



## HARMONISATION OF THE MONTENEGRIN ENVIRONMENTAL LEGISLATION WITH THE EUROPEAN UNION LAW

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### SYNOPSIS

**Key words:**

Constitution of Montenegro, Stabilisation and Association Agreement, primary sources of EU law, EU directives, harmonisation of national legislation, sectors.

This paper addresses normative framework and harmonisation process of the Montenegrin law with the law of the European Union in the field of environment. It also provides for a short overview of the most important legal sources of the European environmental law which account for more than a third of EU law as a whole.

The special attention was paid to obligations of Montenegro in this field in compliance with the Stabilisation and Association Agreement between the European Communities and Montenegro and the National Program for Integration (which encompass the National Plan for the adoption of the European Union law) and the achieved degree of harmonisation of the national legislation with the EU Directives and Regulations in the following sectors: horizontal legislation, air quality, waste management, water quality, nature protection, industrial pollution control and chemicals.

### INTRODUCTION

Since adopting the Declaration of Ecological State of Montenegro in 1991, which proclaimed the commitment of the State to reaching environmental and nature protection objectives, until the time of proclaiming its independence in 2006, environmental protection issues in Montenegro failed to achieve the prominent and “umbrella” position they deserve.

In spite of constitutional proclamations both in the 1992 and 2007 Constitution of Montenegro (Kostić-Mandić, 2007) and great number of legislation and ratified international conventions, as well as some strategic documents in the field of environmental protection (Kostić-Mandić, 2011) it seems that the main impetus to

focusing on this area is given by committing to the European integration process which includes yearly monitoring of the progress even in this field.

After the Stabilisation and Association Agreement with European Union was reached in October 2007, and came into force on 1 May 2010, the significant progress has been made regarding legislation and implementation measures in the field of environment. Therefore, the European integration process in Montenegro reflected the most the field of environment, helping to set priorities and insisting on implementing national legislation which is becoming more and more harmonised with the European Union law.

In the following pages the short overview of the most significant achievements in the field of harmonisation of the national environmental legislation with the EU law is given.

### **AN OVERVIEW OF THE EU LAW IN THE FIELD OF ENVIRONMENT**

Under the auspices of the European Community and later the European Union environment has become one of the most important sectors and is one of the most regulated area which accounts for more than a third of EU law.

The founding treaties together with general principles of law and international agreements are considered to be the primary sources of EU law. The treaties as the most important source of EU law, have gradually recognized and given the importance to the environmental issues as matters of common interest for all member states (Bell & McGillivray, 2008).

Thus, unlike the 1957 Treaty of Rome (the founding treaty of the European Economic Community) which did not address environmental issues in particular, each subsequent treaty tackled environmental issues making them more important.

The Single European Act of 1987 introduced Chapter VII which regulates the objectives and powers of the Community in the field of conservation, protection and improvement of environment, human health protection and rational use of natural resources. Further more, it states that environmental policy of the Community is based on the principles of precaution, prevention, prevention of pollution at the source of damage and the polluter pays principle. It also establishes safeguards and procedures for their implementation, which does not prevent Member States from maintaining or introducing more stringent measures.

The 1992 Treaty on European Union (the Maastricht Treaty) in its preamble proclaims the principles of sustainable development and environmental protection as one of the main objectives of the European Union. In relation to the Single European Act, the new goal at the international level is the improvement of the measures to address regional and global problems. It also establishes changes in the domain of legislative competence and decision-making.

By the 2001 Treaty of Nice environmental protection has become an integral part of the first pillar of the European Union i.e. the European Communities which handled economic, social and environmental policies.

The three pillars structure was introduced with the Treaty of Maastricht and was eventually abandoned on 1 December 2009 with the entry into force of the Treaty of Lisbon, when the EU obtained a consolidated legal personality. The Lisbon Treaty, amends not only the Treaty on European Union (the Maastricht Treaty) but also the Treaty establishing the European Community (the Treaty of Rome, which was renamed: the Treaty on the Functioning of the European Union). The Lisbon Treaty in addition to general provisions on the environment and measures relating to climate change and energy policy also proclaims that the protection and promotion of the environment are the fundamental values not only within the European Union, but also in relations with other states and it authorises the EU to create legislation dedicated to constant development of renewable energy sources.

Further more, the Lisbon Treaty guarantee the application of the Charter of Fundamental Rights, which stipulates that the right to a high level of environmental protection is one of the fundamental rights of EU citizens and that improvement of the quality of the environment must be integrated into EU policy and implemented in accordance with the principle of sustainable development (Charter of Fundamental Rights, Article 37).

