

LEGISLATION IN THE FIELD OF ENVIRONMENT AND CLIMATE CHANGE IN NORTH MACEDONIA AND SERBIA

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ABSTRACT: In the recent years North Macedonia and Serbia have been rated among top most polluted countries in the world. North Macedonia, being a candidate country since 2005 and awaiting a date to start negotiations for EU membership for more than ten years after receiving a positive recommendation to open negotiations in 2009, has been criticized for having limited progress in the harmonization of policies and legislation regarding water quality, nature protection and waste, which both directly and indirectly affect the energy sector, the industry, the labor force and the health-care system in the state. Also, comprehensive strategy on climate-related action and a National Energy and Climate Plan, in line with Energy Community obligation have not yet been put in place. For Serbia, the strategic goal to become an EU member state became an important driving force for legislative activities in the field of climate change. Although the first set of environmental legislation was adopted in 2004, followed by another wave of legislation in 2009-2012 period, significant progress was made with the opening negotiations in 2014, when the interest for alignment with EU *acquis* increased and negotiation chapter 27 has been prepared in January 2020, but it is not open yet. For both countries, further efforts are still needed to comply with EU policies, like the adoption of Law on Climate Change and Strategy for Combating Climate Change. Since the next EC Multiannual Financial Framework for 2021-2027 is expected to include significant part dedicated to climate change activities. In this regard, both Serbia and North Macedonia will be obliged to align their national legislation with the EU *acquis*. At the moment, the current EU 2030 climate and energy targets and the objectives of Paris Agreement seem unreachable for the two countries. The complexity of EU *acquis* and the necessary reforms that need to be implemented in order to achieve the aforementioned goals will require strengthening of institutional capacities and additional financial means. This paper will analyze ways to improve reform processes in the field of environment and target key areas that require immediate actions.

KEYWORDS: *environment, pollution, EU acquis, Chapter 27, legislative framework, climate change.*

INTRODUCTION

The European Union Green Deal objective, Europe as climate-neutral continent, gradually made environment protection as one of its most important policies and pillar in the Cohesion policy, given the number of legal acts (*acquis*), as well as funds allocated for their implementation. As announced by the EC President in January 2020, the Green Deal will take historical one trillion EUR in the next Multiannual Financial Framework 2021–2027.

For candidate countries, EU *acquis* in the field of environment and climate change is the most complex and costly, often described as a „moving target“ that needs to be caught, since it is constantly being changed, with constant improvement of legislation. In a recent study, Dragolović et al (2019) analyze that the candidate countries have to align their national legislation with 802 different EU legal acts in the field of the environmental protection, as well as 184 legal acts in the field of human health protection, 25 animal welfare regulations and numerous EU legislation regulating transport, energy and other related fields.

According to the Intergovernmental Panel on Climate Change (EAEP, 2020), the region of Balkans is very vulnerable to climate change and extreme weather conditions that will happen more often in the future. The air and water pollution have reached critical levels in recent years, hence the issues of combating climate change became even more important.

As candidate countries, North Macedonia and Serbia have to harmonize their national legislation with the EU *acquis*, and although being in different stages of the process, they both face similar problems. By signing the Paris Agreement, as well as confirming their commitment for the future EU membership, North Macedonia and Serbia are obliged to align their

national determined contributions to achieving EU 2030 target to at least 40% of emission reduction in comparison to 1990, with a prospect of increase as part of the Paris objectives.

THE R.N. MACEDONIA

North Macedonia was granted an EU candidate status in 2005. Since October 2009, it has been receiving recommendations for opening accession negotiations by the European Commission that have not been confirmed by the Council. After years of stalemate due to a deep political crisis both in the country and in the EU, the European Council (Council Conclusions, 2020) finally decided to grant opening accession this year.

The vague guidelines of the Copenhagen criteria during past enlargements did not provide real measurement of the progress made by each candidate country. Hence, the political developments that could destabilize the region unless decisive action taken, made the EU to change the enlargement methodology placing rule of law, functioning of democratic institutions and economic reforms in the core of the negotiation process (Engelbrekt, 2002; Tcherneva, Wessley, 2017). Candidate countries will start and end negotiations with these fundamentals. Inglis (2000) concludes that “despite the attempt to depoliticize the process, it remains a political one”.

