajot Chachorovski and Macedonian Ecological Society, 2017

Regretfully, many years of inappropriate conservation measures have adversely affected the biodiversity of Mavrovo NP. Only a few years after its establishment in 1949, the Mavrovsko Pole field was flooded because of the development of hydropower system "Mavrovo". The hydropower system "Mavrovo" affects a total catchment area of 946 km^2 which furthermore adds pressure onto the NP's ecosystems as 414 km^2 of the affected catchment areas situated inside the NP's borders. Not once has been noted a proper implementation of Article 56 of the National Law on Nature Protection regarding the biological minimum discharge of watercourses (Fig. 4 & 5). The negative consequences of the disregard of the biological minimum discharge have been scientifically validated, and are particularly noticeable in the spruce-fir forests (Ass. Abieti-Piceetum scardicum Em/1958/1985) along the river Adzhina Reka.

These forests are defined as zones of strict protection within the NP, hence no human activity should take effect here. The current hydropower system "Mavrovo" significantly affects the structural and functional characteristics of the spruce-fir forests and other riparian communities that are directly dependent on the river flow. In addition, the present hydro-system maintenance and the upgrade of some of the pipelines that took place in 2013, because of the disturbance related to construction and maintenance of the open roads, and periodical construction works.

Figure 4: The lack of biological minimum discharge at Adzina Reka, downstream of Mavrovo HP system, Mavrovo NP
Photo by: Front 21/42, 2015

Figure 5: River Crn Kamen is dry in the summer period, as biological minimum discharge is not met by constructed hydropower plants at tributary Adzhina Reka:
Photo by: Front 21/42, 2015

In 2010, the Macedonian government confirmed the plan to implement two hydropower projects (HPPs) on accumulation lakes inside Mavrovo NP: *HPP Crn Kamen and accumulation Lukovo Pole (also called "HPP Lukovo Pole")*, and *HPP Boskov Most* – by overlooking the effects of the already existing hydropower system "Mavrovo" on the naturalness of the park. Both projects depended on funds from multilateral development banks (MDBs), i.e. World Bank (*HPP Lukovo Pole*) and European Bank for Reconstruction and Development (*HPP Boskov Most*), and both projects were undermining the very idea of a national park as they would threaten animals and plants, which today still find refugium inside Mavrovo NP. Through incorporating the Convention on the Conservation of European Wildlife and Natural Habitats, "Bern Convention", and filing a complaint against these projects, the first success was achieved: World Bank dropped *HPP Lukovo Pole* from their agenda (12/2015). In 2016, European Bank for Reconstruction and Development froze the funds for *HPP Boskov Most* and cancelled the financing of the project one year later, in January, 2017.

Figure 7. Mala Reka river that would be affected by the HPP Boskov Most, Mavrovo NP
Photo by: EuroNatur

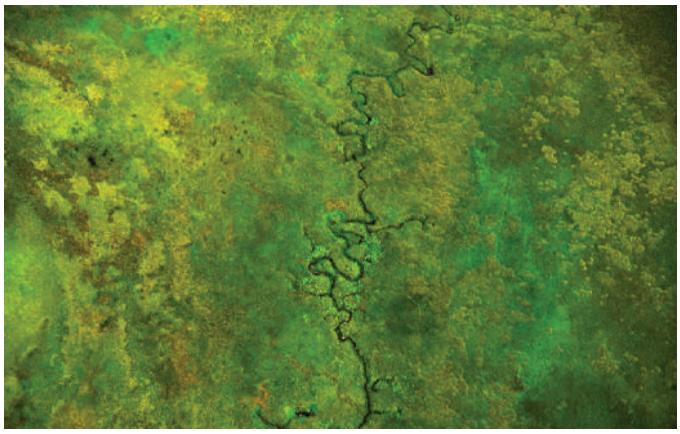


Figure 6. Areal photo of Lukovo Pole valley, Mavrovo NP
Photo by: Macedonian Ecological Society

This is the first and also the briefest example on how legal tools can be used in order to stop HP developments. This toolkit will provide much more insight into the following sections. However, the previously mentioned HP projects are still part of the J.S. "ELEM" investment plan; ELEM being Macedonia's state-owned company for energy production.

Additionally, both projects are still listed in the National Strategy for Energy Development and the National Plan for Utilization of Renewable Energy Sources, which makes them eligible for new investors.

Apart from the two HPPs *Lukovo Pole* and *Boskov Most*, the government of the Republic of Macedonia has approved, or is planning to grant concessions for 20 additional "small", low-performing hydropower projects (LPHPPs) in Mavrovo NP. At the moment, four of them are already constructed and operational, and another four are in pipeline to be built.[4]

[4] Detailed informationand maps can be found on the following link: https://www.balkanrivers.net/en/key-areas/mavrovo-national-park

Figure 8. HPP Tresonce construction on Tresonecka River in 2013, Mavrovo NP
Photo by: Front 21/42

If all – or even one of them – is constructed as foreseen, there will be severe negative impacts on the biodiversity of Mavrovo National Park. Moreover, these projects present an immediate risk of revocation of the national park status of Mavrovo.

Construction of infrastructure projects within protected areas undermines the idea of national parks and the principles of nature protection.

The fight to preserve Mavrovo NP from the hydropower development started in 2009, when projects were announced within the Macedonian National Energy Strategy for the period from 2010 to 2020 with future strategies up to 2030. In 2011, five CSOs with different background and expertise, formed the Public Participation Working Group[5] (PPWG) within an IPA project implemented and coordinated by CSO Front 21/42,, actively participated in all relevant decision-making processes concerning the Mavrovo National Park or the HPP projects within its territory. Since November, 2013, PPWG work is supported within the frame of the "Save the Blue Heart of Europe" Campaign.

[5] Public participation working group in decision making processes related to environment consisted of 5 CSOs. Since 2013 the following 3 CSOs are part of the informal group: Front 21/42, Eko-svest and Macedonian Ecological Society.

THE "SAVE THE BLUE HEART OF EUROPE" CAMPAIGN

In 2013, the international CSOs Riverwatch and EuroNatur have launched the international campaign "Save the Blue Heart of Europe" (BHE)[6] in cooperation with several national partner organizations, aiming to protect the most valuable rivers and river stretches in South Eastern Europe from destruction through uncontrolled hydropower development. One of the key areas of interest is the Mavrovo NP and since 2013 the BHE campaign supports the Macedonian CSOs in their fight against HP developments.

The rivers on the Balkan Peninsula are among the best preserved ones in entire Europe. In investigations conducted by EuroNatur and Riverwatch, 38% of the Balkan rivers are in a pristine or near-natural state; another 40% are in a good condition, only slightly modified. In other words, 78% of 80,523 examined river kilometres are in excellent, or acceptable morphological condition. Additionally, these rivers are major biodiversity hotspot: 113 endangered fish species live in the Balkan rivers, 69 endemic fish species are found in this particular place and nowhere else on the planet. Correspondingly, more than 50 % of all European freshwater-mollusk species live on the Balkans.

However, the campaign "Blue Heart of Europe" is threatened by hydropower development: about 2,800 hydropower projects are planned to be implemented between Slovenia to Albania (http://balkanrivers.net/sites/default/files/Hydropower%20development%20in%20the%20Balkans%202017.pdf) .

[6] www.balkanrivers.net

TOOL 1: THE AARHUS CONVENTION

The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) was adopted on 25th June, 1998, and entered into force on 30th October, 2001.[7]

The Aarhus Convention is the most important international legislation concerning the environmental democracy: It links environmental and human rights, acknowledges our obligation to future generations, and establishes the notion that sustainable development can be achieved only through the involvement of all stakeholders.[8]

The "pillars" of the environmental democracy under the Aarhus convention consist of:

1) Access to information;
2) Public participation;
3) Access to justice.

These three pillars depend on each other for to full implementation of the Convention's objectives.

PILLAR 1: ACCESS TO INFORMATION

The public has the right to access to full, accurate, and up-to-date environmental information.

Public authorities are responsible for providing access to and sharing environmental information. The following entities are considered as public authorities (Article 2, paragraph 2):

- Government (at national, regional and other level – ministries, municipalities, etc.) including agencies, institutions, departments, bodies, etc., of political power;
- Natural or legal person having public administrative functions under national law, including specific duties, activities or services in relation to the environment (e.g. Public Enterprise National Park).

Moreover, government and persons or entities who have public administrative functions, by the definition of public authority also include other persons or entities having public responsibilities or functions, or provide public services in relation to the environment, under the control of the other categories of public authorities (e.g. Public Enterprise for Water Supply).

What is Environmental Information

The Aarhus Convention does not provide a definition of "environment". It is logical to interpret the scope of the terms "environment" and "environmental" accordingly in reference to the detailed definition of "environmental information" wherever these terms are used in other provisions of the Convention. According to Article 2, paragraph 3 environmental information includes information on:

(a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components;
(b) Certain factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, economic analyses and assumptions used in environmental decision-making;
(c) The state of human health and safety, conditions of human life, cultural sites and built structures, their environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above.

[7] Link to the official UNECE page: https://www.unece.org/env/pp/introduction.html

[8] The Aarhus Convention: An implementation guide (Second Edition), United Nations, Geneva 2014 pg.15

The public (e.g. person, CSO, entity, etc.) can use the right to obtain an environmental information from the public authorities without stating the interest (Article 4, paragraph 1 (a)). Therefore, you do not have to explain the authorities the reason for the specific information, nor how you are going to use it.

The public authority must provide the information in the requested format (copy, electronic, etc.) as soon as possible no later than one month from the submission of the request (Article 4, paragraph 1 (b) and paragraph 2). If the requested information is voluminous and complex, there is a possibility of extension, along with proper reason for it, of up to two months. If the extension is used, the public authority must notify you, and it must be accompanied by a justification for it.

You or your organization does not have to be citizen or resident of the country from which you are requesting the information, or located near the area you are requesting information from. For example, a CSO from Albania can request environmental information related to a hydropower project in R. Macedonia from Macedonian authorities (as long as the concerned country has ratified the Convention). **Generally, there are two ways to submit your request for information:** in written form via post office or email, verbally in a direct manner in the office of the public authority. Please check your national legislation in regard to the accepted models of submitting the request.

Practical tips for access to information

Before submitting your request make a brief Google research on the topic and check the relevant authority's webpage, or their available library. According to Article 5 of the Convention, public authorities are obliged to collect and disseminate environmental information. Moreover, the Article obliges the country to provide sufficient information to the public about the type and scope of environmental information held by the relevant public authorities, the basic terms and conditions under which such information is made available and accessible, and the process by which it can be obtained.

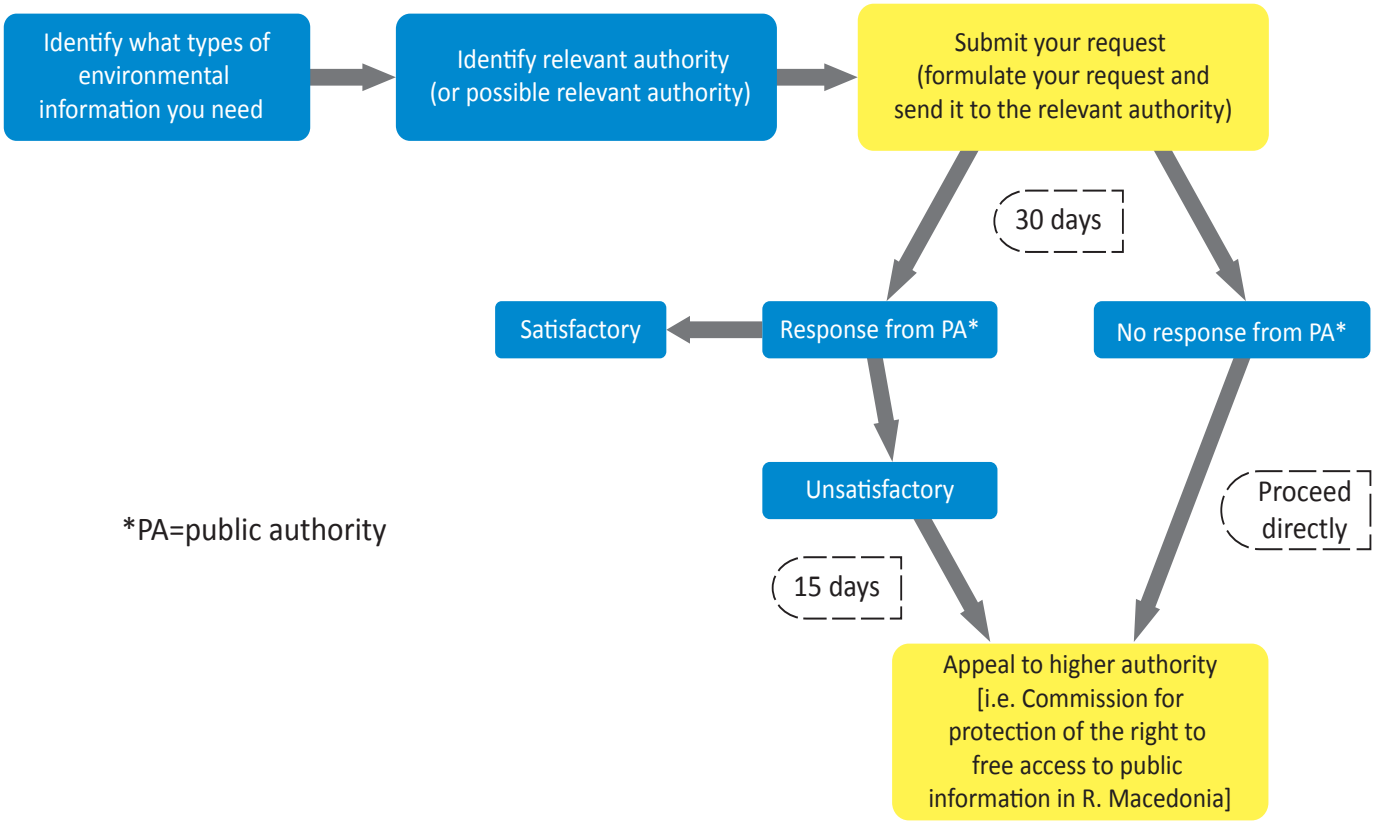
The request should contain the following elements:

- name of the public authority. You should address the request to the public authority (department, sector, etc.) or natural or legal person that performs public administrative functions. If possible, before addressing the request, consult lists, organizational charts or similar documents that provide overview of public authorities structure/responsibilities in your country;
- the information you requested. Be specific as much as possible. Check public information lists or registers (if available). Preferably, provide references of the information requested with specific law/bylaw. It is always convenient to consult the relevant laws and bylaws in order to be as precise as possible in the description of the request;
- the form in which the information should be disclosed e.g. hard copy, electronic, etc.;
- the means the public authority should provide access to the requested information (insight, send copy by post, send electronic version via email, fax, etc.);
- your contact information.

The Aarhus Convention does not provide a template request of information. Generally, countries provide some format/template which you can use to prepare the request (for some countries it is obligatory to use a specific template).

Regardless, if you are not able to prepare your request, you should request assistance from the public authority.

Diagram 1. Procedure on access to environmental information in R. Macedonia



Your request to access to information may only be refused on the basis of very limited exemptions. The refusal must be given in written form containing the reasons (the rationale of the decision not to grant access) and information on the access to review procedure (Article 4, paragraph 7).

Public authorities can refuse disclosure of environmental information if:

- the requested information is not held by the public authority Article 4, paragraph 3(a)

In Article 5, paragraph 1 (a), the Aarhus Convention requires Parties to ensure that public authorities possess and maintain environmental information relevant to their functions. If another public authority holds the requested information, the approached public authority is obliged to inform the applicant which public authority has the information. Alternatively, it can transfer the request directly to the relevant public authority and notify the applicant that it has done so.

- the request is "manifestly unreasonable" or "too general" Article 4, paragraph 3(b)

If this exemption is used, public authority should assist you in revising/specifying the request. Any assistance or guidance provided by public authorities to the members of the public before submitting the request will help to avoid situations where the request is manifestly unreasonable or formulated in a too general manner.

- requested material is in the course of completion or concerns internal communications Article 4, paragraph 3(c)

This exemption can be used only when national law or customary practice exempts such materials (e.g. legal grounds or establish administrative practice). "In the course of completion" relates to the process of preparation of the information or document. Individual documents that are being actively worked upon by the public authority, and as soon as those documents are no longer in the "course of completion", they should be released, even though they are not finished.

