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Are Balkan Countries Safeguarding Their Rivers?

A Legal Analysis of Environmental Standards in Six Western Balkan Countries

EXECUTIVE SUMMARY

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This executive summary introduces the report “Are Balkan Countries Safeguarding Their Rivers? A Legal Analysis of Environmental Standards in Six Western Balkan Countries". The report offers an interim evaluation of how effectively Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, and Serbia are safeguarding their rivers by incorporating key EU Directives related to hydropower projects into their national laws.

Through a detailed legal analysis of the transposition and implementation of the Environmental Impact Assessment Directive, Strategic Environmental Assessment Directive, Environmental Liability Directive, Water Framework Directive, Habitats Directive and Birds Directive, the report examines the national legislation in each of these countries and sheds light on the crucial role of effective legal frameworks in shaping environmental outcomes.

Created by ClientEarth, EuroNatur, and Riverwatch as part of the “Save the Blue Heart of Europe” campaign, this report aims to enhance environmental standards for river protection in the Western Balkans and beyond. It highlights the most critical issues to support future legislative and enforcement efforts in the region, with the goal of better protecting its pristine rivers.

Valbona River, Albania
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Key findings

The analysis reveals that **despite significant variations in transposition among countries, a certain amount of progress has been made overall,** reflecting substantial efforts to meet the Directives' requirements. In some examples, the national laws even go beyond the requirements of the EU acquis, showcasing some of the exemplary standards for river protection.

However, the report also testifies to particular **systemic failures to comply with the EU framework concerning environmental law,** which hamper effective river protection. Numerous countries are yet to conclude the adoption of secondary legislation to fully harmonise their national legislation with EU environmental legislation, whilst the **urgent necessity for efficient enforcement of existing laws** is evident across all nations.

Some of the underlying problems, which undermine proper implementation of environmental regulations in the majority of countries, are **inadequate institutional capacity and lack of clear and extensive data** on water bodies, biodiversity and habitats. This is reflected, for example, in the **poor quality of data provided in the EIA reports,** and in some cases, in **outdated EIA decisions,** which remains a challenge in all countries, as demonstrated in cases of projects on the Vjosa River in Albania, Komarnica River in Montenegro, or Drina River in Bosnia and Herzegovina.

A significant concern, which arises in all countries, except in Albania, is the **restricted access to justice regarding decisions resulting from the strategic environmental assessment procedure,** while Montenegro is the only country, which has regulations in place that govern **liability for environmental damage.**

Concerning the **Water Framework Directive,** the core provisions have been largely adopted by most countries, and administrative arrangements are established for its implementation. Moreover, in the majority of the countries, River Basin Management Plans (RBMPs) and Programmes of Measures (PoMs) are in place, which should, at least in theory, ensure the protection and, where necessary, restoration of water bodies in order to reach good status, and prevent deterioration. However, the absence of proper **assessment of project level impacts of hydropower developments on water bodies** stresses the failures of effective implementation of the Directive.

The same problem applies to the **Nature Directives,** where the processes of designation of Natura 2000 sites still remain at the early stages at best, and thus conservation measures are not adequately adopted. Detailed **provisions on appropriate assessments** are lacking in almost all countries, meaning that such assessments are currently not being carried out. Consequently, a number of hydropower cases before the Bern Convention underscore the pressing need for the expeditious harmonisation of nature protection legislation and its effective implementation and enforcement.

Vjosa River, Albania,
© Nicolas Jehly

Key recommendations

The urgent necessity for efficient enforcement of existing laws is evident across all nations. Consequently, significant enhancements in enforcing environmental regulations emerge as a pivotal area necessitating progress. A beneficial overview of the most critical issues and proposed standards that can facilitate forthcoming legislative and enforcement procedures is outlined as follows:

The Environmental Impact Assessment Directive

- All hydropower projects should be included in the EIA procedure and assessed against all screening criteria. Hydropower projects should not be excluded in advance from the screening procedure based solely on their power capacity.
- Clear alignment with the appropriate assessment procedure should be provided for in all countries.
- Public participation should be enhanced in order to ensure that representatives of civil society should be properly informed and can participate in decision-making, such as in the EIA Commissions' meetings.
- Authorities should ensure that decisions on EIA (reasoned conclusions) are still up to date when granting the development consent, regardless of the timeframes set.
- The quality of the EIA reports should be improved in order to ensure that the hydropower projects are properly screened against their impact on nature and water resources.