For decades, the EU has promoted establishment and implementation of legislation that imposes strong climate action and sustainable development. The environmental legislation represents at least one third of all EU *acquis*, including horizontal legislation on the assessment of the influence on the environment (EIA), strategic regulation impact assessment (SRIA), right to equal access of information and participation of the citizens in the environmental public policies. The 7th

Environment Action Program (L 354/171, 2013), one of the cornerstones of the EU environment policy, establishes a political and legal framework in the next thirty years also for the R.N. Macedonia and its membership in the Union. The analysis made by ECRAN (2016) shows that the environmental requirements in the recent years see significant improvement, especially in terms of transposition alignment, now reaching around 60% of the total EU *acquis* in this area. This Chapter is expected to be opened right after opening the aforementioned fundamentals.

Experience of other acceded countries show (EC Report on Negotiations with Croatia, 2011) that the major investments go into the Water Sector, Waste Management and Industrial Pollution, all three currently being the Achilles' heel of the Republic of North Macedonia. The area is complex and requires a large amount of financial means, as well as strengthening of national administration capacities and sector- vertical and inter- sectoral coordination. The main challenges also remain with weak capacities in the local government units, lack of proper communication between local and central level and what is even most important, lack of sufficient financial means for implementation of reforms in this sector. The European Commission remarks (EC Progress Report, 2019) reveal that public awareness and proper information dissemination among citizens remains low and requires further action, especially regarding waste management and recycling, pollution and nature protection.

Horizontal legislation

As noted earlier (ECRAN, 2016), in the field of horizontal legislation, there is high level of compliance both in transposition and implementation. The transposition for example of the SEA Directive, the Public Participation Directive and the Directive on Access to Informa-

tion is complete, and the transposition of the EIA Directive and the Law on Environment is fairly advanced. Implementation on the recommendation 2001/331 on minimum criteria for environmental inspections requires further reforms efforts to strengthen the relevant bodies for enforcement of environmental legislation at both central and local level. The country current focus (NPAA, 2017) is on preparation of a strategic framework for strengthened monitoring of legislation implementation, as well as a national energy and climate plan, in accordance with the EU Energy and Climate Package 2030 and the Strategy for Low Carbon Europe. The situation is no different with the implementation of the obligations deriving from the Paris Agreement, which the country has ratified in 2017, since the latest UN findings (2020) show that the biggest progress is the preparation of inventory for greenhouse emissions according the necessary technical conditions for sustainability.

Air Quality

Transposition in this area is highly aligned. The Ambient Air Quality Directive and the 4th Daughter Directive, Sulphur Content Liquid Fuels Directive, Stage II Petrol Vapour Recovery Directive and the Law on Air Quality in particular. There is full transposition of the National Emissions Ceilings Directive, Stage I Petrol Vapour Recovery Directive in the previous monitoring period. Implementation notes limited progress over the years. The lack of administrative capacities and financial means remain to prevent putting in place measures to improve air quality. There is not much progress achieved in the transposition of the Industrial Emissions Directive and Seveso III Directive and consequently on their implementation. On the top of this, the EU has tightened its regulations pressing North Macedonia to reduce its emissions by 2028, or even earlier depending on the accession process.

Air pollution is an ongoing global health threat, as 9 out of 10 people in the world today are living in areas where air quality is not according to WHO guidelines (Silva RA, West JJ, Lamarque JF, et al. 2017). The UN Environment Report (2018) enlisted the country among top polluted countries in the world, with Skopje as the most polluted capital. The main sources of air pollution are use of coal in factories, exhaust fumes from old cars, industry combustion and use of wood in household heating. The estimates made by Kanevce et al. (2017) show that the ratio between greenhouse gas emissions and GDP is five times higher than the EU average and that two coal power plants in the country are among the highest pollutants in Europe. A World Bank Report (2019) outlines that each year about 1,600 people die prematurely as a result of air pollution. The estimated costs to the economy are around US\$500–900 million annually, which corresponds to the 5.2–8.5 percent of GDP as of 2016. The overall health care costs estimates are around 20 % of GDP.