Other optional grounds for refusing disclosure of information (Article 4, paragraph 4) are the following:

- proceedings of public authorities, where confidential under national law;
- international relations, national defence or public security;
- the course of justice;
- commercial and industrial confidentiality, where protected under national law;
- intellectual property rights;
- personal data, where confidential under national law;
- the interests of a third party which provided the information requested voluntarily;
- protection of the environment to which the information relates.

These grounds should be interpreted in a restrictive way, taking into account public interest in the disclosure (Article 4, paragraph 4). The Convention does not provide specific guidance on how to balance the "public interest". Countries may choose to consider the public interest (a) categorically across an entire issue; (b) case by case in each decision on whether to release information; or (c) may provide some latitude for case-by-case determinations within the framework of policies or guidelines. In some countries, like in R. Macedonia, the public authority must *per se* conduct a Public Interest Test in order to justify its decision to refuse the access to information.[9]

In this toolkit, we will elaborate three of the above mentioned optional grounds, usually used by public authority, for refusing disclosure of environmental information:

- ***Commercial and industrial confidentiality***

This exemption should protect the legitimate economic interests of private entities, public bodies or the State itself, provided the requested information is of commercial or industrial nature. The conditions that must be met to apply this exemption are: the national law must expressly protect the confidentiality of that information (as commercial or industrial secrets); and the confidentiality must protect a "legitimate economic interest". With regards to the second condition, please note that it would be difficult for an enterprise operating in a monopolistic manner, such as state owned electricity companies, to assert a claim of commercial confidentiality, since there are no competitors that could gain an advantage by giving access to the information.

- ***Intellectual property rights***

This exemption protects copyright, patent, trademark (including geographical indications) and trade secret. When it comes to patents, copyright and trademarks, protection is afforded to a specific individual person or corporate entity; it is limited in duration, and has the primary goal of creating economic rewards for creators and inventors through market transactions involving the intellectual property right or its subject matter. Studies, analysis, and other information prepared for the purposes of a public file in an administrative procedure (e.g. EIA studies, Elaborate for Environmental Protection, etc.) cannot be "entitled to keep the information from public disclosure on the grounds of intellectual property law". Such documents must be disclosed to the public. [10]

- ***Information on protected sites***

This exception allows the government to protect certain sites, such as the breeding sites of rare species from exploitation — even to the extent of keeping their location secret. It exists primarily as a safeguard, allowing public authorities to take into account the damage to the environment when making a decision whether or not to release information.

[9] Law on free access to public information Article 3 – "Public interest pest" is a mandatory procedure conducted by the holder of information before it refuses the access in accordance with the possible exemption set in Article 6 of this Law, used as a mean of checking the consequences over the interest protected thereon, that is the public interest achieved by publication of the information. This Public Interest Test, according to the Macedonian legislation, is not publicly disclosed and its quality cannot be challenged before an independent body or court. This can make the Public Interest Test a very weak instrument for protection of the public interest.

[10] Findings on communication ACCC/C/2005/15 (Romania). Furthermore, where copyright laws may be applied to such studies, it does not justify a general exclusion of such studies from public disclosure.

Please note that each of the above-mentioned exemption cannot be used if the information is already in the public domain. Additional unpermissible exemption is when the disclosure of the information requires consent of a third party.

Article 4, paragraph 8, allows the public authority to charge for supplying information, but the charge shall not exceed the reasonable amount. In order to comply with this Article, the public authorities must publish a schedule of charges indicating the circumstances in which they may be levied or waived. The period of the supply of information is conditional on the advance payment of such charge.

If you (or your CSO) believe that your right to access to environmental information was breached or misused as described above, you have the right to a review procedure (please consult Pillar 3: Access to justice, page 30)

PILLAR 2: PUBLIC PARTICIPATION IN DECISION MAKING PROCESSES

Public participation in decision making processes enables the public to take part in basic decisions that affect their lives. These decisions can be related to:

- **Activity (projects)**: participation of the public that may be affected by or that is interested in decision-making on a specific activity (Article 6);
- **Winder planning:** participation of the public in the development of plans, programmes, and policies relating to the environment (Article 7);
- **Legislation:** participation of the public in the preparation of laws, rules and legally binding norms (Article 8).

The Countries must fulfill the following obligations in relation to the public participation in the decision-making processes:

- ***Set requirements for notifying the public concerned (Article 6, paragraph 2):***

- First of all, public concerned must be identified, then notified. The "public concerned" is defined as "the public affected or likely to be affected by, or having an interest in the environmental decision-making, policymaking and law-making processes", and explicitly includes CSOs promoting environmental protection and meeting requirements under national law;
- the public must be notified early in the process (as early as possible) in an adequate, timely and effective manner. The Convention offers two methods of informing the public — public notice and individual notice. The public notice includes dissemination of information to as many members of the public as possible by using the classic means for general and widespread transmission of the information including: publication in a newspaper or other generally available printed media, dissemination through mass media (TV, radio), through electronic means or posting of notices in areas with heavy traffic or places frequented by the local population (e.g. bus stations, churches, shops etc.), bill-posting within a certain radius, publication in local newspapers and the organization of exhibitions with plans, drawings, tables, graphs and models, etc.[11]

  The notice must include information on:

  (a) The proposed activity and the application on which a decision will be taken;
  (b) The nature of possible decision or the draft decision;
  (c) The public authority responsible for making the decision;
  (d) The envisaged procedure, including, as and when this information can be provided:
    (i) The commencement of the procedure;
    (ii) The opportunities for the public to participate;
    (iii) The time and venue of any envisaged public hearing;
    (iv) An indication of the public authority from which relevant information can be obtainedand where the relevant information has been deposited for examination by the public;
    (v) An indication of the relevant public authority or any other official body to which comments or questions can be submitted, and the time schedule for transmittal of comments or questions;
    (vi) An indication of what environmental information relevant to the proposed activity available; and
  (e) The fact that the activity is subject to a national or transboundary environmental impact assessment procedure.

[11] In its findings on communication ACCC/C/2009/37 (Belarus), the Compliance Committee held that *"journalists' articles commenting on a project in the press or on television programmes ... in general, do not per se constitute a public notice for the purpose of public participation, as required under Article 6, paragraph 2, of the Convention".* Another interesting finding is the on communication ACCC/C/2009/43 (Armenia), the Compliance Committee observed that *"sometimes, it may be necessary to have repeated notifications so as to ensure that the public concerned has been notified".*

- ***Set time frames for public participation procedures within a decision-making process (Article 6, paragraph 3):***

- Specific time frame must be established for the different phases of the decision-making process. In defining the time frame, authorities must keep in mind that there are certain periods in public life which are traditionally considered as holidays or free days (for example, the days of the major religious festivals of each country, national holidays and to a certain extent, the summer vacation period).[12];
- must provide sufficient time (reasonable time frame) to inform the public so as to prepare and participate effectively in the decision (the public must be able to influence the decision)[13] keeping in mind the quantity and difficultness of the documents that are subject to discussion.

- ***Secure that public participation take place early in decision-making process (Article 6, paragraph 4):***

- As early as possible when all options are still open. Early public participation in complex decision-making in relation to large activities may involve several stages and parallel processes.[14] However, to provide public participation at a later stage, when certain decisions have already been taken, cannot rectify the failure to provide public participation at an earlier stage when all options were still open.[15]
- Public participation must not be pro forma. Public participation procedure is not conducted only to justify an "already adopted" decision, there must be real opportunity for the public to influence the decision.

- ***Public authorities encourage exchange of information between decision applicants (e.g. investors, businesses, etc.) and the public (Article 6, paragraph 5).***

- ***Provide the public concerned with access to all information relevant to the decision-making (Article 6, paragraph 6):***

- The public must have free of charge access to all relevant, not just environmental information, or at least to provide:
  (a) A description of the site: the physical and technical characteristics of the proposed activity, including an estimate of the expected residues and emissions;
  (b) A description of the significant effects of the proposed activity on the environment;
  (c) A description of the measures envisaged to prevent and/or reduce the effects, including emissions;
  (d) A non-technical summary of the above;
  (e) An outline of the main alternatives studied by the applicant; and
  (f) In accordance with national legislation, the main reports and advice issued to the public authority at the time when the public concerned was informed.

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[12] In its findings on communication ACCC/C/2008/24 (Spain), the Compliance Committee held: "*a period of 20 days for the public to prepare and participate effectively cannot be considered reasonable, in particular if such period includes days of general celebration in the country*".

[13] In its findings on communication ACCC/C/2009/43 (Armenia), the Committee considers that one week to examine the EIA documentation relating to a mining project (first hearing) is not early notice in the meaning of Article 6, paragraph 2, because it does not allow enough time to the public concerned to get acquainted with voluminous documentation of a technical nature and to participate in an effective manner.

[14] The effectiveness of public participation in a particular decision-making process may depend not only on effective public participation at one stage of the decision-making, but on public participation taking place more than once.

[15] In its findings on communication ACCC/C/2005/12 (Albania), the Committee found it important to make clear that once a decision to permit a proposed activity in a certain location has already been taken without public involvement, providing for such involvement in the other decision-making stages that will follow can under no circumstances be considered as meeting the requirement under Article 6, paragraph 4, to provide "early public participation when all options are open". This is the case even if a full environmental impact.

- ***Secure procedures for submitting any comments, information, analyses or opinions the public considers relevant to submit in written form or orally on public hearing (Article 6, paragraph 7):***

- There are no specific requirements about its format or contents. Public authorities should encourage the public to submit comments and open a discussion;
- The public hearings should be held at a reasonable time, after the date of notification, in order to allow the public to study the materials, analyze other information relevant to the proposed activity, and prepare opinions, suggestions, comments, alternatives or questions. In many countries including R. Macedonia the law requires the hearing to be recorded. The record should provide the meeting proceedings, minute by minute, and include the list of participants, as well as the complete list of submitted comments and suggestions;
- The possibility to comment should be made available during the entire commenting period, which-together with the possibility to inspect documents -should coincide with the information-gathering stage of the authorities' decision-making.

- ***Ensure that decision takes due account of the public participation (Article 6, paragraph 8):***

- Authorities must seriously consider the outcome of public participation and address it in decision-making, policymaking and law-making processes. In this regard the authorities must provide reasons and considerations on which the decision is based;
- Authorities should provide evidence of how the public participation was taken into account. Furthermore, it must be able to show why particular comment was rejected on substantive grounds;
- Taking due account does not require the relevant authority to accept the substance of the entire received comments or to change the decision according to every comment.[16]

- ***Ensure that the public is promptly informed about the final decision after it is taken (Article 6, paragraph 9):***

- Practical arrangements to make the text of the decision along with given reasons and considerations publicly. It is important to the public to receive notice so as to be able to challenge the decision upon valid grounds, before there is an opportunity for the proponent to proceed further with a particular activity so that the status quo cannot be preserved or can be restored only at great cost.

- **Secure public participation in decision-making processes when revision or change occurs** e.g. when public authority reconsiders or updates operating conditions (Article 6, paragraph 10).

Provisions for public participation set in Article 6, paragraph 3, 4 and 8 subsequently apply to public participation concerning plans, programmes and policies related to environment. Moreover, the public authority should identify the participating public in line with the goal of the Convention (very similar to Article 6, paragraph 2).

When it comes to the public participation in executive regulation and/or generally applicable legally binding normative instruments (e.g. laws, bylaws, etc.) related to environment-public authorities should strive to promote effective public participation at an appropriate level, when the options are still open. The draft version (similar to Article 6, paragraph 6) should be published in reasonable time frame and correspondingly should be fixed (similar to Article 6, paragraph 3). The result of the public participation should be taken into account to the greatest degree possible (similar to Article 6, paragraph 8).

If you (or your CSO) believe that your right to public participation was breached or misused as described above, you have the right to a review procedure (please consult Pillar 3: Access to justice on page 30).

[16] In connection with its discussion of communication ACCC/C/2008/29 (Poland), the Compliance Committee observed that: The requirement of Article 6, paragraph 8, the public authorities take due account of the outcome of public participation, does not amount to the right of the public to veto the decision. In particular, this provision should not be read as the final say about the fate and design of the project rests with the local community living near the project, or that acceptance is always needed.

PARTICIPATION IN DECISION MAKING ON SPECIFIC ACTIVITIES (ARTICLE 6)

Article 6 addresses the public participation in decisions which enable particular proposed project, activity or action to go forward.

Article 6 obliges public participation in the decision making process for activities listed in Annex I of Aarhus Convention (subparagraph a). For activities not listed in Annex I, which may have a significant effect on the environment, the provisions of Article 6 may apply (subparagraph b) and in that case the public authority shall determine whether such proposed activity is subject to provisions or not. While subparagraph (a) refers to "decisions on whether to permit", subparagraph (b) refers to "decisions on" proposed activities. **Activities for which public participation is obligatory according to the Aarhus Convention (Article 6) are set out in Annex I of the Convention. The following Annex items should be checked by the public, if applicable for hydropower related activities (in order to assert the right for public participation - if needed):**

- point 10. Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres;
- point 11.
  (a) Works for the transfer of water resources between river basins whereas this transfer aims at preventing possible shortages of water and the amount of water transferred exceeds 100 million cubic metres/year;
  (b) In all other cases, works for the transfer of water resources between river basins where the multi annual average flow of the basin of abstraction exceeds 2,000 million cubic metres/year and the amount of water transferred exceeds 5 %of this flow.
  In both cases under point 11 transfers of piped drinking water are excluded.
- point 13. Dams and other installations designed for holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.
- point 17. Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km.
- point 20. Any activity not covered by Annex I points 1-19 where public participation is provided for under an environmental impact assessment procedure in accordance with national legislation.
- point 22. Any change or extension of activities, if such a change or extension meets the criteria/thresholds set out in Annex I.

Aarhus Convention's Article 6 and EU's Environmental Impact Assessment (EIA) procedure set in the EIA Directive [17]

It may appear that Article 6 refers simply to public participation in EIA procedures but, EIA is not a permitting or authorization process. It is one of many tools within the decision-making process; the latter being addressed by Aarhus Convention.
The term EIA has become associated with a standard form of procedure for the assessment of potential environmental impacts as part of the decision-making process relating to a proposed activity.

[17] Directive 2011/92/EU of the European Parliament and of the Council of 13 December, 2011, on the assessment of the effects of certain public and private projects on the environment. Link: http://ec.europa.eu/environment/eia/eia-legalcontext.htm

There is an additional possibility to apply the public participation provisions of Article 6 for proposed activities that are not part of Annex I of the Convention, only if the proposed activity might have "significant impact on the environment". The concept of "significant impact on the environment" is not defined in the Convention.

Generally, according to the Aarhus Convention, the following criteria are used in order to determine the impact:

- size of the proposed activities,
- location (e.g. close to an area of special environmental sensitivity or importance such as wetlands designated under the Ramsar Convention, national parks, nature reserves, sites of special scientific interest, or sites of archaeological, cultural or historical importance), and
- effects (serious effects on humans or on valued species or organisms, effects which threaten the existing or potential use of an affected area and effects causing additional loading which cannot be sustained by the carrying capacity of the environment).[18]

A great number of hydropower projects are implemented within protected areas or areas with high biodiversity values thus, if the project by its characteristics and scope does not fit in the Annex I (Aarhus Convention), due to its significant impact on the environment, it will be subject to public participation procedure in accordance with Article 6. Significant impact to the environment can arise in cases where a number of hydropower projects are planned on one river (known as the cumulative impact).

Form of the decision by public authorities

The form of the decisions varies from spatial-planning decisions, development consents, construction and operating permits, to secondary decisions such as those relating to safety and emissions. The initial list of decisions that are usually taken into account by the public authorities in relation to hydropower projects are presented as follows:

- Public call for concessions;
- Government decision on selection of the most favorable bid;
- Concession agreement including specific conditions;
- Water permit (usually based on Law on water or a Law on concession and public private partnership);
- Environmental Impact Assessment (EIA) permit or Environmental Study permit for smaller projects (e.g. in R. Macedonia besides the EIA permit there is also an Elaborate for Environmental Protection approval for smaller projects)
- Decision on land transformation;
- Construction permit,
- Soil excavation permit, etc.

The requirements of Article 6 apply to all decisions to permit activities whether or not a foral licensing or permitting procedure has been established[19].