Derived sources of environmental law are passed by the European Union institutions. They include: regulations, directives, decisions - (the first three sources of law are binding), recommendations, opinions and resolutions. In addition, the Court of Justice case law is also binding upon the Member States. Regulation made in the EU is directly binding on all Member States. After publication in the Official Journal of the EU and the entry into force of the Regulation, the same text and with no intervention of the Member States applies in all Member States. Directive, on the other hand, states the goals to be achieved, and Member States choose whether to fulfill it by enacting new laws or by-laws or by amending existing legislation. Each State may in a different way regulate an issue as long as it is in accordance with the objectives set by the directive.

A much larger number of the EU legislation in the field of environment appears in the form of directives in relation to regulations and the EU member states and candidate countries harmonise their law with the EU law by adopting new laws and regulations or amending the existing regulations.

Since the EU legislation in the field of environment is only partially transferred to the Union level, while still largely left to national legislation the manner of exercising these rights will depend both on the EU as a whole, and of nation-states, in accordance with the legislation passed by the EU institutions, as well as the jurisprudence of the Court of Justice, signed international agreements and others.

## **THE LEGAL FRAMEWORK FOR HARMONISATION OF THE NATIONAL LEGISLATION WITH THE EU LAW**

In the hierarchy of legal sources, the Constitution of Montenegro remains on the top position, while ratified international treaties have the supremacy over the domestic legislation and will be directly applicable when regulating certain relations differently than the internal law. Thus, the Constitution of Montenegro, for the time being is not subject of the harmonisation process. However, in the course of its adoption the EU concepts and principles in the field of environment were taken into account.

The new Constitution of Montenegro in similar wording as its 1992 predecessor defines the state as "ecological one" and it deals with protection of natural heritage in the part on Economic, Social and Cultural rights and Freedoms. Thus, it is proclaimed that everyone shall be obliged to preserve natural and cultural heritage of public interest and that the State is obliged to protect natural and cultural heritage (Constitution of Montenegro, Article 78). Moreover, in the Constitution provision dealing with entrepreneurship it is explicitly stated that entrepreneurship should be restricted by environment and nature protection (Constitution of Montenegro, Article 59).

The 2007 Constitution treat right to healthy environment as a human right and this right is positioned in common provisions on human rights and freedoms. This provision develops the concept of public participation in environmental decision-making (Constitution of Montenegro, Article 23). Thus, to the previously prescribed right of timely and complete information, the possibility of having the impact in decision-making process and access to justice are added, making it a very modern solution in line with the UN Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters as well as relevant EC directives. In addition, it is proclaimed that everybody, and the state in particular is obliged to preserve and promote the environment.

Issues related to the area of environment are defined in the Stabilisation and Association Agreement between the European Communities and Montenegro, in the Title VIII – Co-operation Policies, by the Article 111 relating to the Environment and the Article 97 on the Forestry. The Stabilisation and Association Agreement (SAA) between the European Union and Montenegro signed in October 2007 entered into force on 1 May 2010. According to SAA Article 111 Montenegro shall focus on preventing further deterioration of the environment and work on its improvement in accordance with the sustainable development principle. Further more, the cooperation shall address capacity building of administration and procedures in order to improve strategic planning and harmonization of environmental legislation. Among other issues, the cooperation between the parties may focus on: developing strategies in order to significantly reduce air and water pollution on local, regional

and trans-boundary level; clean, sustainable and renewable production and consumption of energy; environmental impact assessment and strategic environmental impact assessment, while the special attention should be paid to implementation of the Kyoto Protocol.

In order to fulfil the obligations from the Stabilization and Association Agreement, the Government of Montenegro adopted National Program for Integration of Montenegro into the EU on 5 June 2008. This document defining strategic development objectives, as well as relevant policies, reforms and measures requisite for the accomplishment of these objectives and defining human and budgetary resources for the fulfilment of projected tasks, also encompass the National Plan for the adoption of the European Union law. It is thus compiling two strategically important documents in the process of harmonization of the national legislation with the EU law.

The National Program for Integration has been designed on the basis of the best practice of the countries which has already completed successfully that stage of integration. The Program encompasses the period between 1 January 2008 and 31 December 2012. All projected tasks in the domain of harmonisation with the EU legislation, as well as establishment and enhancement of the institutional framework for the implementation of a harmonised national legislation, have been divided into short-term priorities for the period by the end of 2009 and medium term priorities for the three-year period encompassing the years 2010, 2011 and 2012.