The degree and effectiveness of transposition and implementation of the EIA Directive varies across the Western Balkans countries. For particularly concerning hydropower projects, significant disparities exist, primarily relating to the obligation to conduct screening procedures. While **Albania** and **Kosovo** have faithfully transposed provisions regarding the screening of hydropower projects by ensuring that small hydropower projects are not exempt in advance from the procedure, due to their energy capacity, **Bosnia and Herzegovina** has gone beyond the requirements of the EIA Directive by adopting more rigorous provisions. Specifically, **Republika Srpska** requires an EIA for all hydropower projects with a capacity of 5 MW or more (projects smaller than 5 MW are subject to screening), while **the Federation of Bosnia and Herzegovina** requires an EIA for all hydropower projects, regardless of the power capacity.

Contrary to the above, **Montenegro** and **Serbia** mis-transposed the screening provisions. **Montenegro**, for instance, excludes hydropower projects below 1 MW from the screening procedure, while Serbia does so for those below 2 MW and outside protected areas. Both countries have also mis-transposed Article 2 of the Directive, which means that, in theory, 'salami slicing' is not prevented.

Similarly, **North Macedonia** adopted contradictory bylaws which introduce a process of issuance of a so-called 'elaboration' for hydropower projects below 10 MW, a procedure that seems to run in parallel to the screening procedure, excludes the public consultation procedure, and seems to indicate that the hydropower plants up to 10 MW are actually excluded from the EIA screening procedure.

Moreover, some countries, such as **Albania**, **Bosnia and Herzegovina (Republika Srpska)** and **North Macedonia**, have failed to properly transpose the screening criteria and, as a consequence, proper screening has been disabled which contradicts the requirements of the Directive.

A positive process of aligning the appropriate assessment procedure with the EIA was comprehensively developed in the draft EIA Law of **Serbia** that dedicated a number of provisions to the appropriate assessment procedure. Alignment of the two processes was also found in **Albania** and **Montenegro**.

Moreover, inclusion of the civil society in decision-making procedures was enhanced in **Montenegro** and **Kosovo**, where laws provide for the possibility of selecting experts outside of the authorities in the Commissions for analysis of the EIA reports.

Regarding changes to the projects listed under the Annexes of the Directive, **Albania** failed to transpose paragraph 24, Annex I of the Directive that requires any change to or extension of projects listed in Annex I, where such a change or extension in itself meets the thresholds, to be subjected to a mandatory EIA. The national law only requires screening in these cases. On the other hand, although the provisions regulating this procedure in **Republika Srpska** seem to be more aligned with the Directive, it is questionable whether the changes to the project require a proper screening procedure to be conducted, and whether there is enough emphasis on obliging the authorities to carry out a proper assessment in the case of changes to the project, rather than relying on information provided by the developer. The new EIA Law in the **Federation of Bosnia and Herzegovina** has remedied this issue by clearly stating the obligation for authorities to assess the significance of the change.

The requirement for competent authorities to ensure that a reasoned conclusion is still up-to-date when taking a decision to grant development consent was addressed in all countries by setting a timeframe for the validity of a reasoned conclusion, as encouraged by Article 8a(6) of the Directive. However, none of the countries has ensured that the assessment is still relevant, regardless of the timeframe set. This is important in order to ensure that a long time period between decision-making and construction does not raise questions of validity of the EIA and of the subsequent decision, meaning to ensure that the EIA study did not become obsolete due to e.g. changes in the state of environment, or in relevant regulations at the time of construction.