[18] Good criteria for determining the impact are set in the EIA Directive. In its Annex III the EIA Directive sets the following selection criteria for determining whether a particular project should be subject to EIA procedure:

- ***Characteristics of projects***, such as the size, the connection with other projects, the use of natural resources, the production of waste, pollution and nuisances and the risk of accidents;
- ***The location of projects***, such as the environmental sensitivity of geographical areas likely to be affected by projects, including, for example, wetlands, coastal zones, mountains, forest areas, nature reserves and parks, landscapes of historical or cultural significance, or densely populated areas;
- ***Characteristics of the potential impact***, including the extent of the impact in terms of geographical area and affected population, the transfrontier nature of the impact, the magnitude and complexity of the impact, the probability of the impact, and the duration, frequency and reversibility of the impact.

[19] Article 6 does not require a formal licensing or permitting procedure to be established, but if such a procedure is established, the public participation requirements of Article 6 must be implemented as part of it.

As previously elaborated in this section, Article 6 obliges the authorities to inform the public concerned, either by public notice or individually as appropriate, ***early*** in an environmental decision-making procedure and in an ***adequate, timely and effective manner*** as explained in the introduction of the public participation chapter.

Efforts must be made to ensure the public concerned is not only reached, but that the meaning of the notification is understandable (suitable for the group you are addressing) and all reasonable efforts have been made to facilitate participation. Early public participation means that the public may participate ***when all options are open and participation may be effective.*** This is very important for projects where public authorities sign concession agreements with investor, who later on applies for environmental permit.[20]

Practical tips for public participation

- **Never forget to document everything in order to have legally valid proofs if needed.**

When you engage in public participation procedure first you have to cross-check the procedural aspects of the process.

Primarily, check:

1. the order and hierarchy of decisions/permits and whether public participation is enabled at early stage in the chain of decisions,
2. the public participation time frame[21],
3. the content (elements) of the public announcements (Article 6, paragraph 2),
4. the means used for announcements[22],
5. the availability of documents.
   It is crucial to check whether all relevant documents are available in the commenting period (for example, is the draft version of the water permit available for insight, further request of details such as where, in which format, or is it easily accessible, etc.).

[20] In its findings on communication ACCC/C/2008/24 (Spain), the Compliance Committee held that "entering into agreements relevant to the Convention that would foreclose options without providing for public participation may be in conflict with Article 6 of the Convention".

[21] With regard to communication ACCC/C/2009/37 (Belarus), the Compliance Committee, noting that under Belarusian law hearings must be organized no earlier than 30 days from the date of the public notice, made the following finding: The Committee appreciates a flexible approach to setting the time frames aiming to allow the public to access the relevant documentation and to prepare itself, considering the fact that a minimum of 30 days between the public notice and the start of public consultations is a reasonable time frame. The flexible approach allows extending this minimum period as necessary, taking into account, inter alia, the nature, complexity and size of the proposed activity. The findings are also relevant on communication ACCC/C/2009/43 (Armenia), where the Compliance Committee held the following: The Committee considers that one week to examine the EIA documentation relating to a mining project (first hearing) is not an early notice in the meaning of Article 6, paragraph 2, because it does not allow enough time to the public concerned to get acquainted with voluminous documentation of a technical nature and to participate in an effective manner.

[22] In its findings on communication ACCC/C/2006/16 (Lithuania), the Compliance Committee held that: The requirement for the public to be informed in an "effective manner" means that public authorities should seek to provide a means of informing the public which ensures that all those who potentially could be concerned have a reasonable chance to learn about proposed activities and their possibilities to participate. Therefore, if the chosen way of informing the public about possibilities to participate in the EIA procedure is via publishing information in local press, much more effective would be publishing a notification in a popular daily local newspaper rather than in a weekly official journal, and if all local newspapers are issued only on a weekly basis, the requirement of being "effective" established by the Convention would be met by choosing the one with the circulation of 1,500 copies, over the one with a circulation of 500 copies.

If the envisaged procedure includes public hearing, be aware that the notification must also include sufficient information about the time and place the public hearing will be held (Article 6, paragraph 2 (d)). If the procedure does not include public hearing, then you should submit the comments within the given timeline. If you are not sure whether the procedure includes public hearing, then contact the relevant authority to confirm it for you.

Prepare BEFORE the public hearing:

- Check and inspect the content of the available documents. Keep records of missing documents and reflect this issue in your comments (especially in written form).
- Cross-check the provided information e.g. the location of the project, the size, etc.
- Compare the potential impact on other similar activities or with the impact on the same activity on similar location e.g. the impact on protected area.
- Prepare questions and initial comments beforehand and clarify the public participation procedure (what is going to be the decision, the given deadline to send comments, to whom you should send the comments, etc.).
- Inform and invite media to report on the public hearing.

DURING the public hearing:

- Make sure that there is a record or minutes of the discussion and that your comments are duly noted.
- Check for attendance - there must be at least one representative of the competent authority.
- Track your own minutes and write down any new or additional information discussed or expert reference.
- Make sure that you practice your right to participate - state your comments and clarify your questions during the hearing. If this is not the case, keep evidence and demand this fact to be duly noted by the authorities.
- Avoid off the record discussion and off topic discussion.
- Connect with the present representatives of the media reporting on the public hearing. You can draw their attention to potential failures in the procedure. Moreover, you can use social media tools (like Facebook Live) for documentation and communication.
- Pay attention to other speakers. You may find allies that support your comments.

AFTER the public hearing/SUBMITTING COMMENTS (also in case when public hearing has not been organized):

- Prepare your (final) comments in oral or written form and send them to the responsible authority. If you choose the oral form of submitting the comments, make sure that all of them are dully noted and make sure you receive written confirmation by the public authority.
- Hints for preparing comments:
  - Try to include as much facts as possible.
  - Reference to scientific papers, expert opinions and similar documents will bring serious weight to your comments.

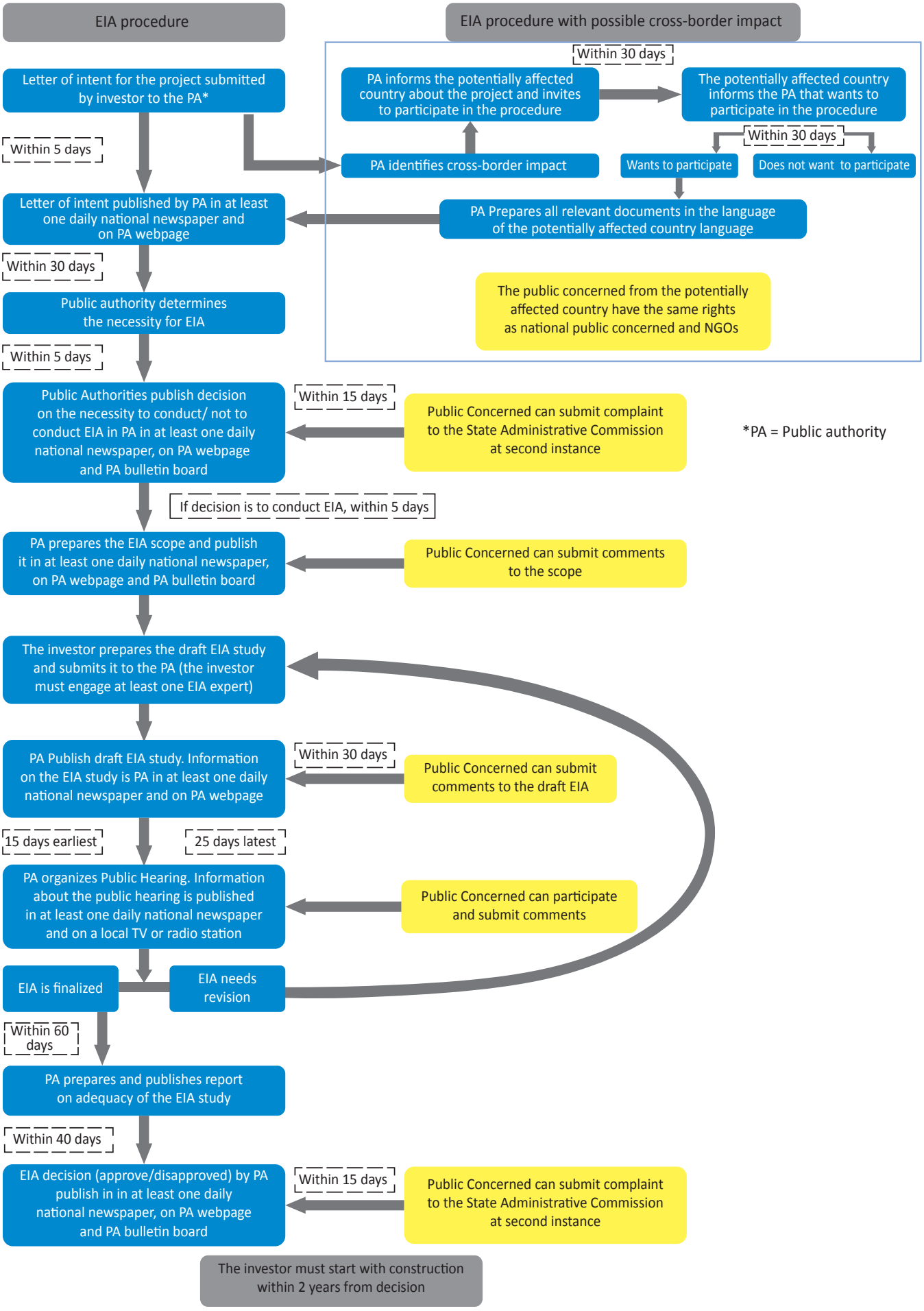
- Getting support from expert community or local community is an asset.
- From a technical point of view try to structure the comments as clear as possible (organize them in chapters/paragraphs, etc.).
- Toward the end of your comments/statement kindly remind the public authority that they have obligation to duly take note of the comments into account and that you expect the outcome in writing.
- In relation to this, don't forget to add/give your contact details.

- It is very important to address the comments to the competent authority within the given legal time frame. Hence, calculate the dates/deadlines correctly.
  Example: In R. Macedonia an information on EIA study was published in national newspaper on October 1st 2018. The relevant authority (the Ministry of Environment) published the EIA study on their webpage and made it available for insight on October 3rd 2018. The given period for commenting is 30 days. The commenting period will end on November 2nd 2018. Avoid sending comments at the last moment.
- Make sure there is proof of submission of your comments in time (e.g. post confirmation document, archive number of the relevant authority, email, etc.).

Participation in the decision-making process with transboundary impact

Another important mechanism related to public participation is the Convention on Environmental Impact Assessment in a Transboundary Context ("Espoo Convention"), adopted at Espoo, Finland, on 25 February 1991. The Espoo Convention shows the link between public participation and environmental impact assessment. Its Article 4, paragraph 2, is especially relevant for public participation. The Espoo Convention obliges parties to assess the environmental impact of certain activities at an early planning phase and requires countries to notify and consult each other on all major projects that are likely to have a significant adverse environmental impact across boundaries (Please consult Case study No. 4, page).

Diagram 2. Example of the public participation in the decision-making process in the EIA procedure in R. Macedonia (including transboundary component)



PARTICIPATION IN THE DECISION-MAKING PROCESSES RELATED TO PLANS, PROGRAMMES AND STRATEGIES (ARTICLE 7)

Article 7 covers the public participation regarding the adoption of plans, programmes and policies related to environment. The difference of the participation in decision-making related to activities, is that Article 7 requires the provisions to be applied to "the public" rather than the narrower "public concerned" (as stipulated in Article 6). In addition to the expected representatives of special interest groups that are traditionally included in these processes, other members of the public that learn about the process through the required notification, may also express their interest in participating.[23]

Article 7 allows more flexibility for the public authorities in finding appropriate solutions for public participation in this category of decision-making. Countries should make proper and/or other provisions for the public to participate within a transparent and fair framework, having provided the necessary information to the public (Article 6, paragraphs 3, 4 and 8, are applied, please check the introductory part of the chapter).[24]

The Convention does not define the terms "plans", "programmes" and "policies". The following types of plans, programmes and policies may be considered as "related to the environment"[25]:

- Those which "may have a significant effect on the environment" and require SEA;
- Those which "may have a significant effect on the environment" but do not require SEA, for example, those that do not set the framework for a development consent;
- Those which "may have effect on the environment" but the effects are not "significant", for example, those that determine the use of small areas;
- Those intended to help to protect the environment.

When it comes to hydropower development, you have to pay attention to plans, programmes and policies related to:

- **Energy and climate issues** (including National Energy Development Strategies, National Climate Action Strategy, Nationally Determined Contributions for Climate Change – NDCs, etc.);
- **Renewable energy sources (RES)** (including National Plan for utilisation of RES)[26];
- **Water management** (National Water Management Strategy, River basin management plans, etc.);

[23] Aarhus Guide 179

[24] The requirement for "early public participation, when all options are open" should be seen first of all within a concept of tiered decision-making, whereby at each stage of decision-making certain options are discussed and selected with the participation of the public and each consecutive stage of decision-making addresses only the issues within the option already selected at the preceding stage. Thus, according to the particular needs of a given country and the subject matter of the decision-making, Parties have certain discretion as to which range of options is to be discussed at each stage of the decision-making. Such stages may involve various consecutive strategic decisions under Article 7 of the Convention (policies, plans and programmes) and various individual decisions under Article 6 of the Convention authorizing the basic parameters and location of a specific activity, its technical design, and finally its technological specifications related to specific environmental standards. Within each and every procedure, where public participation is required, it should be provided early in the procedure when all options are open and effective public participation can take place. (European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10, 2 May 2008, para. 51)

[25] Aarhus Convention Guide 176

[26] The Party concerned has informed the Committee that there was "no complex decision taken on the development of industrial park as a whole". It has emphasized that Decision No. 8 of the Council of Territorial Adjustment of the Republic of Albania "On the Approval of the Industrial and Energy Park – Vlore", which approved the development of "The Industrial and Energy Park -- Vlore", was just a location (siting) decision. However, this does not detract from its importance, both in paving the way for more specific decisions on future projects and in preventing other potentially conflicting uses of the land. Several ministries were instructed to carry out this decision. The decision came into force immediately. It is clear to the Committee that this was a decision by a public authority that a particular piece of land should be used for particular purpose, even if further decisions would be needed, before any of the planned activities could go ahead. (Albania ACCC/C/2005/12; ECE/MP.PP/C.1/2007/4/Add.1, 31 July, 2007, para. 72)

- **Spatial planning** (National Spatial Plan, Urban Development Plan, Urban Development Documentation, etc.)[27].
- **Finances and budgets**.

This list is indicative and has not been exhausted.

Aarhus Convention's Article 7 and EU's Strategic Environmental Assessment (SEA) procedure set in the SEA Directive[28]

While the Aarhus Convention does not oblige Parties to undertake environmental assessments, a legal basis for the consideration of the environmental aspects of plans, programmes and policies is a prerequisite for the implementation of Article 7 of the Convention. For example, Article 7 requires the Parties to ensure that "due account is taken of the outcome of public participation" and implies that there must be a legal basis to take environmental considerations into account in plans, programmes and policies. Similarly, the requirement to take the outcome of public participation into account points out to the need of establishing a system for evaluating comments. Proper public participation procedures in the context of SEA are a valuable tool to assist in the implementation of Article 7. SEA provides public authorities with a process for integrating the consideration of environmental impacts into the development of plans, programmes and policies[29]. Two important instruments on SEA are the EU's SEA Directive and the Protocol on SEA to the Espoo Convention[30].