In the following pages we will briefly present the degree of harmonisation of the national legislation with the EU Directives and Regulations in the following sectors: horizontal legislation, air quality, waste management, water quality, nature protection, industrial pollution control and chemicals. Having in mind the number and variety of Directives, we will focus on those which are considered to be of the greatest importance for applying to all fields of environmental protection (horizontal legislation) and those of a framework or more general character. Some of the information in this paper is originating from the analysis performed by the author of this paper which has been carried out in 2007-2009 under the project "Progress Monitoring in the Environmental Sector in Montenegro" with the support of the Directorate-General for the Environment of the European Commission.

## **HORIZONTAL LEGISLATION**

Area of Horizontal Legislation, in the legislative system in Montenegro, is covered by the Law on Environment, Law on Strategic Environmental Impact Assessment and the Law on Environmental Impact Assessment and with the set of secondary regulations.

The Law on Environment adopted in July 2008 replaced its 1996 predecessor. This law establishes legal and strategic mechanisms and institutional framework for environment in Montenegro. The Law, among other, establishes the responsibilities for the damage caused to environment, the manner of reporting on the condition of the environment in accordance with the standard methodology of the European Agency for Environment through the obligation of establishing the national lists of environmental indicators, envisages the obligation of establishment and development of the environment related information system in accordance with the European standards etc.

The Law on Strategic Environmental Impact Assessment and the Law on Environmental Impact Assessment were adopted at the end of 2005, and their implementation commenced on 1st January 2008. The period from their adoption to their implementation was used for establishment of institutional capacities, on the state and local level.

In general, Montenegro has achieved a high level of transposition for the horizontal legislation.<sup>1</sup> However, Montenegro needs to finalise the transposition by addressing the remaining provisions, and in particular the Environmental Information Directive, which is less advanced. The remaining part should be transposed through amendment to the 2005 Law on Free Access to Information in order to have uniform legal norms even in the national legal system. The urge for harmonization refers in particular the Law on Free Access to Information and its Article 9 paragraph 2 with the Article 4 (4) of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention) which is a part of EU law, as well as Montenegrin legal system.<sup>2</sup> The Aarhus Convention has explicitly provided that the grounds for refusal of access to information be interpreted in a restrictive manner, while the Law on Free Access to Information does not contain such a provision, although it provides a test for determining significant harm (if the disclosure of information generated significantly greater damage compared to the importance of public interest to publish information). Because this test in practice introduce discretion of power to decide which interest is dominant in any particular case, the Law on Free Access to Information has to be harmonised with the Aarhus Convention, which provides a

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1 EIA Directive (85/337/EEC), SEA Directive (2001/42/EC), Public Participation Directive (2003/35/EC) and Environmental Information Directive (2003/4/EC).

2 The European Community approved the Aarhus Convention on 17 February 2005 (Council Decision 2005/370/EC) and Montenegro ratified the Aarhus Convention in 2009 (Sl. list Crne Gore- Međunarodni ugovori no. 77/09) and it is applicable in Montenegro since 2 February 2010. Further more, EU adopted Regulation on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (1367/2006/EC).

greater guaranties to applicants that their request for information will not be rejected just because they fall under the above basis.

## **AIR AND CLIMATE CHANGE**

The area of the protection of the air quality is regulated by the 2010 Law on Air Protection, which by its structure is a general law for ambient air, and it regulates the issues of limit values of air quality, monitoring of air quality, safeguards, assessment and improvement of air quality, as well as planning and managing air quality. The Law incorporates the basic provisions of the EU Directives regulating the area of climate changes and protection of the ozone layer.

Montenegro has reached very advanced stage of transposition in the air quality sector, the main transposing instrument being the Law on Air Protection. Secondary regulations, adopted under this law, also implement other Directives from this area that relate to the control of products, stationary source emissions, mobile source emissions, standards and monitoring of the ambient air quality, reporting and exchange of information.

Basic provisions of the EU Directives that regulate area of climate changes and the protection of the ozone layer were transposed into the Law on Air Protection, and with the Law on Environment this area will be completely regulated in accordance with obligations accepted through the ratification of conventions from these areas (the conventions make part of EU law as well).<sup>3</sup>

## **WASTE MANAGEMENT**

The normative framework in the area of waste management is governed by the Law on Waste Management. The Law was adopted in 2005 but its full application commenced on 1st January 2010 instead of 1st January 2008.<sup>4</sup> The reason for this delay was the need for building the infrastructural prerequisites, such as landfills, recycling centres, transfer stations, etc. The Law on Waste Management envisaged the obligation for the adoption of the National Waste Management Plan, municipal waste management plans and waste management plans for enterprises. This Law

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3 The Convention on Persistent Organic Pollutants – the Stockholm Convention; UNECE Convention on Long-range Trans-boundary Air Pollution (LTRAP) and the Protocol on Long-Term Financing of the Co-operative Program for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe (EMEP); the Convention for the Protection of the Ozone Layer and its Montreal Protocol on Substances that Deplete the Ozone Layer with all amendments and the United National Framework Convention on Climate Change (UNFCCC) and Kyoto Protocol.