Modernization and replacement of the outdated equipment, promotion of policies for use of renewable energy must be the future government focus. Monitoring also provides fundamental basis in detecting qualitatively and quantitatively major causes of air pollution. The expertise made in 2016 (EKRRAN) warns that the two major power plants in the state will have to reduce their emissions by approximately 95%, which are from 14 to 20 times higher than the standards enshrined in the Industrial Emissions Directive. Introducing financial resources for air quality improvement measures for the first time in the State Budget in 2019, as well as subsidies to households for alternative heating and provision of town gasification is not sufficient, but it can be a good starting point in this regard.

Water Quality

Mohaupt and Kirst (2016) define the Water Framework Directive (WFD) as a “visionary piece of environmental legislation that strives to achieve a good water status in Europe”. Brack (2017) calls for a widespread consensus that monitoring and assessing the chemical and ecological status should be readjusted into a more coherent approach to achieve a better quality of European freshwaters.

In the area of water quality, the study (EKRRAN, 2016) finds out that country is at early stage of alignment. Transposition of the Water Framework Directive and the Groundwater Directive marks some progress, after being granted derogations from the objectives for water environment quality in 2016. Full transposition of the Urban Waste Water Treatment Directive has already been achieved in previous monitoring periods, while the Drinking Water Directive requires further alignment with the amending Directive. There has been no progress achieved towards transposition of the Nitrates Directive, Water Quality Standards Directive and the Bathing Water Directive. Transposition of the Floods Directive and Quality Assurance and Quality Control Directive remains at an early stage. Governments have been criticized for not making any progress in their implementation due to lack of coordination, planning and expertise in the relevant institutions. EU, EIB and EBRD have provided their support to alleviate the situation.

Urban waste water treatment remains country’s biggest problem. Most of the pollution comes from untreated wastewater in urban areas. A research on this topic by Market Opportunities (2019) found out that 52.7% of industrial and mining waste water was discharged in watercourses, 10.9% in public sewers and the rest in the soil and reservoirs. A World Bank Report (2019) states that sewage

treatment plants have only 13% of the household connections, and around 65% go to the general sewage systems. According to the National Water Study (2017), our membership will be conditioned with construction of 128 waste water plants for each place over 2000 inhabitants that will cost approximately 1.35 billion EUR. This should contribute to the decrease of water resources pollution by 70%. Currently, one waste water power plant is underway in Skopje, with six other being built in different cities and four other to be constructed in the following years.

Waste Management

This area marks some progress in the last several years. The main remarks in the 2019 EC Progress Report call for implementation of adopted regional waste management plans and the establishment of integrated regional waste management system. Government explanation is that lack of administrative and financial resources make them still not fully operational, delaying setting up of regional structures. There is full transposition of the Sewage Sludge Directive and the PCB/PCT Directive. Packaging Waste Directive, Batteries Directive, Landfill Directive and End-of-Life Vehicles transposition is well advanced, and no progress is seen in transposition of Waste Framework Directive, Mining Waste Directive and alignment with requirements of the RoHS and the WEEE Directive. Implementation of the waste management *acquis* sees no progress lately, except for implementation of the PCB/PCT Directive, due to lack of existence of specific implementation plan for full cost recovery mechanism made according to the principle the polluter pays and network for disposal installations (EKRRAN, 2016).

According to the data of the State Statistical Office (2018), the total amount of collected municipal waste in the country was 625,386t., with 99.5% of it being

dumped in the landfills. Two thirds of this waste is generated by the mining industry. Disposal of hazardous and industrial solid waste is not compliant with current legal framework. A Waste Management Strategy (2008) estimated that one third of the existing 51 landfills are assessed as posing the highest risk to the environment and demand closure or remediation. Another problem is waste disposal at around 1000 illegal landfills that affect the natural resources and environment in general. According to a Municipal Waste Management Report (2018), the collection and recycling is generally made by private companies and the informal sector, the rates in 2015 being glass 10.01%, plastic 44.36%, paper and cardboard 59.89%, metal packaging 1.47% and wood 7.37. Public awareness and involvement is currently low, and this is vital to successfully implement municipal strategies for solid waste in all of its phases.

The existing legislation and national waste management plans place the focus on the decrease of waste generation due to its effect on the environment, on promotion of measures for improvement of production technologies, as well as on increase of recycling and the possibility for waste reuse. This goes in line with the rules of circular economy, which Hollins et al. (2017) call it as change in perception of “waste as a problem” to “waste as a resource”. However, it will require high level of cooperation between industries and relevant companies.