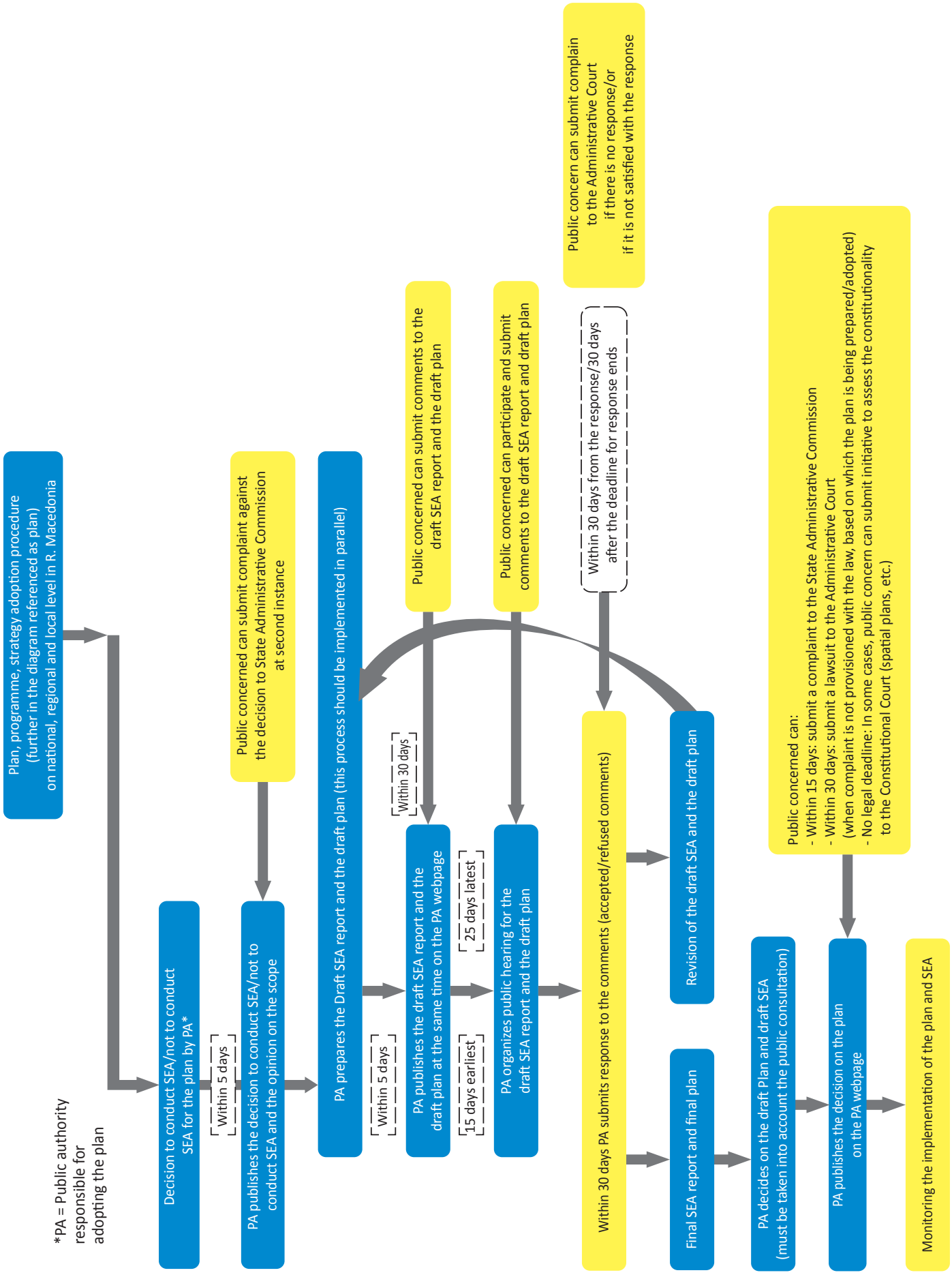
[27] The Committee also finds that by failing to provide for public participation in decision-making processes for the designation of land use, the Government of Armenia was not in compliance with Article 7 of the Convention. (Armenia ACCC/C/2004/8; ECE/MP.PP/C.1/2006/2/Add.1, 10 May 2006, para. 43)

[28] Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (http://ec.europa.eu/environment/eia/sea-legalcontext.htm)

[29] Aarhus Convention pg. 174

[30] Link to the SEA protocol to the ESPOO Convention: https://www.unece.org/env/eia/sea_protocol.html

Diagram 3. Example of public participation in the decision making process related to plans and programs in the SEA procedure in R. Macedonia



PARTICIPATION OF THE PUBLIC IN THE PREPARATION OF LAWS, RULES AND LEGALLY BINDING NORMS (ARTICLE 8)

Article 8 of the Aarhus Convention's addresses public participation in a particular area of decision-making: the preparation by public authorities of executive regulations and generally applicable legally binding rules - until drafts are prepared by the executive branch and passed to the legislature. Therefore, the following steps should be taken:

(a) Time-frames sufficient for effective participation should be fixed;

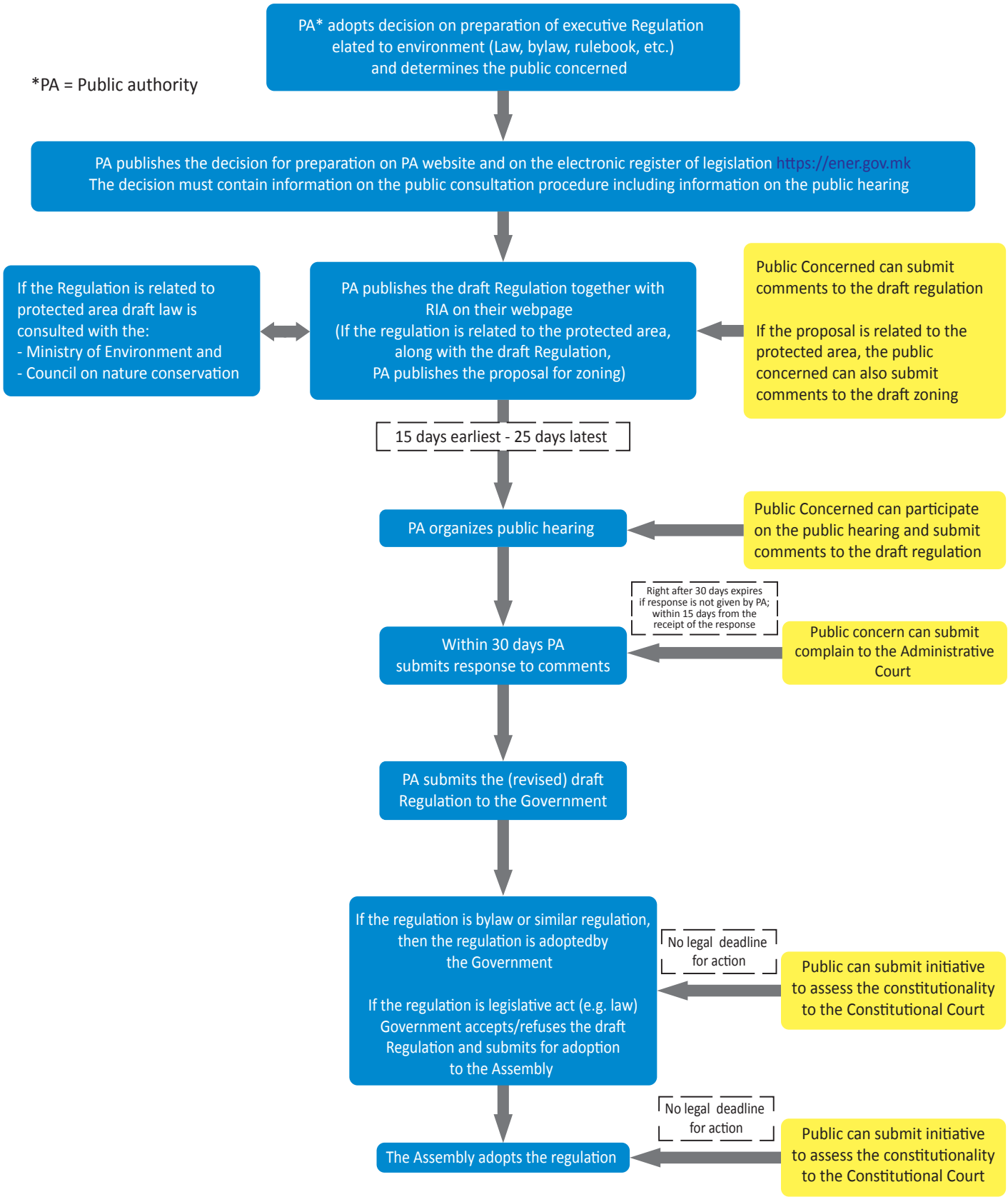
(b) Draft rules should be published or otherwise made publicly available; and

(c) The public should be given the opportunity to comment, directly or through representative consultative bodies.

The result of the public participation should be taken into account to the greatest extent.

The term "rules" is used in this section in its broadest sense, and may include decrees, regulations, ordinances, instructions, normative orders, norms and rules. This includes: Law on nature conservation as well as laws designating protected areas (especially if the law defines zones with permitted/forbidden activities), Law on water and norms which determine the biological minimum or water permits, etc.

Diagram 4. Example of public participation in the decision making process related to regulation in R. Macedonia



PILLAR 3: ACCESS TO JUSTICE

Access to justice as a human right, is the third important pillar of the Aarhus Convention (Article 9) and justifies resorting to an administrative or judicial appeal in a court of law if:

- the **right of access to information** is violated (Article 9.1) *[also compare chapter Pillar 1: Access to information]*:
  - Information is provided but incomplete and/ or irrelevant to the request;
  - The request for information is rejected;
  - No reply is given within the deadline (i.e. 1 (+1) month.
- the **right to participate** is violated (Article 9.2) [also compare chapter Pillar 2: Public participation]:
  - Notification about the decision-making procedure is not provided;
  - The means of notification are insufficient to reach those concerned;
  - Notification is issued at a late-stage in the procedure;
  - The notification does not contain the minimum required information;
  - More detailed information about the project, programme or plan is not available;
  - The procedure does not allow for submission of comments;
  - Comments do not take due account of the following:
    - The decision maker cannot reasonably explain why certain comment was not incorporated in the final decision;
    - The decision is not published;
    - The published decision does not include the rationale for the decision.
- **environmental laws** are violated (Article 9.3):
  - Acts or omissions of private persons who violate laws related to the environment may be challenged;
  - Acts or omissions of public authorities that violate laws related to the environment may be challenged.

(*This provision has several conditions, including the right to bring a case, which has to meet certain criteria—usually an affected interest. It is known as "standing"*).

Countries are obliged to provide information to the public on access to administrative and judicial review procedures and should consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.

Article 9 of the Convention gives special status to environmental CSOs, and recognize them as having an interest in cases of access to justice on the right to participate in decision making, therefore "standing" to bring cases in these instances.

Access to an appeal procedure is usually reached through an administrative appeal to bodies superior to the decision maker (e.g. Administrative Commission in Second Instance), and through the courts (e.g. the Administrative Court).

In certain instances, where any of the means of access to justice cannot be used successfully, several procedures also exist internationally, including the Convention's own Compliance mechanism (the Aarhus Convention Compliance Mechanism), and in some cases, the European Court of Human Rights.

Appeal to a higher authority in R. Macedonia

This simply means that if you are not satisfied with the decision of an official, you can always turn to a higher authority in the hierarchy. According to the Law on General Administrative Procedure, decisions issued in the first instance are subject to complaint to a higher authority in accordance with the law (e.g. decision issued by the Ministry of Environment is subject to appeal to the State Commission for decisions in administrative procedures and procedures for employment on second instances).

Also, a complaint to a higher authority may be submitted if a public authority has not acted on the request of the party within the defined time frame or by a specific deadline (e.g. within 30 days for a request for access to information).

An appeal should be submitted within 15 days of receipt of the decision, unless it is otherwise determined by the specific law. The deadline to submit an appeal is counted from the date of receipt of the decision.[31]

The complaint in an administrative review can be sent either to the issuing body or directly to the higher authority. If sent to the higher authority, the complaint is first forwarded to the issuing body to check its admissibility. **Within seven days from the submission of the complaint the issuing body should check whether the complaint is admissible** (grounded, timely and completed by an authorized person).

If it is admissible, the issuing body shall hand over the complaint and all related documents to the higher instance, which is then entitled to:

a) annul the first instance act (partially or completely) and request the first instance (issuing body) to review the procedure with specific guidelines for amendments; or

b) annul the first instance act, review the administrative procedure, and adopt a new administrative act on the subject (if the complaint is submitted on an act that has been previously annulled by a higher instance, but the issuing body has not followed specific guidelines for amendments). **The administrative procedure for the complaint should be completed without delay, and no later than 60 days from the date of receipt of the complaint and all related records.**

During the administrative complaint procedure, the administrative act cannot be implemented except in cases when the law specifically stipulates that the complaint does not delay execution of the act.

[31]Administrative decisions adopted by a commission (through an administrative complaint procedure), and administrative acts for which the administrative complaint procedure is not provisioned by Law, are subject to administrative dispute (Administrative Court).

Appeal to the Administrative court in R. Macedonia

Macedonia has a special court that processes administrative lawsuits, the Administrative Court. In administrative disputes, the court decides on the legality of administrative acts (in the form of a decision adopted by the authorities).

An administrative dispute is initiated by filing a lawsuit.

The lawsuit can be submitted within 30 days of receiving or being informed of the administrative act.

An administrative dispute may be initiated against:

- an administrative act adopted in second instance (final administrative act);
- a first-instance administrative act that cannot be appealed through an administrative procedure; or
- a competent authority that has failed to issue an appropriate administrative act upon a request or appeal, as stipulated by law.

An administrative act/decision may be challenged if:

- the law is improperly applied (substantive issue);
- the act is issued by an unauthorized authority; or,
- if the procedure that was implemented is not in accordance with law (procedural issue).

Practical tips: Lawsuit contents according to Macedonian law

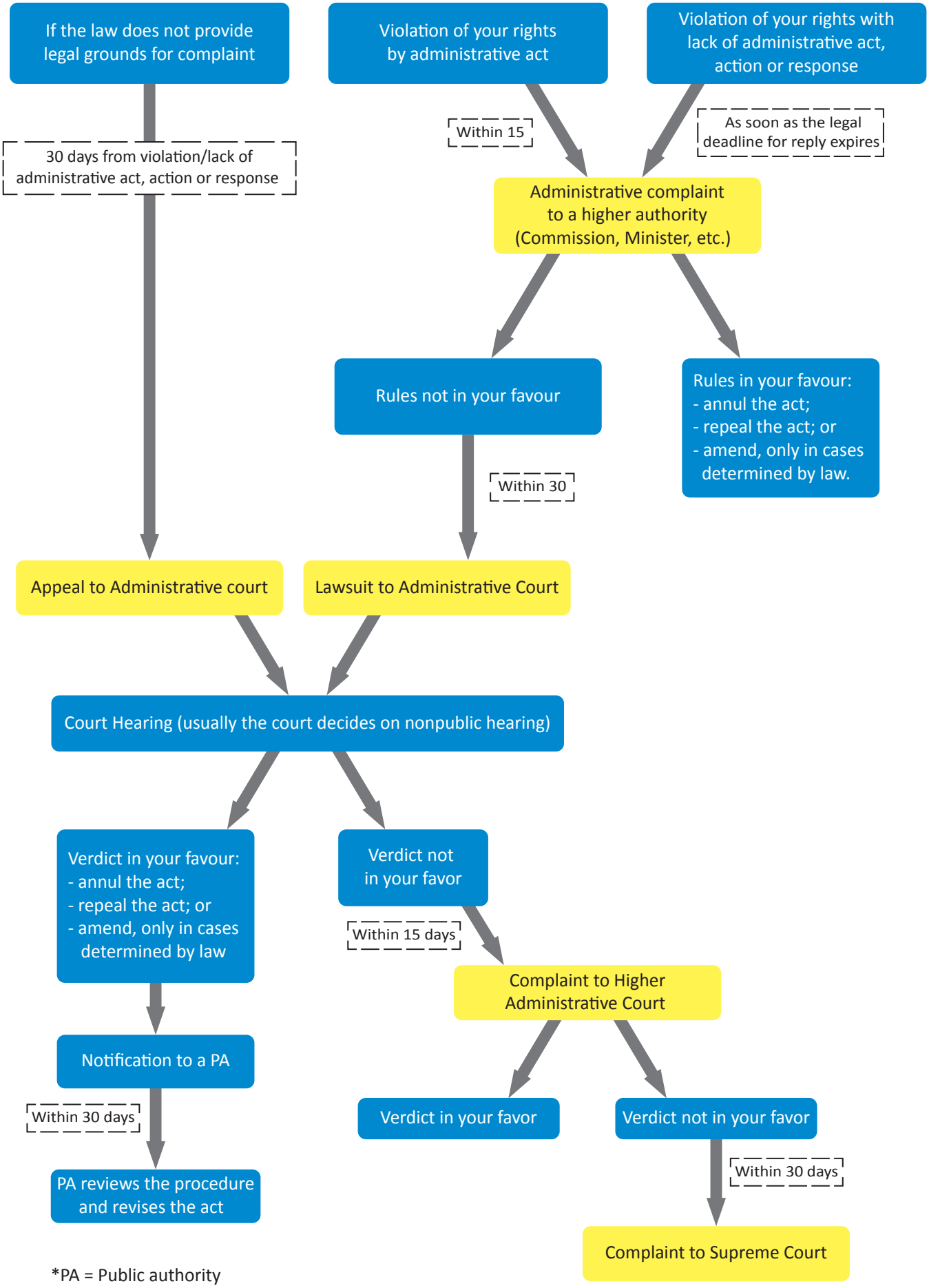
1. **Name of the court** to which the case is submitted;
2. **Name, surname and place of residence of the Complainant;** or, name and address of head office as registered in the Central Register);
3. **Decision (e.g. name, number) against the lawsuit which is lodged** in original or certified copy;
4. **Rationale of claims and supporting documents** (explaining the breach of law or how the procedure was not properly implemented);
   - evidence that support the claim,
   - reference to laws and regulations that support the lawsuit;
5. **Proposal on how the court should resolve the issue** (e.g. scope and direction of proposed annulment or revision of the administrative act);
6. **Signature of complainant (in cases when you file a complaint)/plaintiff (in cases when you file a lawsuit) and date of submission.**

The lawsuit and all supporting documents must be delivered to the court, either handed directly in person or sent by post. The filing of a lawsuit does not generally mean that the administrative act which it is lodged against will be suspended. In addition to the original set of documents, a copy should be submitted to each defendant included in the legal case. The defendant in this case is the public authority/authorities unsatisfied with the decision (e.g. in a decision for EIA permit defendant is the Ministry of Environment).