The clearest issue of this was found in the legislation of **Bosnia and Herzegovina**, where the analysis has shown that the applicable law allows for the life-time validity of the construction permits that does not expire even when the environmental permit does. This means that once the construction permit is issued, it enables the developer to legally perform construction several years after the construction permit was issued, regardless of the validity of environmental permit that is issued for the duration of five years. Moreover, court cases have proven that the construction permits cannot be challenged only due to the environmental permit expiration. On the other hand, the new Draft EIA Law of **Serbia** is endeavouring to ensure the proper procedure for the authorities to assess the relevance of previously approved EIA studies.

Finally, the poor quality of data provided in the EIA reports remains a challenge in all countries, which was one of the main shortcomings raised in cases covered in the implementation part of the report.

The Strategic Environmental Assessment Directive

- Access to justice for SEA-related decisions should be provided.
- Clear alignment with the appropriate assessment procedure should be provided for in all countries.
- Public participation should be enhanced.
- Proper implementation of the SEA procedure should be strengthened.

The transposition of the SEA Directive has seen considerable success, however certain deficiencies remain. Notably, the obligation to carry out Strategic Environmental Assessment (SEA) for plans and programs involving 'the use of small areas at a local level' is entirely omitted from **Albania's** SEA Law. This limitation restricts the scope of plans and programmes subject to screening procedures, only applying when a protected area is potentially implicated. Similarly, the FBiH fails to fully transpose the list of types of plans and programmes that always require the SEA procedure, as well as those that should be subjected to the screening procedure. Consequently, the SEA Law in FBiH does not contain any screening criteria.

Positive improvements are seen in the draft SEA Law in **Serbia** that has included provisions on appropriate assessment in order to align the two processes. In the national laws of **Republika Srpska** and **Montenegro**, it is mandated that any adverse decision regarding the implementation of a Strategic Environmental Assessment (SEA) must be accompanied by explanations and the criteria used to reach such a decision. This requirement serves to bolster legal certainty in environmental decision-making processes.

A significant concern arises due to the restricted access to justice regarding decisions resulting from the strategic environmental assessment procedure. Only **Albania** ensures the possibility to challenge the decisions deriving from the SEA procedure, based on general administrative procedure rules. The draft SEA Law in **Kosovo** requires a decision to be issued; however, it is not clear if that decision can be challenged by the public concerned. North **Macedonia**, on the other hand, only allows challenges against the SEA screening decision, and not for other decisions deriving from the SEA procedure. The remainder of the countries do not provide for access to justice provision at all, and it seems that this is also not possible under the general administrative procedure. This impossibility was demonstrated in **Serbia**, where the Ministry of Environmental Protection consistently refuses to grant public and civil society organisations access to legal recourse in instances where they perceive their rights to have been violated during the strategic impact assessment process. Specifically, the Ministry denies that the decision to approve a strategic environmental impact assessment constitutes a legal action against which a legal remedy can be pursued, without clarifying the legal nature of such approval.

Last but not least, effective implementation of the SEA Directive continues to pose challenges in all of the countries concerned. For example, in **Albania**, it is sometimes difficult to monitor the implementation of the SEA because of the vague indications for information and consultation processes. In **North Macedonia**, due to a lack of synchronised development of the draft plan or programme and the SEA report, adoption or endorsement of the plans before the SEA process is completed was often the case. In **Bosnia and Herzegovina**, the state arrangement makes it difficult to align and implement the Directive for plans and programmes adopted at a national level.

The Environmental Liability Directive

- Regulations governing liability for environmental damage should be implemented across all regions, as currently only Montenegro has such regulations in place.

The ELD has only been transposed and is being implemented in **Montenegro**. Other countries have adopted certain basic provisions related to the definition of environmental damage and the polluter-pays principle; however, implementation of the environmental liability provisions is not being carried out.