THE REPUBLIC OF SERBIA

Since 2000 Serbia was included in the Process of Stabilization and Association, the EU-Serbia Stabilization and Association Agreement was signed in 2008 and entered into force in 2013. Serbia was granted the status of candidate country in March 2012, and in January 2014, EC commenced the process of accession negotiation with

Serbia with the analytical examination of the EU *acquis* (screening process) that was completed in March 2015.

The first set of environmental legislation was adopted in 2004, which included Law on Environmental Protection, Law on Strategic Environmental Impact Assessment and the Integrated Prevention Act and control of environmental pollution. The adoption of these laws was the turning point in the treatment of environmental problems, but it turned out that their implementation was problematic. The key factor of insufficient or distorted implementation was weak state administrative capacities, state unwillingness to apply the adopted laws, the poor state of economy and the privileged, unequal position of those who needed to align with their provisions. (Živković, T. et al., 2012)

The adoption of the first environmental laws also marked the starting point of Serbia's fight against environmental problems. In the next years, the significant progress has been made launching of the process of harmonization of national legislation with the EU *acquis* (started in 2008) as well as with the start of the negotiation process (since 2014). In addition, since ratification and implementation of the Convention and Kyoto Protocol (in 2001), Serbia makes efforts to establish legal, institutional and political framework aimed at fulfilling the obligations arising from the Convention and the Protocol.

In the period 2009–2012, which is related to the submission of Serbia's application for the EU membership and consequent obtainment of the candidate country's status, a number of environmental laws was adopted: Law on Waste Management, Law on Packaging and Packaging Waste, Law on Chemicals, Law on Non-Ionizing Radiation Protection, Law on Nature Protection, Law on the protection against environmental noise. In the same period, an extremely high number

of by-laws were adopted, including the ones adopted by local self-governmental units. (Živković T., 2014)

The adoption of the mentioned laws was a reflection of the expressed political will to begin the accession process. However, it was done without serious analyses on the obligation thereby imposed on the entities it relates. Thus, although their adoption had triggered positive changes, it still lacked a more serious solution to the accumulated problems in the field of environmental protection. (Jovanović, Đ., et al., 2012)

One of the problems identified in the period of implementation of the first set of climate laws was the lack of by-laws that should support the main legislation and the long period needed for their preparation, thus impeded their implementation.

In this regard, it was not a surprise that seven out of nine of the laws adopted in 2004–2009 period, were amended shortly after their adoption, in May 2009 and the new set of environmental laws was adopted in 2012–2014 period.

The Negotiation process, Chapter 27

In December 2015, Serbia continued negotiation process for the EU membership by opening first negotiation chapters (currently 18 chapters are open out of 35). The negotiation chapter 27 that covers EU standards and legislation in the field of environment and climate change is still not open.

The process of analytical screening of Serbian legislation in the chapter 27 done by the EC was completed on 2014 and the Screening Report concluded that Serbia is sufficiently prepared for the accession negotiations. Although in the last, third revised version of the National Programme for the Adoption of *Acquis* (NPAA) adopted in March 2018, it was envisaged that the adoption of a number

of laws and by-laws in order to harmonize horizontal legislation in the sector of Environment to be finished till the end of 2019, the full plan was not achieved.

The Government Working group for the Chapter 27 was formed in 2015, when the Negotiation Team was formed by Serbian Government. The Working group on Environment was also formed within the National convention on EU, thus involving the civil society organizations in the negotiation process. The Resolution of the National Assembly of the Republic of Serbia, NARS, (December 2013), followed by the Decision of the EU Integration Committee (June 2014) established the procedure for the adoption of draft negotiation positions. In this regard, each draft negotiation position is sent to the parliament that is obliged to have the consultation with the civil society before considering the draft on the relevant committees meeting. After obtaining the positive opinion of relevant parliamentary committees, the draft on becomes negotiation position on certain negotiation chapter (NARS, 2013).