4 According to the Law on Amendments to the Law on Waste Management the commencement of application of specific provisions was postponed to 1st January 2010.

incorporates the provisions of EU Directives which were in the meantime adopted or amended, thereby creating better quality base for preparation and adoption of secondary legislation and regulation in this area with a high level of compliance with EU directives and standards.

Montenegro made very limited progress in the transposition of the waste related EU law, which mainly related to the Waste Framework Directive (2008/98/EC). The main transposing measure is the Waste Management Law and secondary regulations. Adoption of this Law created legal base for the transfer of the EU legal system of the waste management area into national legislation. The Law introduces innovations in the waste management practice, since an obligation for local self-government units has been defined to have selective waste collection, mandatory waste disposal on sanitary landfills and manner of waste treatment which is in accordance with standards applied in EU countries.

Further more, Montenegro has accessed Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal in 2006 (which also makes part of the EU law).

## **WATER MANAGEMENT**

The 2007 Law on Waters regulates the legal status and the manner of integrated management of waters, water and shore land and water related facilities, conditions and manner for performing water related activities and other issues important for management of waters and water resources.

The Law on Waters, which has been developed based on the Water Framework Directive, together with secondary regulations remains the main harmonisation instrument.

Montenegro is most advanced in transposing the Water Framework Directive (2000/60 /EC, as amended). Apart from the Marine Strategy Framework Directive (2008/56/EC), where transposition is at early stage, Montenegro is fairly advanced in transposing the remaining EU water legislation.<sup>5</sup>

## **NATURE PROTECTION**

The 2008 Law on Nature Protection incorporated the provisions of several Directives, particularly the Directive on Protection of Natural and Semi-natural Habitats of Flora and Fauna and the Directive on Wild Birds.

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<sup>5</sup> The analysis also encompassed: the Urban Waste Water Treatment Directive (91/271/EEC), Nitrates Directive (91/676/EEC), Shellfish Waters Directive (2006/113/EC) and Drinking Water Directive (98/83/EC).



The Law on Nature Protection with secondary legislation remain the main transposing instrument in harmonisation in the area of Nature Protection with the EU law, comprising of the Directive on Conservation of Natural Habitats of Wild Fauna and Flora (92/43/EEC, as amended), Directive on the Conservation of Wild Birds (79/409/EEC, as amended) and Regulation on the Protection of Species of Wild Fauna and Flora by Regulating Trade Therein (338/97/EEC).

Further more, Montenegro has adopted several international conventions in this field which are also part of EU law (among other: the Convention on Biological Diversity; the Convention on Wetlands of International Importance (Ramsar Convention); the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES Convention) and the Cartagena Protocol; the UN Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa)).

## **INDUSTRIAL POLLUTION, RISKS AND ACCIDENTS CONTROL**

Basic transposition instrument for Industrial Pollution, Risks and Accidents Control is the Law on Integrated Environmental Pollution Prevention and Control with secondary regulations.

The Law on Integrated Pollution Prevention and Control is harmonised with the Directive concerning Integrated Pollution Prevention and Control (2008/1/EC as amended). Based on this law, six secondary legislation acts were adopted to regulate the following issues in more details: content, manner of keeping the register of issued integrated licenses, content and manner of filling in the request for issuance of the integrated license, program of measures of adjusting the plants or activities prescribed by conditions, criteria for determination of best accessible techniques, standards and determination of limit values of emissions, as well as types of activities and plants for which integrated license is issued.

The Montenegrin legislation is highly harmonised with the Directive concerning Integrated Pollution Prevention and Control (2008/1/EC as amended). However, transposition is lagging behind for the COMAH (Seveso II) Directive and the Large Combustion Plants Directive (2001/80/EC).

## **CHEMICALS**

The 2007 Law on Chemicals is the first Law in this area in Montenegro, which sets the procedures for reporting and commercial release of new and existing chemicals, procedure for evaluation and assessment of chemicals related risk, classification, packaging and labelling of chemicals, import and export and other

matters important for the protection of human life and health, and environmental protection.

The 2008 Law on Genetically Modified Organisms, in the part related to the problem of the issue of the deliberate introduction of GMO into environment, is advanced in the transposition of the Deliberate Release of GMOs Directive (2001/18 EC).