Generally, the Administrative Court in administrative disputes decides in a non-public session. The court decides on the lawfulness of the act and the administrative matter. In the verdict, the court accepts the lawsuit as grounded or rejects it as ungrounded. Moreover, the court can decide on the administrative matter and reach verdict on its own.

In case the Administrative Court does not rule in your favour, an appeal against the decision of the Administrative Court can be submitted to the Higher Administrative Court.

Diagram 5. Access to justice procedure in R. Macedonia



*PA = Public authority

CASE STUDY NO. 1: ACCESS TO INFORMATION RIGHTS VS. INTELLECTUAL PROPERTY RIGHTS: ACCESS TO BIODIVERSITY EXPERT REPORTS RELATED TO THE MAVROVO NP

Background:

In 2011, Public Enterprise National Park (PENP) Mavrovo started administrative procedure for revalorisation and re-proclamation of Mavrovo as protected area, IUCN category II - national park.[32] The process of revalorisation is a professional and scientific assessment of the values of the natural heritage that serves to confirm, expand, strengthen or reduce the scope and effect of protection, including the exclusion or termination of the protection. The re-proclamation is based on the revalorisation outcome.

This procedure has the following steps:

- Prepare revalorisation study and propose management zones (along with allowed/prohibited activities within each zone);
- Prepare and adopt the law on proclamation based on this study; and
- Prepare and adopt a 10 years management plan.

The first document that was prepared was the revalorization study. The study was supported by twelve individual expert reports for each aspect of the biodiversity of the park. The draft revalorisation study was published in September, 2011 and public hearing was scheduled on October 19th 2011. At the same time, five individual expert reports were available online.

Reason of concern:

The final proposed zoning in the valorization study for Mavrovo National Park did not correspond with the individual expert reports. Inconsistencies in the documents were especially evident on locations where hydropower projects were envisioned. Two HPP plans were even included in the study along with maps that showed how they perfectly fit into the zones where infrastructure activities are not strictly forbidden. This signaled that the PENP Mavrovo misused the expert reports and "adapted" the zoning in order to accommodate the construction of such huge number of hydropower projects in the park.

Actions and reactions taken by CSOs and public authorities involved:

Public Participation Working Group (PPWG) participated in the public hearing and addressed this issue. As soon as we communicated the differences between the expert reports and the issue with the HPPs fitting the zones in the valorisation study, the PENP Mavrovo withdraw all expert reports from the internet and claimed that the study is expert based. In May, 2012 the **PENP Mavrovo decided to refuse all of our comments as not grounded** and to proceed with the procedure. In June, 2012, CSO **Front 21/42 (PPWG coordinator) submitted request for access to environmental**

[32] Macedonian Law on Nature protection (2004) Article 187

information to the PENP Mavrovo in written form via post, requesting access to the copies of each individual expert report prepared for the valorization study. Obtaining access to all expert reports was going to provide solid proof that differences can be found between the documents. According to the Macedonian national law and the Aarhus Convention, the public authority must respond to the request within 30 days from the receipt. However, **Front 21/42 did not receive any reply to the request within the legal deadline**. According to the Macedonian Law on environment and the Law on free access to public information, **if the national authority does not respond to your request within the legal deadline it is considered that the request is rejected and an appeal can be filled**.

Macedonia has two level of administrative check (Administrative Commission in second instance and Administrative Court). If you are unsatisfied with your access to information procedure, you can submit complaint to the Commission for protection of the right to free access to public information (Commission on Access to Information).

Consequently, **Front 21/42 submitted a complaint to Commission on Access to Information in July, 2012**. The Commission on Access to Information acknowledged the breach and ordered the PENP Mavrovo to respond to the request within 7 days. **PENP Mavrovo decided to refuse the request** to access the expert reports. The Decision for refusal was given in written form in September, 2012. In the justification, PENP Mavrovo stated that there is an **exception to the access due *to intellectual property rights* and *material in the course of completion or concerns internal communications***, therefore, the information cannot be publicly disclosed.

This decision was in breach with the provisions of the Aarhus Convention and the related national laws (i.e. Law on environment and Law on free access to public information), namely:

- PENP Mavrovo is a public body that holds environmental information regarding the natural values of the park and has an obligation to gather and disclose environmental information such as the expert reports (Article 5 of the Aarhus Convention);
- the information requested was already available in the public domain (PENP withdraw the reports after the public hearing);
- the decision regarding the National Park was in collision with the idea of protection of the copyright and trademarks (intellectual property rights). Oxfam Italy (as corporate entity which rights are being protected), has limited (in duration) protection and the legalism of the protection is to protect the economic reward (benefit) through market transactions involving the intellectual property right or its subject matter. In consonance with this, publishing the reports (or enabling access to them) will not contravene the intellectual property rights - especially keeping in mind that PENP Mavrovo can decide to enable access with request for financial compensation; and
- the decision for refusal was lacking the obligatory public interest test.

All in all, the PENP Mavrovo misused the exemptions.

As a result, in October, 2012 **Front 21/42 submitted its second complaint against the PENP Mavrovo decision to the Commission on Access to Information**. **The Commission on Access to Information ruled in our favor** noting that *„According to the Aarhus convention these Information should be publicly disclosed“.* Additionally, the commission acknowledged the fact that the PENP Mavrovo did not conduct the public interest obligatory test by the national laws as well as the Aarhus Convention and thus the PENP Mavrovo conducted a procedural breach.

In December, 2012 the **PENP Mavrovo adopted new decision on our request for access to information, and once more refused the access to the information**. At this time PENP Mavrovo conducted the public interest test and, yet **again, decided to refuse the access due to conflicts with the intellectual property rights.** This new of **refusal** along with the Public Interest Test were **challenged first in front of the Commission on Access to Information** in January, 2013 **and then in front of the Administrative Court in Macedonia** in April, 2013**.**

In February, 2015 the Administrative Court rejected the lawsuit as ungrounded and confirmed the first-instance decision for refusal the access to the documents. The Administrative Court delivered the verdict to Front 21/42 in February, 2017.

In the justification, the Administrative Court noted that the PENP Mavrovo can exclude information due to conflict with the intellectual property rights based on a public interest test. However, in the reached verdict there was no justification regarding to the fact that neither the information was previously available in the public domain, nor that the public interest test justify the protection of the intellectual property rights.

That being said, F**ront 21/42 started preparing an international complaint (Communication to the Aarhus Compliance Committee)**. **Prior to sending of the Communication, the PENP Mavrovo decided to withdraw its decision and to grant full access to the reports.**

The above-mentioned procedure for access to environmental information lasted more than 5 years.

CASE STUDY NO.2: ACCESS TO INFORMATION RIGHTS VS. INTELLECTUAL PROPERTY RIGHTS: ACCESS TO ELABORATES FOR ENVIRONMENTAL PROTECTION FOR HYDROPOWER PROJECT LESS THAN 10 MW

Background:

According to the Macedonian Law on Environment, any hydropower project (irrespective of its size) is a subject to environmental assessment. Hydropower projects with installed capacity above 10 MW or project with accumulation lakes are subject to Environmental Impact Assessment (EIA). Projects with installed capacity less than 10 MW, low-performing hydropower projects (LPHHPs) are subject to Elaborate for Environmental Protection. However, based on such assessment studies, the Ministry of Environment approves or disapproves the implementation of the project.

Reason of Concern:

The EIA procedure is regulated in more detail in the Macedonian Law on environment with specific obligation on the disclosure and the access to information related to the procedure. Nevertheless, when it comes to the Elaborate for Environmental Protection there are no specific obligations for disclosure of the documents. The investor is obliged to submit a request for approval and Elaborate for Environmental Protection in hardcopy and electronic version to the Ministry of Environment.

In April, 2015 the Ministry of Environment announced that on the territory of Mavrovo NP, the Ministry has approved four new LPHPPs based on Elaborates for Environmental Protection.

Actions and reactions taken by CSOs and public authorities involved:

The same month (04/2015), **Front 21/42 submitted a written request for access to environmental information** on the Elaborates for Environmental Protection and the Decisions for approving the four new LPHPPs in Mavrovo NP to the Ministry of Environment. The format, in which the information was requested, was a copy of the Elaborates for Environmental Protection in electronic format (PDF file on CD-ROM). The **Ministry of Environment did not respond to the request within the legal deadline of 30 days.** Hence, **Front 21/42 submitted a complaint to the Commission on Access to Information** in August, 2015. The Commission on Access to Information acknowledged the breach and ordered the Ministry of Environment to respond to the request within 7 days. **The Ministry of environment responded to the request in September, 2015 refusing to provide copy of the electronic version of the elaborate** noting that, upon advanced notification, Front 21/42 representatives can make a partial insight in the documentation.

Taken into account the quantity of data that needed to be assess (usually over 100 pages technical documentation for one project), **Front 21/42 continued the appeal procedure (by submitting a letter informing the commission that the complaint will be continued, since Front 21/42 is not satisfied with the response) in the Commission on Access to information and demand full access to the information in electronic copy.**

In October, 2015, the **Commission on Access to Information ruled out in favour of Front 21/42**. In the rationale of the decision the Commission on Access to Information was noted that the Ministry of environment must provide the information in the requested format, unless the information is already available in other format (obligatory by law) or if the format suggested by the Ministry is more favorable. In any case the Ministry must justify the choice to not provide the information in the requested format.[33]

[33] According to the Article 4 of the Aarhus Convention, members of the public may request information in a specific form, such as paper, electronic media, videotape, recording, etc. As a rule, the public authority must honour the request for a specific form except under specific conditions. This provision also means that public authorities must provide copies of documents when requested, rather than simply providing the opportunity to inspect documents. In its findings on communication ACCC/C/2008/24 (Spain), the Compliance Committee found the Party concerned to be not in compliance with the Convention when authorities responding to an information request failed to provide the

In December, 2015, the **Ministry submitted a response again refusing access and noting that the requested studies are subject to author rights and only after performing administrative check of the conflict in disclosing them, will provide access to the information**. This was not consistent with the decision of the Commission on Access to Information – to provide full access to the requested form.

Additionally, this decision was in breach with the Aarhus Convention. **Namely, EIA studies (or similar studies) are prepared for the purposes of the public file in administrative procedure and therefore, the author or developer should not be entitled to keep the information from public disclosure on the grounds of intellectual property law.**[34]

As a result, in February, 2016, **Front 21/42 submitted two administrative interventions to the State Administrative Inspectorate** (in addition to the complaint to the Commission) asking for full and proper implementation of the decision. Administrative interventions are used when public authority does not respect the decision from a hierarchically higher administrative body or court.In March, 2016, as a result of the administrative interventions by the State Administrative Inspectorate, the Ministry of Environment enabled full and proper access to the Elaborates for Environmental Protection.

The above-mentioned procedure for access to environmental information lasted approximately 1 year.

[34] Romania ACCC/C2005/15; ECE/MP.PP/2008/5/Add.7, 16 April 2008 para. 28

CASE STUDY NO. 3: PUBLIC PARTICIPATION IN THE DECISION-MAKING PROCESS ON ACTIVITY - EIA PROCEDURE FOR HPP BOSKOV MOST

Background:

The HPP Boskov Most is planned in the Mavrovo National Park (more than 80% of the project is located within the Park). It includes construction of a reservoir (33 m high dam), hydropower plant with the total capacity of 68 MW and an annual production of around 118 GWh, a tunnel and a headrace from the reservoir to the HPP. The project falls within the criteria of Annex I of the Aarhus Convention and Annex I of the EIA Directive.

Reason of concern:

In September, 2010, the JS Electricity Macedonia (state-owned electricity production company) submitted notification to the Ministry of Environment with the intention on project implementation (letter of intent) for the project HPP Boskov Most together with proposed scope of the EIA study. In April, 2011, the Ministry of Environment adopted decision requiring EIA study, and determined the scope of the EIA for the project without public consultation. In July, 2011, the draft Environmental Impact Assessment (EIA) study was prepared and published.

Actions and reactions taken by CSOs and public authorities involved:

The first commenting period was during the summer holidays and was not in line with the Aarhus Convention. PPWG noted this to the Ministry of Environment and the Ministry extended the consultation period till the end of September, 2011. As a governing authority for the implementation of the evaluation process the **Ministry of Environment and Physical Planning organized three public hearings** in September, 2011, two in the affected area (Mavrovo NP and City of Debar) and one in the capital city - Skopje. **PPWG participated on the public hearings,** asked questions and commented on the content of the draft EIA study for the project. After the public hearing, **PPWG submitted series of comments (including comments from international experts) to the Ministry of Environment**. The main comment on the study was the lack of significant information that is indispensable for precise and objective evaluation of the impact of the project on the environment and the development of suitable alternatives. The pointed lack of sufficient and crucial information in the EIA study was acknowledged by the investor. However, t**he Ministry of Environment, officially, never responded to comments**.

As a result, the investor agreed to conduct one-year pre-construction monitoring of the environment and the biodiversity of the location of the project in order to eliminate the deficiencies in the EIA study. Furthermore, based on the information the investor agreed to prepare alternatives and mitigation measures. The pre-construction monitoring started in summer 2012 and it should have been finalized in summer 2013. At the consultation meetings regarding the pre-construction monitoring, representatives from the Ministry of Environment were present.

In contrast to the investor decision on one-year pre-construction monitoring, the **Ministry of Environment decided to approve the project and issued EIA permit** in October, 2012. **Front 21/42 submitted an Administrative Complaint to the State Commission** deciding in administrative procedures and labor procedures in second instance (State Administrative Commission) in 2012. Macedonia has two level of administrative check (Commission in second instance and Court) and due to this complaint is first submitted to the relevant Commission. The complaint was submitted within the legal timeframe (15 days from the last publishing of the decision). **The State Administrative Commission dismissed the complaint as ungrounded and confirmed the EIA permit for the project** in March, 2013.

In April, 2013, **Front 21/42 submitted lawsuit against the decision of the State Administrative Commission to the Administrative Court**. The lawsuit was submitted within the legal time frame (30 days from the receipt of the decision). The lawsuit was based on the fact that the EIA study for HPP Boskov Most was incomplete - a fact which was confirmed by the necessity of conducting pre-construction monitoring. Another argument was the lack of proper and effective public consultations – our comments should have been answered after the pre-construction monitoring.

The **Administrative Court found the lawsuit grounded**. In the verdict, the Court noted that there is no proof how the Ministry of Environment took into account the comments from the public. Namely, according to the Law on Environment the Ministry of Environment should have based its decision on the EIA study, particularly on the report on the adequacy of the study on the project environmental impact assessment, the public debate and the opinions obtained in the consultation period. When it comes to the EIA for HPP Boskov Most there was no proof on how exactly the Ministry of Environment based its decision on all of these legal requirements, since conclusions with approved/rejected comments from the consultations were missing and there was no proof that the conclusions were communicated with the project investor. Consequently, the Court could not justify the outcome of the consultations taken due account in the decision-making process. The verdict was adopted in December, 2015, and it became effective in May, 2016. **The EIA decision on HPP Boskov Most was officially annulled** in January, 2017.