In **Albania,** the implementation of ELD provisions has been impeded by the absence of secondary legislation. The absence of specific regulations has hindered the complete enforcement of the environmental liability regime, leaving only the general provisions of the Civil Code applicable. However, it is worth noting that the ELD does not encompass criminal liability or liability for traditional civil law damages, such as property damage or personal injury

Since to date no measures necessary to implement the ELD were adopted, the Secretariat of the Energy Community has opened a case against **Bosnia and Herzegovina** and **Kosovo** and submitted Reasoned Requests to the Ministerial Council of the Energy Community Treaty.

The Water Framework Directive

- Relevant secondary legislation should be adopted and institutional capacity strengthened.
- Environmental objectives and Programmes of measures should be adopted in all of the countries.
- Public participation should be enhanced.
- River basin management plans need to be adopted or updated.
- Proper assessment of the impacts of projects on water bodies in accordance with the WFD needs to be carried out.

In most countries, the core provisions of the Water Framework Directive have been largely transposed and administrative arrangements are in place in order to implement the Directive. However, the absence of secondary legislation translating technical and operational provisions into practice renders it impossible to effectively implement the Directive.

Albania, Bosnia and Herzegovina, Montenegro and **Serbia** have adopted their first river basin management plans. The **Federation of Bosnia and Herzegovina** is already at its second cycle, since updated RBMPs (2022–2027) have been adopted. However, the fragmentation of water policy between the two entities impairs their ability to effectively oversee and manage river basins across the entire territory of **Bosnia and Herzegovina.** In **Kosovo** and **North Macedonia,** no RBMPs have been adopted.

Most of the countries struggled to fully establish provisions on environmental objectives, with only **Albania** having the most successful transposition. In the case of **Montenegro,** lack of proper transposition of the term 'overriding public interest' opened the door for an easier derogation for projects of new hydro morphological modifications or new sustainable human development activities, contrary to the WFD.

Despite the presence of provisions on public participation, engagement remains limited, even when consultations are conducted. The majority of countries face challenges stemming from inadequate institutional capacity and lack of clear and extensive data on water bodies, hindering the proper implementation of Water Framework Directive provisions.

Implementation concerning the impacts of projects and pressures on water bodies, as stipulated in the Directive, seems to be in its early stages across all countries.

The Nature Directives

- Relevant secondary legislation should be adopted and institutional capacity strengthened.
- Natura 2000 sites should be designated.
- Bylaws on appropriate assessment need to be adopted.
- Transposition and implementation of the Birds Directive needs to take place in all of the countries concerned.

Similarly to the Water Framework Directive, the absence of secondary legislation translating technical and operational provisions and insufficient institutional capacity hinder the proper implementation of the Directives.

The processes of designation of Natura 2000 sites are at the early stages at best, and thus conservation measures are not adopted. The lack of proper biodiversity data on species and habitats seems to be a problem in most of the countries. The lists of protected habitats and species are mostly adopted, however they require amendments.

Detailed provisions for appropriate assessment are exclusively present in Montenegro's legislation, whereas secondary legislation for implementing the appropriate assessment procedure has not been adopted by other countries. Additionally, **North Macedonia** failed to transpose any of the provisions regulating the appropriate assessment procedure.

Regarding the Birds Directive, transposition levels differ from country to country. Although Article 4(2) of the Birds Directive is binding on countries under the Energy Community Treaty, most of them have not transposed it. Additionally, the provisions of the Birds Directive are ambiguously defined in most laws. For instance, in Serbia, the Law on Nature Protection does not incorporate distinct provisions transposing the Birds Directive. Instead, it includes bird protection within species protection provisions and consolidates derogation provisions for species and birds, contrary to the Directive's requirements.

Lack of proper assessments of project impacts on protected areas, habitats and species seems to be a major issue in all of the countries. Cases before the Bern Convention, such as in case of Vjosa River in **Albania,** Upper Neretva River in **Bosnia and Herzegovina,** National Park Mavrovo in **North Macedonia,** and the Komarnica River in **Montenegro,** highlight the pressing need for expeditious harmonisation of nature protection legislation and its effective implementation and enforcement.

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