The increasing interest in environmental issues was reflected in Serbian parliament. The Green MPs Group was formed in 2009, consisting of MPs from different political affiliations with common goal to advocate environment protection and sustainable development (NARS, 2009). In addition to that, according to the Decision of the Committee on Environment (2013), the permanent „green chair“ is established, allowing the civil society organizations to actively participate at Committee sessions. However, the need for broader inclusion of the civil sector in the decision-making process is constant requirement. (Dragojlovic N. et al., 2019) There most common criticism is that the public gets involved too late when environmental laws are to be adopted. (Sretic Z. Et al., 2015)

According to the above mentioned procedure, in January 2020, Serbian administration completed preparation of the negotiation position for Chapter 27. The Chapter includes analyses of the existing legislation for the ten main areas, with planned activities needed for the full alignment with EU *acquis*, national and local strategies, responsible institutions, timeframe and financial means needed for the achievement. The document envisages the adoption of the necessary by-laws at the same time with the necessary laws in each area, since it was the lack of these acts that prevented the proper implementation of positive legislation in the past.

Sectoral Environmental Legislation

At the beginning of 2020, the air quality became major environmental issue in Serbia since there were high levels of air pollution measured in most big cities. Civic organizations launched petition to ask for clean air and the citizens organized protests in the most polluted cities. In addition to that, construction of mini-hydro power plants provokes protest of citizens in vulnerable areas. According to the Environmental Protection Agency, the main source of air pollution in Serbia originates from the electricity production and distribution plants (SEPA, 2018, 18). However, there are still no official data on the health consequences of the latest worsening of air pollution in Serbia. The nature protection remains moderately harmonized with EU *acquis*. (EC, 2019)

In the field of air quality EC notes good level of alignment with the *acquis*. National Ceilings Directive is transposed through the Law on Air Protection. Air Quality Directive has been largely transposed (Law on Air Protection, Regulation on monitoring conditions and air quality requirements, Rulebook on content of air quality plans and Rulebook on short-term action plans). The 4th Daughter Directive, Industrial Emissions Directive

and EU Emissions Trading System Directive are transposed, but transition period will be needed. Seveso III Directive is transposed but still in initial phase of implementation. (MEP, 2020)

In the area of horizontal legislation Serbia achieved high level of alignment with the *acquis*, with further need to increase administrative and financial capacities of the Environment Protection Agency, making the Green Fund fully in function and providing adequate resources for the Fund operations. In the sectoral legislation, such as air quality and waste management EC notes good level of alignment with the *acquis*, and in water quality and nature protection EC notes moderate progress. The overall progress on environmental financing including on the level of funding is very low. (EC, 2019)

For Serbia, the negotiation Chapter 27 is considered to be one of the most complex ones, not only in the scope of EU *acquis*, but also in necessary financial resources needed. In 2012–2016, only 3% of stream and river water bodies were characterized as having good ecological status. The estimation is that the alignment with EU standards will cost 15 billion EUR in total, 9 billion of which for the water quality management for the next 15–20-year period. (MEP, 2019)

In Serbia 55% of the total population is currently connected to wastewater collection systems and public sewerage receives approximately 296 thousand m³ wastewater annually (72% discharged from households), 52,4% of total generated wastewater is collected, 7,3% receives biological treatment and 1,3% undergoes more stringent treatment. (MEP, 2020)

In the field water quality EC notes moderate progress. Urban Waste Water Treatment Directive is partially transposed through Water Law. Water Framework Directive is partially transposed through the Water Law, while the implementa-

tion is at early stage. However, it is expected that the full transposition will be achieved by the end of 2020, by amending the existing legislation, i.e. the Water Law and relevant by-laws. Drinking water Directive and Quality Assurance and Quality Control Directive are partially transposed through the Water Law. National Monitoring Water Directive and Groundwater Directive are partially transposed, with the implementation at early stage. The transposition of Drinking Water Directive is in progress. Bathing Water Directive is at early stage of transposition and Flood Directive is largely transposed. There are plans for full transposition until 2021. (MEP, 2020)

Waste Framework Directive is not yet fully aligned. Its implementation is considered together with the implementation of other waste management requirements, in particular having in mind the targets set by the Landfill Directive and the Packaging and Packaging Waste Directive. The development of an integrated waste management system and appropriate infrastructure is at an early stage and lack of infrastructure for treatment and disposal of hazardous waste is a particular problem. In this regard, there are plans for full alignment until 2030. (MEP, 2020)