The EIA procedure for HPP Boskov Most lasted 2 years (from 2010 marked as the start of the procedure to 2012 EIA permit). The access to justice lasted almost 5 years.

CASE STUDY NO. 4: PUBLIC PARTICIPATION IN DECISION-MAKING PROCESS WITH TRANSBOUNDARY IMPACT - EIA PROCEDURE FOR HPP LUKOVO POLE

Background:

The Lukovo Pole hydropower project comprises of: (a) construction of about 20 kilometer long covered feeder channel, running slope parallel to transfer water from Korab mountain catchment to Lukovo Pole storage and Crn Kamen River (transfer waters from Adriatic to Aegean river basin), (b) about 70 meter high dam at Lukovo Pole that will have a storage capacity of about 39 million cubic meters, and (c) a LPHPP Crn Kamen of about 5 MW downstream of Lukovo Pole. Between the maximum and minimum reservoir levels, the reservoir area will fluctuate between 1.5 and 0.1 square kilometers. Total energy generation is expected to be 160 GWh/year.

The project is located in Northwest of Macedonia in Korab mountain range at an altitude of 1,500 meters in the Mavrovo NP. Part of the project intakes and accumulation are located in a zone where no infrastructure activities are allowed (zone of strict protection and zone of active management).

Reason of concern:

In January, 2010, JS Electricity Macedonia started preparing the documentation for the EIA procedure for the HPP Lukovo Pole and submitted a notification on the intention for project implementation (letter of intent). Based on the letter of intent, in August, 2010, the Ministry of Environment adopted a decision to determine if the EIA study should be prepared.

The project included transfer of water from one river basin to another and as a result to this, the impact of the project was cross-bordered with R. Albania and R. Greece. This meant that the letter of intent and the decision for EIA study, as well as the scope should have been translated to the relevant languages and communicated with the neighboring countries – through transboundary public consultation procedure according to ESPOO Convention. In the decision, the cross-border component was not mentioned and its impact on the project. Similarly, the decision and the letter of intent were not translated to other languages, nor communicated with neighboring countries.

Actions and reactions taken by CSOs and public authorities involved:

As a consequence, the **PPWG submitted written comments to Ministry of environment demanding this decision to be annulled and the procedure to be restarted** from the beginning including the obligation for cross border consultation. Three years later, in August, 2014, **JS Electricity Macedonia submitted new letter of intent** including the cross-border component and scope of the EIA study.

PPWG submitted comments to the scope of the EIA study. In November, 2014, the Ministry of Environment published decision on the scope of the EIA study. PPWG's comments were not fully reflected. As a result, in December, 2014, CSO Front 21/42 submitted complaint to the State Administrative Commission.

In January, 2017, Front 21/42 received decision that the complaint is ungrounded by the Administrative State Commission. In February, 2017, CSO Front 21/42, submitted lawsuit to the Administrative Court. The lawsuit was supplemented by the outcome of the Bern Convention case (see Tool 2: Bern Convention). The Administrative Court has not adopted decision on this case at the time of writing of this toolkit.

CASE STUDY NO. 5 NATIONAL ENERGY STRATEGY VS. PUBLIC PARTICIPATION IN PLAN, PROGRAMMES, STRATEGIES - MACEDONIAN NATIONAL ENERGY DEVELOPMENT STRATEGY

Background:

In 2009, Macedonian government started preparing the National Energy Development Strategy. The document was prepared by the Macedonian Academy of Science and Arts, under the auspices of the Ministry of Economy. According to the authors, the Strategy traces the best long-term development of the energy sector in Macedonia that will ensure reliable and quality supply of energy to consumers. This long-term development includes construction of more than 10 large HPPs and over 400 LPHPPs. Basically, the Strategy envisions hydropower developments on every river in Macedonia - most of the HPPs are planned in protected or near areas. The main strategic HPPs envisioned by the Strategy are HPP Lukovo Pole and HPP Boskov Most - both located in the Mavrovo NP. Additionally, some of the LPHPPs are also planned on the territory of Mavrovo NP. In preparation for the Strategy, the Ministry of Economy is obliged to conduct SEA procedure and enable early public participation in the process.

Reason of concern:

According to the Macedonian Law on Environment, the Ministry of Economy should have adopted a decision on preparation of the National Energy Development Strategy and a decision to implement a SEA procedure. The Ministry of Economy along with the SEA decision determines the public concerned (relevant authorities as well as CSOs) and informs them, i.e. enables early public information and participation. Nonetheless, for the preparation of the National Energy Development Strategy, the Ministry of Economy did not adopt and publish any decision. CSOs were only unofficially informed by the Macedonian Academy of Science and Arts who worked on such project.

Actions and reactions taken by CSOs and public authorities involved:

For the reasons mentioned above, **Front 21/42, together with other CSOs submitted an open letter to the Ministry of Economy requesting direct participation** in the adoption as well as implementation of the SEA procedure (including preparation of SEA report).

In June, 2009, (just before the summer vacation period started), the **Ministry of Economy published draft version of the National Energy Development Strategy** and announced 30 days commenting period. **The Strategy was prepared and published without a SEA report (which is obligatory by law)**. The SEA report is considered as essential information. The relevance of the SEA 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 scenarios in the Strategy. Hence, **CSOs sent another alarming letter to the Ministry of Economy asking for suspension of the draft National Energy Development Strategy until SEA report is prepared**.

In February, 2010, the **Ministry of Economy published draft SEA report and announced 30 days consultation period**. The draft SEA report was incomplete (the report did not analyze different alternatives, did not assess the cumulative effects, did not contain non-technical summary etc.) and the draft Strategy was missing. When it comes to the hydropower projects in Mavrovo NP, the SEA report noted the following “HPP Crn Kamen and accumulation Lukovo pole *[=HPP Lukovo Pole]* and

HPP Boskov Most are located in National Park "Mavrovo", which is a candidate Emerald site, which means that in future, with the accession of the Republic of Macedonia to the European Union, it will become Natura 2000 site. One must take into account the fact that the EU will not allow the degradation of Natura 2000 sites. Additionally, the projects are in collision with the Law on nature protection". This remark was not reflected in the National Energy Development Strategy.

Just 8 days after the disclosure of the SEA report, Ministry of Environment held public hearing. On the public hearing there was only one representative of the public - the representative from Front 21/42. **Front 21/42 submitted comments to the draft.**

On April 20th, 2010, the **government announced the adoption of the National Energy Development Strategy** for the period 2010-2020 with future vision until 2030. The final version of the Strategy did not differ from the first published draft. **The Ministry of Economy never officially responded to the comments.**

In 2015, the **Ministry of Economy started revising the National Energy Development Strategy (the period from 2015 to 2035)**. The revision of the strategy is obligatory by the Law on Energy. When it comes to the draft revised Strategy, the Ministry of Economy prepared a draft SEA report. The new draft SEA report noted the issue of hydropower developments in protected areas, specifically noting the HPPs plans in Mavrovo NP. Yet again, the hydropower issues which were identified in the SEA report were not reflected in the revised draft of National Energy Development Strategy.

The public consultation process for the revised Strategy and the draft SEA report, once more, was not properly implemented (not in accordance with the Aarhus Convention). Namely, the consultation period for the documents, including the public hearing, were organized in July during the summer vacation period and the "public concerned" (including us as CSOs) was not invited to participate on the public hearing.

Due to the lack of proper public consultation CSO Front 21/42 and CSO EKo-svest demanded public hearing in the Macedonian Assembly. Public hearings and oversight hearings are legal instrument for the Assembly to formally assess the implementation and enforcement of the laws and other activities of the government and state bodies. In December, 2015, the Assembly organized public hearing for wider public audience including CSOs. **During the hearing Front 21/42 and Eko-svest demanded revision of the National Energy Development Strategy in line with** the remarks on the SEA report as well as proper and effective consultation with the public. **The Ministry of Economy pledged that they will organize new public consultation process for the revised Strategy**. But in fact, they never did.

The Strategy, however, has never been officially adopted by the government, neither.

As a result of this dispute, new public call for collecting offers for concession for HPPs and LPHPPs located in Mavrovo was not published, nor awarded since then.

In August, 2018, the **Ministry of Economy started preparing new National Energy Development Strategy with early CSO engagement -** in accordance with the Aarhus Convention obligation for early public participation, the Ministry of economy engaged CSOs in the procedure, as public concern, from the beginning of the procedure. This is another positive outcome of the constant CSO monitor and engagement in the process. The procedure for the new version is expected to be finalized in 2019.

CASE STUDY NO. 6 PUBLIC PARTICIPATION IN LEGISLATIVE ACT – LAW ON RE-PROCLAMATION OF MAVROVO NP

Background:

In February, 2015, the Ministry of Environment published draft Law on re-proclamation of the Mavrovo NP as IUCN category II protected area – national park.[35] This procedure was envisaged by the Law on nature protection. Namely, the Law on nature provisioned revalorisartion and redesignation procedure for all previously protected areas in order to confirm the natural values.

The information regarding the draft Law on re-proclamation published by the Ministry of Environment and the Public Enterprise National Park (PENP) Mavrovo included the following documents:

- draft version of the Law on re-proclamation,
- map of the park territory with new proposal for delineation of zones for protection, and
- Regulatory Impact Analysis (RIA). The RIA included determination of the institution concern and public concern.

Reason of Concern:

The proposal for new zoning and the draft Law on re-proclamation were not in line with the IUCN criteria for protected site as well with the Law on nature protection: The draft Law included Articles directly stipulating construction of hydropower projects. In the announcement for the draft Law, there was neither an information on the consultation period[36], nor information on when and where a public hearing[37] will be held.

Actions and reactions taken by CSOs and public authorities involved:

CSO **Front 21/42 submitted written comment** related to these omissions to the Ministry of environment via email and demanded to be directly inform (via email) about any further events related to the draft Law[38]. The **Ministry responded** within one day. They informed us back that consultation period lasts 30 days from the day of the information disclosure and that they will organize public hearing within the consultation period. Several days later, **Front 21/42 was officially, in written form, invited to the public hearing**. Front 21/42 distributed the information about the public hearing to all partner CSOs including the local affected CSOs from Municipality of Debar and Municipality of Mavrovo – Rostuse.

The **public hearing** took place on 5th March, 2015, in Mavrovo NP. Over 50 people, most of them CSO representatives, participated in the hearing. All participants had comments related to the proposed zoning and the provisions for hydropower developments. The debate was tense. In addition, there was shortage of space for such a large number of participants (the booked room

[35] Please note that at the time of the disclosure of this information, Front 21/42 was constantly monitoring the Ministry of Environment webpage for new documents and information.

[36] The minimum commenting period for any legal act in R. Macedonia is 20 days according to the Rules of Procedure of the Government. According to the Macedonian Law on environment draft legislation related to environment should be available for insight for at least 30 days.

[37] It is obligatory by Law on environment to hold a public hearing regarding draft legislation related to environment.

[38] The National Law on environment and the Ordnance on Public Participation in environmental matters give this possibility

had capacity for less than 15 people). The hearing started with the presentation by the public authority, and then it was followed by discussion. The list of speakers from the CSOs contained over 50 participants but, the debate was only scheduled for one hour. As soon as the limit of one hour passed, regardless of the fact that there were more speakers, the **Ministry of Environment closed the public hearing without any explanation, nor information about second public hearing**. This was a serious breach of the Aarhus Convention and the national Law on environment.

In March, 2015, within the given deadline and after the public hearing, **Front 21/42 submitted comments** to the Ministry of Environment. The comments were divided in two chapters – one related to the breach of the public consultation procedure (no proper public hearing, consultation period, etc.) and one to the content of the draft Law on re-proclamation (collision with IUCN criteria, Law on environment, etc.). The **comments were shared with our partner organizations as well as with IUCN** and other experts. **Short press release** was shared with the media and published on our webpages.

Several months later we were informed that the **Ministry of environment suspended the procedure for the draft Law**.

Three years later in 2018, **Front 21/42 and Eko-svest initiated and organized meeting** with the Deputy Minister of environment for the legal protection of the Mavrovo NP. 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 official letter to the Secretariat of the Bern Convention on the Conservation of the European Wildlife and Natural Habitats demanding expert help in reviewing of the draft law (for further information, please consult Tool 2: Bern Convention). The Secretariat of the Bern convention announced that it will provide three experts and organize joint visit where all relevant stakeholders will participate (including local CSOs) and contribute in spring/summer 2019.

We hope that this involvement of the Bern Convention and international expert will gratefully help align the draft law with international standards to finalize the procedure.

TOOL 2: BERN CONVENTION

The Bern Convention on the Conservation of European Wildlife and Natural Habitats, also known as the Bern Convention, is a binding international legal instrument in the field of nature Conservation; it covers the natural heritage in Europe, as well as in some African countries. The Convention was open for signature on 19 September 1979 and came into force on 1 June 1982. It is particularly concerned about protecting natural habitats and endangered species, including migratory species[39].

Macedonia ratified the Convention in 1998, and it entered into force in 1999, thus becoming an integral part of its legislation.

All countries that have signed the convention must:

- promote national conservation policies,
- promote measures against pollution,
- promote educational and informative measures,
- co-ordinate efforts to protect migratory species,
- establish legislative and administrative measures.

This is monitored by an established reporting system; the group of experts and the case file system. The case file system is based on complaints for possible non-compliance or other problems related with the provisions of the Convention. These complaints are processed by the three bodies of the Convention: The Secretariat, the Bureau and the Standing Committee.

The **Standing Committee** of the Bern Convention is composed of all the delegates of the contracting parties (signatory states and representatives of EC and EU presidency of the Convention). It meets once per year (late November/early December) in Strasbourg, where all developments, amendments, decisions and case files are discussed and agreed mutually. The **Bureau** is composed of five delegates of the Standing Committee, (re-)elected every year. The Bureau meets twice per year (in March and September) to monitor the implementation of the Convention and to look into the case files. The **Secretariat** is the technical and administrative support structure of the Bern Convention. It has its headquarters in the Council of Europe in Strasbourg, and currently employs four people.

The Complaints Mechanism of the Bern Convention: The Case File System

1. Submission of a complaint
   Any party, civil society organisation or citizen can send a complaint to the Secretariat of the Bern Convention, using the online form[40].

2. Examining the complaint
   The complaint is then examined by the Secretariat with the option to remain anonymous, relating to the Bern Convention and describing the problem and the possible damage. The next step is to file the complaint under a reference number. Based on the decision of the Secretariat, it can request further information from the complainant.

[39] https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/104

[40] http://rm.coe.int/native/0900001680475910

3. Requesting further information

When it comes to the submitted complaint, the Secretariat requests information from the contracting party in order to receive its opinion on the concerns raised by the complainant. The contracting party has to respond within a period of up to four months. At this stage, the case is considered as "on standby".

If a response is not received by the authority of the signatory party, the case will be automatically considered as "possible file".

4. Role of the Bureau

The Bureau takes administrative and organisational decisions in between meetings of the Standing Committee. The Bureau cannot decide on the opening of a case, but it can decide whether to file a complaint forward or not. The Standing Committee decides on the received complaints (i.e. to open the case or not), and their reasons may vary from case to case. The Bureau may propose that an on-the-spot appraisal be carried out, if the circumstances of the case so requires. The reports of Bureau meetings are made available to Parties and observers.

- ***NGOs can register as observers to the Bern Convention and participate without voting rights in the meetings of the Standing Committee. In order to apply for observer status, NGOs need to submit letter of interest to the Secretariat of the Bern Convention.***

5. On-the-spot appraisal

When the Bureau or the Standing Committee sees the need for more comprehensive information on the situation at site, they can decide for and arrange an on-the-spot appraisal (visit at the site) with independent experts. An on-the-spot appraisal can only be carried out with the agreement of the contracting party. At least one independent expert participates in the on-the-spot appraisal in order to resolve and answer all questions that arise from the complaint. On-the-spot appraisal is a visit that also enables the representative(s) of the Bern Convention Secretariat to participate and organise meetings with the government, NGOs, and other relevant stakeholders (e.g. local communities, scientists, etc.) to get a full picture of the situation on site. The report issued by the independent expert (or a group of experts) is reviewed by the Standing Committee with great attention. It represents the basis for their decision-making and the recommendations on the case file in question.