Transposition in this sector is at a very early stage, except for the Deliberate Release of GMOs Directive (2001/18 EC).

Regarding the Biocides Directive (98/8/EC, as amended) and the Contained Use of GMMs Directive (90/219/EEC, as amended), transposition has not yet started.

### **CONCLUSIONS**

After signing the Stabilization and Association Agreement with the European Union in 2007 the significant progress in Montenegro has been made regarding legislation and implementation measures in the field of environment, which is one of the most regulated area accounting for more than a third of the European Union law.

The obligations which Montenegro has to fulfil in order to harmonise its legislation with the law of European Union are set in the strategic document National Program for Integration of Montenegro into EU for the period 2008-2012, which also encompass the National Plan for the adoption of the European Union law.

The Constitution of Montenegro is for the time being not an object of the harmonisation process. Also, Montenegro has already ratified most of the international conventions which are also part of the EU law.

So far, harmonisation process is the most advanced in the sector of horizontal legislation and in air and climate sector. The progress has also been made in the water and nature sectors. The harmonisation in other sectors differentiate a great deal depending on a sector and other factors: the existing prerequisites for the future implementation in terms of costs and the existing framework (waste sector, industrial pollution, risks and accidents control and chemicals being the most challenging ones). Also, the harmonisation process is fairly advanced even in those sectors when it comes to more general, framework directives.

However, in the future the implementation of legal obligations arising out from national legislation harmonised with the EU law remain the main challenge for Montenegrin institutions and the society as a whole.

## REFERENCES:

- Bell, S. & McGillivray, D. 2008: Environmental Law, 7th edition, Oxford University Press, New York, pp. 1-783.
- Kostić-Mandić, M. 2007: Environmental rights in the new Constitution of Montenegro, In: National and Regional Identity and Supranational Integration: Constitutional and EU – Related Developments in South Eastern Europe, Constitutionalization of Private Law: Recent Developments, editor Rainer Arnold, Jean Monnet Chair, University of Regensburg, pp. 23-28.
- Kostić-Mandić, M. 2011: Environmental Law of Montenegro, Jean Monnet Chair, University of Regensburg, pp. 11-18.
- The Report on Progress Monitoring in the Environmental Sector in Montenegro: 2008, Regional Environmental Center, European Commission, Directorate General for Enlargement, Brussels, pp. 1-72.
- Declaration of Ecological State of Montenegro ("Official Gazette of RM" no. 39/91).
- Constitution of Montenegro ("Official Gazette of Montenegro" no.01/07).
- Stabilisation and Association Agreement between the European Communities and Montenegro, 2007. Available from:<http://cgo-cce.org/eic/dokumenti/SSP%20CG%20i%20EU.pdf>
- National Program for Integration of Montenegro into EU for the period 2008-2012, Government of Montenegro, Podgorica, 2008, pp.1-604. Available from: <http://www.google.me/url?sa=t&rct=j&q=National%2BProgram%2Bfor%2BIntegration%2Bof%2BMontenegro%2Binto%2BEU%2B&source=web&cd=1&ved=0CBgQFjAA&url=http%3A%2F%2Fwww.gov.me%2FResourceManager%2FFileDownload.aspx%3Frid%3D54708%26rType%3D2%26file%3D1209999711.pdf&ei=LtmyTtT-4qWswbHsvieBA&usg=AFQjCNHDTGVsmvzKWdcsxq5J7fGAGze-Lg>.
- Law on Environment ("Official Gazette of Montenegro", no.48/08 and 40/10).
- Law on Impact Assessment on Environment ("Official Gazette of RM" no.80/05).
- Law on Strategic Impact Assessment on the Environment ("Official Gazette of RM" no. 80/05).
- Law on Integrated Prevention and Control of Pollution of the Environment ("Official Gazette of RM" no. 80/05, "Official Gazette of Montenegro", no. 54/09).
- Law on Air Protection ("Official Gazette of Montenegro", no. 25/10).
- Law on Nature Protection ("Official Gazette of Montenegro", no.51/08, 21/29).
- Law on Chemicals ("Official Gazette of Montenegro", no. 11/07).
- Law on Waste Management ("Official Gazette of RM" no. 80/05, "Official Gazette of Montenegro", no. 73/08).
- Law on Water ("Official Gazette of RM" no. 27/07).
- Law on Free Access to Information ("Official Gazette of RM" no. 68/05).
- Law on Ratification of the Aarhus Convention ("Official Gazette of Montenegro", no. 77/09).

Received: 28 July 2011.