Climate Change Legislation

After 2000 Serbia faced several significant extreme climatic and weather episodes that caused significant financial and material loss, as well as the loss of human lives. The total amount of material damage caused by extreme climatic and weather conditions, in the period 2000–2015, exceeds 5 billion EUR. More than 70% of losses are associated with drought and high temperature, while the other major cause was flooding. (MEP, 2020)

In the area of climate change Serbia achieved some level of preparation but

implementation is at a very early stage, there is still Law on climate changes to be adopted as well as the Strategy for combating climate changes. There is also a question of the need to strengthen administrative and technical capability to fully align with climate *acquis* monitoring and reporting that should be addressed to. (EC, 2019)

Since the new Law should transpose several EU regulations and directives, it should be followed by by-laws in order to cover all aspects of EU *acquis* in this field, including the new regulations on LULUCF (EU) No 2018/841 and Effort Sharing Regulation (EU) No 2018/842. The new deadline set for the adoption of the Law is envisaged for the last quarter of 2020. (MEP, 2020)

The new Law on climate change was expected to be adopted in 2019, but it was postponed to the last quarter of 2020, as the first draft Law was publicly discussed. One of the findings of the public discussion asks for the regular and not urgent parliamentary procedure when environmental laws are concerned. (NARS, 2020)

Drafting of a Climate Change Strategy and the accompanying Action Plan is ongoing, with the help provided by the EC experts. The Strategy shall align Serbian standards with EU 2030 climate and energy objectives, set feasible targets for the reducing greenhouse gas emissions and provide guidance for long-term sustainable economic growth. The drafting process includes numerous activities in different areas of climate changes and serves as a platform for the inclusion of interested parties. (Project Climate Strategy and Action Plan, 2020) Since the Strategy covers four main areas of intervention in climate change, energy, transport, agriculture and environment, it must be in line with strategic documents in the mention areas, which is the long lasting and complex work ahead.

CONCLUSIONS

The full alignment with EU *acquis* in the area of environment and climate change is the main goal for candidate countries and it is not a question if North Macedonia and Serbia will, but when and how the two countries will fulfill environment and climate change commitments. The negotiations process goes under the principle of integrity of the *acquis*, allowing only few possibilities of bargaining for transitional periods. Adoption of the legislative framework should be accompanied by evidence and should come as result of wide public consultations, and more importantly, it should be adopted in regular parliamentary procedure. Previous experiences shows that lack of administrative and technical capacities in relevant institutions in charge of different areas of legislation, monitoring and reporting occur as key obstacle for future implementation. This said, the process is going to be very challenging for both countries.

Macedonia, in order to fully implement the waste and water management *acquis*, will need approximately 1000 EUR per citizen. The Waste Water Treatment Directive and Drinking Water Directive are the two areas that will be on the top of the list for postponement. According to the plan made by the relevant ministry, the demanded transitional period will probably be by 2040. Waste management costs less, i.e. around 200–300 million EUR, but is much more complex since it involves citizen's acceptance for construction of regional waste landfills, as well entails supporting activities for recycling, reusing, composting and promoting waste as a source of energy. Public awareness and information campaign will contribute to a great extent in this regard. In terms of air quality, the country should continue with alternative heating policies and ensure compliance with the Industrial Emissions Directive. The message is that before the official start of negotiations, the govern-

ment must prepare a sustainable financial framework for “unachievable” and ask for use of membership cohesion funds later for their implementation, having in mind that they are three times higher than those currently at our disposal.

For Serbia, although there is sufficient level of alignment with the EU *acquis* and the drafting of new Law on climate change and Climate change strategy is in progress, there are numerous challenges ahead. With finalization of the negotiation position on Chapter 27 as well as the ongoing drafting of new legislation and strategic documents, much of the work on legislative framework is being done as the necessary documents have been professionally drafted. As track re-

cord shows, key limitation factors occur in insufficient administrative capacities in relevant institutions, as well as in the judiciary and environmental inspectorate. There is also a question of insufficient financial resources for technical and administrative capacity building. In this regard, financial means for the technical and administrative capacity building may be found in EU funds, bilateral donor funding, in favourable loans from international financial institutions and in private sector. However, significant political and strategic decisions to enhance future implementation are still to be made in order to continue with the extensive work in this area.

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