6. Decisions on the case file

This stage is the most important of the entire procedure. The Standing Committee assesses the case file and takes decision on the status of the file and the measures and/or recommendations to be adopted. In case of vote, decisions would need to be taken by a two-thirds majority of the total votes cast. It is important to stress out the freedom of the Standing Committee when deciding on a case. The Bern Convention is an instrument of cooperation among equal Parties, and the Standing Committee plays the role of a forum to discuss and help resolve problems, rather than that of a watchdog. Therefore, the procedure governing the case file system is flexible, allowing for rapid decision-making, and for freedom of choice in terms of the solutions proposed concerning the case files.

The Standing Committee may decide to take different measures: It may requests for further information and reports to be presented; it may propose an on-the-spot appraisal; or adopt a specific Recommendation on the matter, whose implementation will be followed-up afterwards.

7. Status of the case file

The Standing Committee decides on the status of the case. In this respect, there are different statuses:

a. "**Possible new files**" are those complaints that are assessed by the Committee and which have not been formally opened. These cases are placed on the agenda of the Standing Committee after the proposal from the Bureau, and await a decision on whether to open a case file or not. If the Standing Committee decides not to open the case, the file can still stay on Bureau's discussion agenda.

b. "**Open files**" are files which deserve a special attention from the Standing Committee. In general, the reasons to open a file are breaches in the Convention provisions due to the great European importance of the site/species concerned, the scope of the threat, and the urgency of the needed measures. Open cases are accompanied by recommendations by the Bern Convention addressed to the respective contracting party. The latter is usually requested to take measures (described in the recommendations) in order to ensure compliance with the rules of the Convention.
There are also cases which, despite being discussed by the Standing Committee, are dropped if the Committee considers there are not enough grounds. This happens, for instance, when the cause of the complaint is withdrawn, such as potentially harmful projects that are later altered or abandoned. It may also occur because the measures taken by the Party concerned are considered satisfactory, or because a Recommendation has been issued and the Party concerned is responsible for implementing it. This does not automatically entail that the file is closed. On the contrary, in accordance with the decisions of the Standing Committee, the *case could be subject to a follow-up,* since cases are followed-up regularly. Monitoring can continue until the Committee decides to close it, or it could even be put in on hold, until the Standing Committee decides to re-activate it, asking for further information, reports, etc.

c. "**Closed files**"
Generally, the decision to close a file is made when the difficulties to implement the Convention have been solved. This decision may also be temporary. The Standing Committee has the power to re-open "old files" and start the procedure all over again, if there are certain concerns. On the other hand, some cases are closed not because the threat has completely disappeared, but because the Party has shown satisfactory progress and the Standing Committee may decide to monitor such progress as an information point, rather than as an opened case-file.

8. Closing a file

Generally, the decision to close a file is taken, when the difficulties to implement the Convention have been solved. This decision may also be temporary. The Standing Committee has the power to re-open "old files", and start the procedure all over again, if there are certain concerns. On the other hand, some cases are closed not because the threat has completely disappeared, but because the Party has shown good progress and the Standing Committee may decide to monitor such progress as an information point, rather than as an opened case-file as "follow-up of previous complaints" (see "Open files").

9. Recommendations and their follow-up

The Standing Committee can adopt two types of recommendation:

- General recommendations: referring to all Parties, or addressing a broader issue, or
- Specific recommendations: targeting a specific Party, or a specific subject.

Follow-up of Standing Committee's recommendations can be done at Standing Committee meetings, but also through reports, meetings and reviews by the responsible Group of Experts. Depending on the issue and its nature, some cases are reviewed only by one of these instruments, others by a combination of them.

Impact/ Power of the Bern Convention:

The decision on a complaint taken by the Standing Committee is not legally binding to the addressed contracting party. Furthermore, there are no financial repercussions, if it is not in compliance with the decision of the Committee. However, the complaint mechanism of the Bern Convention is a strong political tool, as the issue (complaint) is being raised at a higher level and brings the attention to the problem of the Government of the contracting party. Critical recommendations by the Bern Convention, usually, facilitate a push for improvement and changes related to the case on national level - although in a very diplomatic manner. Sometimes, recommendations are difficult to draft, as contracting parties feel strongly about the requirements imposed on them and may argue against such recommendations. However, it appears that even in such cases, the Secretariat of the Bern Convention plays a significant role in bringing the interests together and building compromise on the issue.

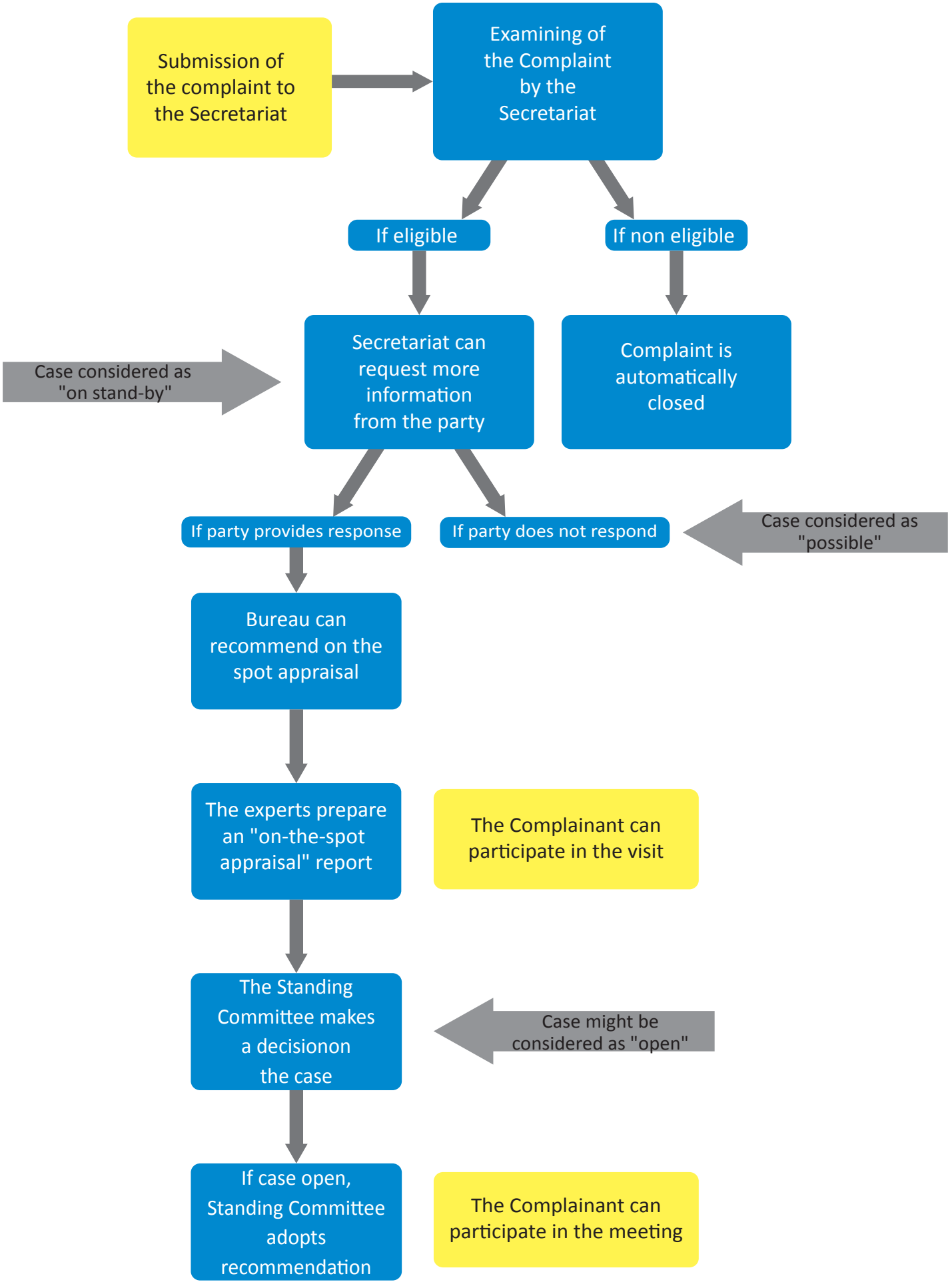
Acceptance of the contracting party of the recommendation is the key to its implementation and successful resolution of the case.

Civil society organisations can benefit from the process. Raising their local issues on the international level brings the spotlight on their struggles to protect nature, and it is a helpful tool in building common understanding on what they are trying to achieve, including opening a dialogue with their decision makers on how to overcome the issues identified in the complaint.

Practical tips for submitting complaint to the Bern Convention

When submitting a complaint, one should be aware that the process is not swift and that it does not automatically stop, or prevent any damage done to the natural habitat of concern. Therefore, the complainant should be ready to be patient and regularly provide information to the Secretariat about the development of the case. It might take around two to three years before a case file is discussed at the Standing Committee meeting. Presence at these meetings is beneficial, as it allows the complainant to directly engage with the delegates, and also present the case and updates in the plenary session before the Standing Committee.

Diagram No. 6: The Complaints Mechanism of the Bern Convention procedure



CASE STUDY NO. 7 HYDROPOWER DEVELOPMENTS IN MAVROVO NP IN FRONT OF THE STANDING COMMITTEE OF THE BERN CONVENTION

In March, 2013, the NGO Eko-svest supported by Front 21/42, submitted a complaint to the Secretariat of the Bern Convention. The complaint claimed that:

- The Macedonian Government did not complete a Strategic Environmental Assessment before going further with the hydropower plant developments in Mavrovo NP.
- The area around the intended HPP Boskov Most is a critical habitat for the critically-endangered Balkan lynx.
- A part of the HPP Lukovo Pole project is planned in a strictly protected zone of the National Park.
- There are pending lawsuits against the Ministry of Environment of Macedonia because of the approval of an incomplete Environmental Impact Assessment study.
- The independent expert of the European Bank for Reconstruction and Development (EBRD) - the creditor of HPP Boskov Most - proved that the Bank breached its own procedures, and the Environmental Impact Assessment was not sufficient to decide upon the bank's involvement in the project.

The complaint was reviewed and followed by the Bern Convention Secretariat. During the Standing Committee meeting in December, 2014, the case file was opened meaning it gained official attention by the Standing Committee of the Bern Convention. Additionally, the Standing Committee instructed the Secretariat to carry out an on-the-spot appraisal to Mavrovo NP in 2015.

The on-the-spot appraisal took place in June, 2015, where representatives of the Bern Convention Secretariat and European Commission as well as of Macedonian institutions (Ministry of Environment, Macedonian power plant company (investor of both projects), and the national park authorities) took part. They were accompanied by the representatives of the EBRD and the Macedonian NGOs who filed the complaint and monitored the developments in Mavrovo NP during the previous five years.

The report from the on-the-spot appraisal[41] was presented in December, 2015, at the 35th Meeting of the Standing Committee of the Bern Convention. The report concluded that:

"**…the proposed hydropower construction planned in the Park is not compatible with the status of protection of the Park, its high value ecosystems and species; the projects, as currently planned, should be abandoned.**"

The official recommendation to the Macedonian government was to suspend all hydropower projects in the Park until a Strategic Environmental Assessment is carried out. The recommendation to the international financial institutions involved (i.e. EBRD and World Bank), was to cancel the financing of the planned hydropower projects.

Only few days after the recommendation was published, the World Bank announced that the Lukovo Pole project was cancelled. The EBRD remained involved in the Boskov Most project until early 2017, the year when it was also cancelled.

[41] https://rm.coe.int/1680746636

TOOL 3: MULTILATERAL DEVELOPMENT BANKS AND THEIR SOCIAL AND ENVIRONMENTAL POLICIES

A multilateral development bank (MDB) is an institution that provides financing and professional advising for the purpose of development, created by a group of countries. MDBs have large memberships including both developed donor countries and developing borrowing countries. MDBs finance projects in the form of long-term loans at market rates, very-long-term loans (also known as credits) below market rates, and through approval of grants.

Some of the best-known MDBs banks are: the World Bank Group (WB), the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD).

These banks normally have their safeguard policies which cover social and environmental aspects, as well as criteria for the implementation of their projects in order to minimise any adverse impact on the people and the environment. Moreover, the banks also prescribe certain recourse mechanisms in case of dissatisfaction, or damage caused by their investments.

The European Bank for Reconstruction and Development (EBRD for example, has designed its own Project Complaint Mechanism, which will be elaborated in the next section.

The Project Complaint Mechanism of the EBRD

The Project Complaint Mechanism (PCM) is the EBRD's accountability mechanism to assess and follow-up the complaints about EBRD-financed projects. It covers the bank's Environmental and Social Policy and aspects of the Public Information Policy. The PCM is a grievance mechanism for civil society, local groups and individuals, that may be directly and adversely affected by an EBRD project.

The PCM acts in two ways:

- Problem-solving, which aims to restore dialogue between the complainant and the EBRD client to resolve the issue(s) underlying the complaint;
- Compliance review, which seeks to determine whether or not the EBRD complied with a relevant EBRD policy with respect to the approved project.

If you are affected by an EBRD funded project, you can submit a complaint under the PCM. However, you should keep in mind that it is better to submit the complaint **after you have already attempted "good faith" communication with the project sponsor or EBRD staff**.

If you try to stop or modify a certain project, take into account that you should ensure enough time and resources to engage with the PCM complaint process, and as well as to monitor the implementation of the PCM findings after the case is concluded. It might take at least several years before you start to see any results from the submitted complaint.

According to the rules of procedure: "One or more individual(s) located in an Impacted Area, or who has or have an economic interest, including social and cultural interests, in an Impacted Area, may submit a Complaint seeking a Problem-solving Initiative" and "One or more individual(s) or Organisation(s) may submit a Complaint seeking a Compliance Review."[42]

Complaints may be submitted in any written form, using the template provided at EBRD's website[43]. The PCM officer[44] can also be contacted for advice when preparing the complaint.

Practical tips for submitting a complaint to the EBRD under its PCM

- **Anonymous requests are not allowed.** However, if requested, the PCM will endeavour to keep the names of complainants confidential.
- **Collect and keep records of all communications** with the project sponsor or EBRD staff that you have had while working to solve your complaint (letters, emails, photos, videos, reports, meeting notes, media clips).
- **Check carefully the PCM rules of procedure and its safeguard policies**[45] to understand well the violations.
- Once a complaint has been filed, it is important to continue **to provide the PCM with updated information** about your complaint on a regular basis.
- It is also important to **monitor your complaint** to ensure that the PCM is following its own procedural rules.

Other practical information and tips:

- The submission of the complaint does not mean that all of your problems will be solved.
- Be aware that the process takes time. Recent experience shows that it can take more than two years to finalise a case and publish the findings.
- The submission of a complaint does not mean that you will get judicial conclusions, like injunctions or monetary compensation. Even if the PCM will find contradictions between EBRD policies and its actions, it does not mean that these findings will have a direct impact on the project.
- Even in cases of full non-compliance and serious, irreparable harm the PCM is still making just recommendations to the board or the president.
- The complaint does not need to be the resort to change a project, it is one tactic in a campaign, and the process and findings can make an interesting story for the media.

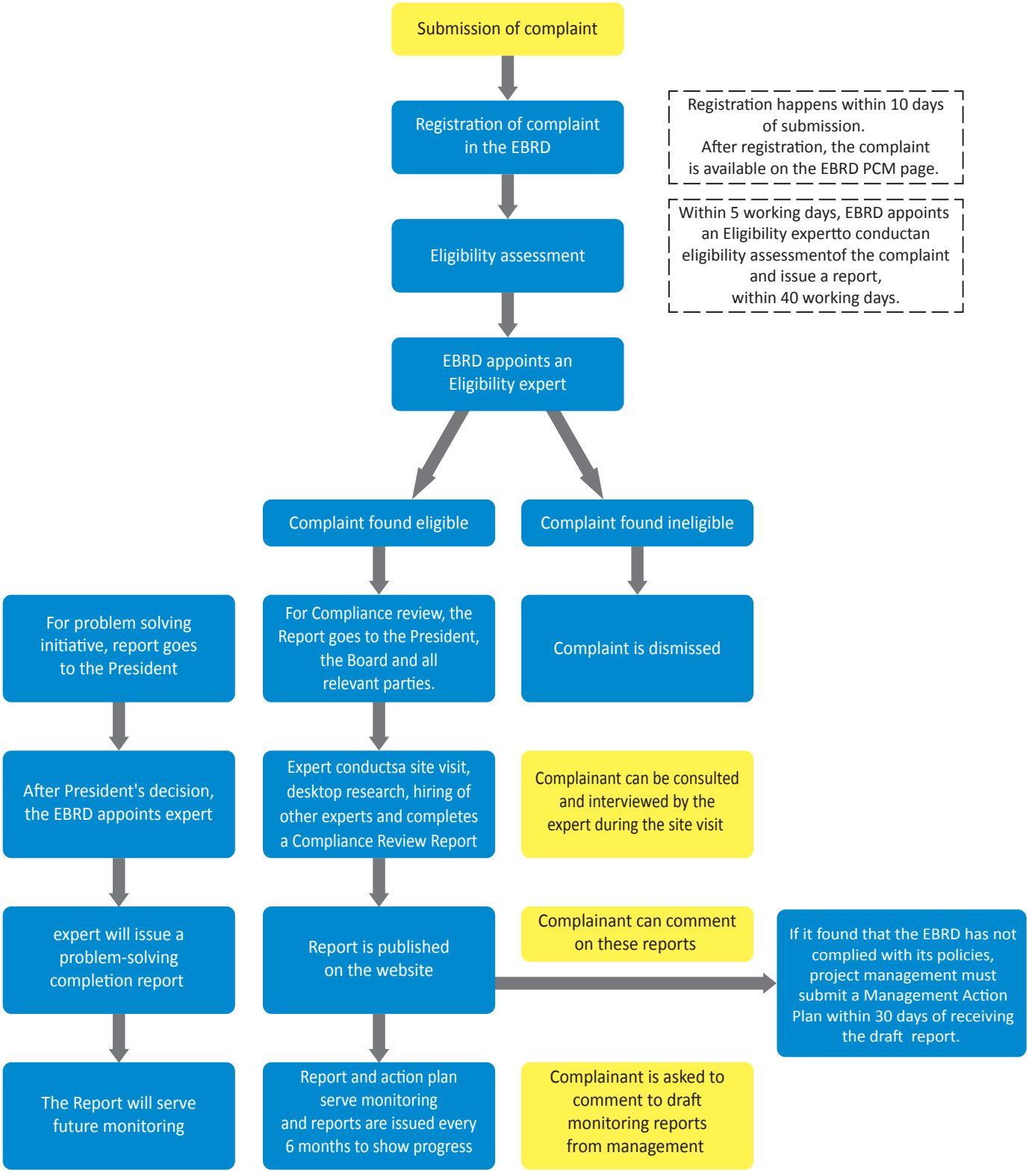
[42] https://www.ebrd.com/downloads/integrity/pcmrules.pdf

[43] http://www. ebrd.com/downloads/integrity/sample_complaint_form.pdf

[44] PCM Officer - European Bank for Reconstruction and Development
One Exchange https://www.ebrd.com/downloads/research/policies/esp-final.pdf Square, London EC2A 2JN, United Kingdom, Fax: +44 20 7338 7633, Email: pcm@ebrd.com

[45] https://www.ebrd.com/downloads/research/policies/esp-final.pdf

Diagram No. 7 EBRD's Project Complaint Mechanism procedure



CASE STUDY NO. 8 MONEY VS. NATURE - THE COMPLAINT TO EBRD'S PCM ABOUT THE HPP BOSKOV MOST

In 2011, Eko-svest submitted a complaint to the EBRD's PCM about the HPP Boskov Most. The complaint alleged that:

- The HPP Boskov Most is planned in a critical habitat, where the critically endangered Balkan lynx lives, which is not compatible with the Bank's Environmental Policy.
- The Bank failed to assess this impact and to obtain all relevant information before it approved the project.
- The Environmental Impact Assessment study failed to provide baseline data, necessary alternatives and mitigation measures for the project.

The complaint was assessed as "eligible" in 2012, and in 2013, the independent PCM expert issued a report[46] which confirmed that the Bank breached its own procedures when it approved HPP Boskov Most. The report outlined that the Environmental Impact Assessment was not sufficient, and that if a project is planned in a protected area such as the Mavrovo National Park, an appropriate assessment needs to be carried out. As this was not completed before EBRD approved the project, the expert concluded that the Environmental and Social Policy of the EBRD was violated.

The expert came forward with recommendations for future improvement of the EBRD's policies and practices, but as the PCM is an internal process, focusing on the functioning of the Bank, the expert could not recommend anything outside of this scope. As a result, the EBRD continued officially to support the project, although no financial disbursement was made, and a set of additional studies and assessment were initiated in order to compensate for the missing data.

The compliance report provided the complainant NGO with sufficient data for follow up advocacy and further demands towards the Bank, the investor and the Macedonian institutions which helped in the development of a stronger campaign.

[46] https://www.ebrd.com/documents/occo/dpdf-monitoring-report-2-boskov-march-2015.pdf?blobnocache=true

TOOL 4: ACTION (GET INSPIRED)

ORGANISE PROTESTS:

Figure 9. Joint protest action of the national Blue Heart of Europe team and kayakers part of the Balkan River Defense Tour in 2018, Skopje
Photo by: Front 21/42

Description: In September, 2018, the Save the Blue Heart of Europe campaign, supported by the local partners Front 21/42 and Eko-svest hosted the tour of the kayakers from Slovenia. A protest in front of the government building in Skopje was organised to demonstrate the need to establish protected zones for rivers. Hydropower plants leave the riverbeds dry and you cannot kayak on a dry riverbed. The protest was accompanied by film screenings in Skopje to further raise awareness about the value of rivers and the need to preserve them.

Figure 10. Protest action during the Annual General meeting of environmental CSOs in Macedonia in 2015, Mavrovo NP
Photo by: Eko-svest

Figure 11. Joint protest of the national Blue Heart of Europe team and the local community from Debar and Mavrovo- Rostuse, Skopje
Photo by: Front 21/42

Description: When genuine, protests are a powerful tool to show dissatisfaction with governmental plans or decisions and to call for action. The photo shows the protest of the local communities from the Mavrovo region that took place in Skopje in February, 2015. The locals were united against hydropower developments in the Mavrovo National Park and were actively mobilizing the diaspora, sending a strong message aimed at the two banks, the World Bank and the European Bank for Reconstruction and Development, so as to stop financing Lukovo pole and Boskov most projects.

PARTICIPATE IN PUBLIC EVENTS TO SPREAD YOUR MESSAGE – OR ORGANIZE THEM YOURSELF

A – PARTICIPATE IN PUBLIC HEARINGS

Figure 12. Public Hearing for EIA study for HPP Boskov Most in Mavrovo- Rostuse
Photo by: Eko-svest

Description: The photo shows a CSO activist talking to EBRD officials in Rostushe municipality in Mavrovo in 2011, where the public hearing about the Boskov Most hydropower plant took place. Voice your concerns and demands to the decision makers in the early stages of the development of the projects. That will increase the chance to prevent damage and stop harmful projects. Public hearings are an excellent way to collect valuable information, but they also raise questions and pose concerns regarding the projects. It is very important to demand answers to your concerns from the institutions.

Description: The photo shows over 50 CSO and local community representatives participated at the officials public hearing for the draft Law on re-proclamation of Mavrovo as protected area category II – National park. The public hearing was organised by the Public Enterprise National Park Mavrovo and the Ministry of Environment. There was no opportunity for the CSOs and local community representatives to fully express their comments. Make sure you document everything – it might be part of your future case. Also, is always good to invite media on public hearing and discussions events.

Figure 13. Public Hearing for the draft Law on re-proclamation of Mavrovo as protected area category II – National park in 2015, Mavrovo Rostuse Photo by: NP Mavrovo

B - ORGANIZE YOUR OWN PUBLIC HEARING (if public authorities do not carry out their duty):

Figure 14. Public Hearing for the National Energy Development Strategy, Skopje
Photo by: Eko-svest

Description: Civil society has waited for years for the Government to organize a public hearing or debate about the Strategy for energy development. Eventually, CSOs organized it themselves and invited a wide variety of stakeholders to discuss the various scenarios of the draft Strategy. Interestingly enough, government officials showed up uninvited and presented the vision and scenarios of the new Strategy, which stirred a lengthy discussion. This was an important step which put the civil society organisations "on the radar" of the governmental institutions as a relevant partner to consult about energy issues in the future.

C - ORGANIZE PUBLIC EVENTS WITH EXPERTS ON THE TOPIC (e.g. conference, workshop):

Figure 15. HPPs vs. Protected area International Conference Public in 2014, Skopje
Photo by: Front 21/42

Description: The photo shows the speakers at the conference organised in the frame of the Save the Blue Heart of Europe campaign, which involved international organisations and experts. The conference was organised in April, 2014, and it was the first public and open debate about the projected hydropower plants inside the Mavrovo National Park. These events, when attended by international experts, inevitably draw attention of the institutions, and therefore create space to debate and discuss the challenges.

VISUALIZE YOUR MESSAGES - CREATIVITY WITHOUT BORDERS:

Figure 16. Visual action with a banner in from of the Macedonian Government, Skopje
Photo by: Eko-svest

Description: Drawing a huge banner to send a message to your target group is not entirely excluded when running a campaign, moreover, it is highly recommended as it draws attention to the public and the media. This banner was drawn and then displayed in front of the Government's building to demand protection of the critically endangered Balkan lynx. The display of the banner was accompanied by a letter sent to the Prime minister, demanding that hydropower development in protected areas such as Mavrovo is seized, in compliance with the international nature protection laws.

Figure 17. Balkan lynx visits Skopje, Skopje
Photo by: Eko-svest

Description: A costume, some make-up and some acting talent- that is the recipe for raising awareness about the importance of the critically endangered Balkan lynx. At this point, the Lynx was roaming the streets of Skopje, making friends and even taking part in a series of educational workshops with children. The campaign to prevent the development of hydropower in protected areas had multiple layers, one of which was to educate and to raise awareness about the impacts of dams to natural habitats and species.

COLLECT YOUR OWN PROOFS OF REALITY (field visits etc.)

Figure 18. Lack of implementation of the biological minimum measure on Tresonecka river, NP Mavrovo
Photo by: Eko-svest

Description: Field visits are essential. They are tools to investigate, check on status, get in touch with locals, as well as gather proof and evidence. The photo shows the dry riverbed of the Tresonecka river in the National Park of Mavrovo. The reason for its persistent "dry spell" is the small performing hydropower plant constructed in 2015. The ecosystem of the river between the intake and the powerhouse is completely devastated, which should not be the case in a protected area with high ecological status such as Mavrovo.

BUILD ALLIES WITH PEOPLE/ORGANIZATIONS WHO CAN MAKE AN IMPACT:

Description: The delegation of Luxembourg at the Bern Convention meeting decided to change its name to "Lynxembourg" to support our efforts to protect the Balkan Lynx population from harmful hydropower. At this meeting, we organised a protest of the little lynxes in order to bring attention to the importance of the case file on Mavrovo. At the same time, we used the meeting to make allies and bring strong arguments in favour to our claims. This meeting was historic for the campaign as the Standing Committee of the Bern Convention decided to open the case file and adopt the first recommendation, requesting the Government of Macedonia to suspend the planned hydro projects in the park. If you are true to your goal, support will come from all sides!

Figure 19. Save the Balkan lynx action during the Bern Convention Standing Committee meeting in 2015, Strasbourg, France
Photo by: Eko-svest

BRING MEDIA'S ATTENTION TO YOUR CASE:

A - Organize press conferences:

Figure 20. Blue Heart of Europe local campaigning team press conference, Skopje
Photo by: Eko-svest

Description: Working with local media brings your struggles closer to the public. The activists protecting Mavrovo organised numerous press conferences, meetings and working breakfasts with journalists to convey their messages in national and local media.

B - Reach out to international media:

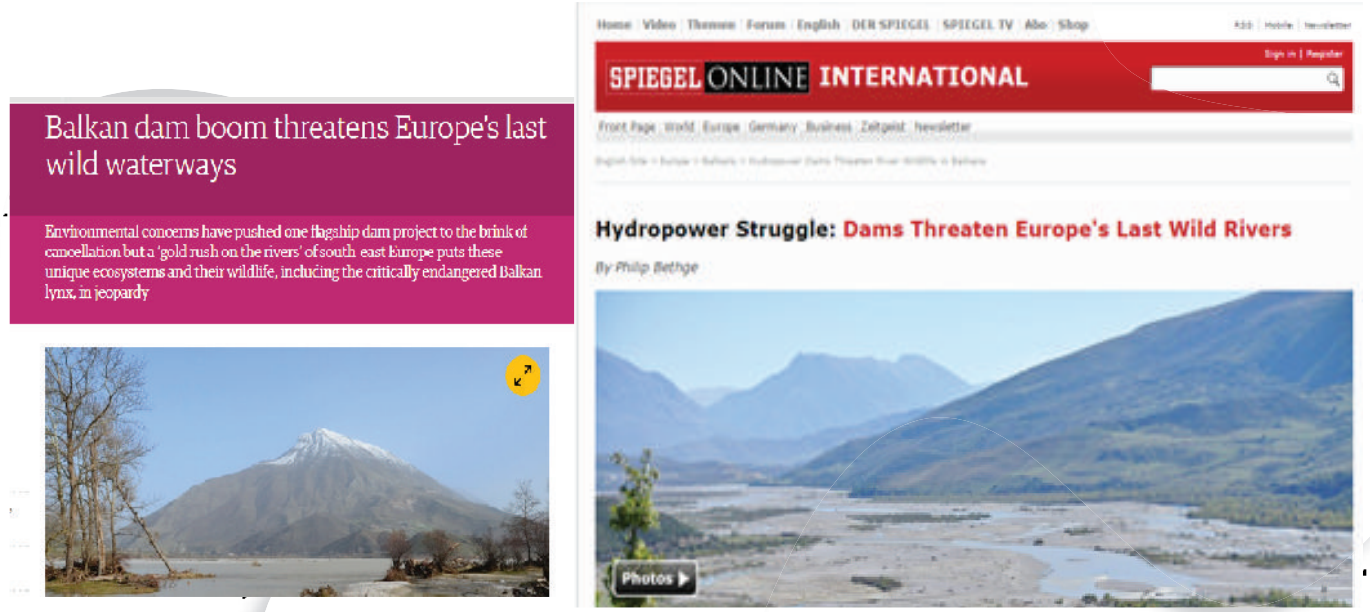


Figure 21. International media covering the topic of hydropower project on the Balkans (article in The Guardian - left, article in the Spiegel - right)
Photo by: Front 21/42

Description: If your campaign has an international perspective- use it! The case about Mavrovo hit the headlines in German and Austrian newspapers and was soon brought to the attention of the European Commission, which also played a role in the campaign. This international attention in the media was enabled by the communication established with journalists that cover these stories in Europe.

ANNEX I - RELEVANT EU DIRECTIVES:

ACCESS TO INFORMATION DIRECTIVE
Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information and repealing Council Directive 90/313/EEC
Link: http://ec.europa.eu/environment/aarhus/legislation.htm

PARTICIPATION IN DECISION MAKING DIRECTIVE
Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC - Statement by the Commission
Link: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003L0035

EIA DIRECTIVE
Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects and amending DIRECTIVE 2014/52/EUDirective2014/52/EU
Link: http://ec.europa.eu/environment/eia/eia-legalcontext.htm

SEA DIRECTIVE
Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment
Link: http://ec.europa.eu/environment/eia/sea-legalcontext.htm

WATER FRAMEWORK DIRECTIVE
Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy
Link:http://ec.europa.eu/environment/water/water-framework/index_en.html

HABITAT DIRECTIVE
Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora
Link: http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm

RENEWABLE ENERGY DIRECTIVE
Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC
Link: https://ec.europa.eu/energy/en/topics/renewable-energy/renewable-energy-directive

CIP - Каталогизација во публикација
Национална и универзитетска библиотека "Св. Климент Охридски", Скопје

502/504(497.761)
BUJAROSKA, Aleksandra
Practice your environmental rights legal tools and mechanisms :
get inspired by the story of Mavrovo national park and save your rivers
/ [Aleksandra Bujaroska, Ana Colovic - Lesoska]. - Skopje : Front 21/42,
2019. - 67 стр. : илустр. ; 30 см

ISBN 978-608-66351-1-4
1. Cholovikj - Leshoska, Ana [автор]
а) Животна средина - Заштита - Национален парк ''Маврово''
COBISS.MK-ID 110274826