

**Mr Karmenu Vella,
Commissioner for Environment, Maritime affairs and Fisheries**

**Mr. Daniel Calleja Crespo,
Director-General for Environment**

**Mr. Aivo Orav,
EU Ambassador to Montenegro**

Dear Sirs,

In April 2016, Montenegrin NGOs established a Coalition for monitoring of Chapter 27 negotiation process (Coalition 27) with the main task to monitor and report current national progress regarding the harmonisation and implementation of the EU acquis. Thru this Network, which gathers 20 environmental NGO representatives, we have analysed current process and compiled a first Draft of the Shadow report. Having in mind that the commenting process for the finalization of Montenegro Negotiation Position on Chapter 27 is ongoing, we are sharing with you some of our main findings.

Besides evident efforts of responsible institution to harmonise national legislation with EU, our **general remarks** are:

- The process of merging/subordinating the EPA to the MSDT has been implemented with lack of transparency and without consulting important stakeholders. As a consequence there is a clear conflict of interest in the operating of those two bodies and independence within the decision-making process of EPA (that is now under the Ministry –Directorate for Environment). This is evidenced in the fact that experts opinions given by EPA are misused for advocating controversial projects and investments, driven by different interest groups through MSDT.
- It is certain that there will be no substantial financial allocations for closing Chapter 27 deriving directly from the state budget ¹but rather from private sector penalties. Having in mind the low rate of collectability of taxes and penalties from this sector, there is a reasonable doubt that proposed solutions within Eco Fund will not be able to significantly contribute meeting the committed activities under this Chapter.
- Lack of human resources, mostly regarding the capacities of civil servants, which at the end reflects on dealing the development and adoption of relevant by laws that would enable efficient implementation of legal framework. Additional reason for concern is insufficient capacities of inspection bodies which due to the small number of employees are not able to timely and efficiently carry out inspections in the field.

¹Law on Budget and Fiscal Responsibility for 2017

- Spatial planning and correlated sustainable development of valuable areas is threatened by the Governmental adoption of new draft of Law on Spatial Planning and Construction. The Draft law main principle is based on centralisation of the decision making process for planning and permitting procedures, which is not just opposite to the EU standards, but annulling existing local spatial plans and plans of spatial purposes such as those for National parks and coastal zone. For example this draft is annulling just recently adopted Local spatial plan for Municipality of Ulcinj that identified Ulcinj Salina as protected area (which protection is negotiation benchmark).
- Although competent CSOs monitor, participate, argue and insist on dialogue in all important processes of national interest, this is largely ignored by the line ministry, and their opinion has been mostly marginalized especially in important cases such as: establishment of Eco Fund, protection of Ulcinj Salina, development of Porto Skadar Lake, building of second block of TPP Pljevlja, adoption of new Law on Spatial Planning and Construction... Cooperation with civil society in the early stages of information and consultation when it comes to the decision-making process and effective public participation remains low.

After reviewing reports of the implementation of National Strategy with Action Plan for Transposition, Implementation and Enforcement of the EU Acquis on Environment and Climate Change (NEAS) and the daily activities of responsible institutions in this field, the Coalition 27 is highlighting the following **specific comments**:

- Besides the MSDT duties and obligations to secure compliance in a manner and within a program either stipulated in the relevant EU instrument, or agreed with the responsible EU institution, some other ministries or departments in national government will inevitably need to be involved at various stages in the planning and implementation process. Those institutions are: ministries with responsibilities for agriculture, economy, export/import, foreign affairs, internal affair, local government, and trade and industry. This much needed involvement could potentially cause conflicts since there is no coordination of their tasks and clear distinctions of their respective roles or clear State's strategies in the area of environment.
- Reflecting the issues mentioned above, it is necessary to identify conflicting legislation, amendments, to integrate primary legislation and secondary acts needed for full and effective legal transposition and relative timeline and to identify actions needed for full implementation and enforcement. Also, it is a need to assess financial implication of actions performed in accordance with specific issues. For example, for "heavy" directives it is necessary to prepare implementation plans and according to that plan the relevant costs in state budget.
- All levels of jurisdiction for establishment of protected areas and most of ecological programs are being developed and implemented primarily through the Spatial Plan of Montenegro and after that through the different government programmes. Regarding to the changes in the Final draft of the Law of Spatial Planning and Constriction we can conclude that it will change a good model that all plans on the lower level have to be harmonized with Spatial Plan of Montenegro.

Parliament of Montenegro will have less responsibilities in this sector, and Government of Montenegro will have a big responsibilities.

- Bearing in mind calculation of the costs necessary for successful closing of Chapter 27 estimated in the NEAS and intention of Government of Montenegro to establish the Eco Fund we would like to introduce you with different options for establishment this fund. First option is using existing payments according to the principle „polluter pays“, second option is increasing the existing payments, third option is to use existing payment like in option „one“ with additional payment through introduction of excise duties, and forth option is principle „polluter pays“ with the excise duties and additional payments. According to the available information the most certain is option one. The funds collected pursuant to this option are far less than sufficient for the financing of the environmental projects and costs estimated in the NEAS.
- Many fields of environment are missing the clear institutional set-up, technical assistance actions, capital infrastructure and operational actions especially after the merger of the Environmental Protection Agency (EPA) to the Ministry of Sustainable Development and Tourism (MSDT).
- In **Horizontal legislation** we would like to point out the necessity of better coordination between SEA and EIA procedures. Enforcement should be improved strengthening the EPA's and local government's resources. Better implementation and enforcement of the Directive regarding access to information, and better transposition, implementation and enforcement of the Directives about access to justice and public participation are needed.
- In the field on the **air quality** sector the main problem is implementation. There is missing action plans for air quality for many municipalities with higher level of pollutants. The implementation of the measures for Pljevlja municipality is not satisfying.
- **Waste management** is lacking clear option for waste treatment. Government adopted the National Waste Management Strategy by 2030 and National plan for the period 2015-2020 but without clear guidelines for the future activities. The level of implementation of the EU Acquis in this sub-area is not very high and many other important steps still must be taken, such as the establishment of an adequate network for waste disposal, prioritizing waste reduction and prevention, the establishment of a register for waste producers.
- In **water sector** the level of transposition of EU water acquis is quiet low. Currently the system of competences is fragmented. Ministry of Agriculture is the Competent Authority. According to the fragmented competences the level of implementation and enforcement of the water legislation is not adequate. The Government adopted the National Strategy and Action Plan but is still missing the many important documents and clear actions in the field. The construction of sewerage networks and waste water treatment plants is being delayed. An effective monitoring and enforcement system isn't established. A preliminary flood risk assessment to identify the river basins and associated coastal areas where there is a potential significant risk is not set up.

A measure to eliminate the pollution of inland surface waters, territorial waters and internal coastal waters by dangerous substances is not in place.

- **Nature protection** is facing numerous problems as well. After one year of enforcing the Law on Nature Protection, MSDT has prepared only two by-laws, while numerous by-laws are necessary for the full transposition of EU Acquis. There are many ongoing projects and often with incompatible goals. Planning and implementation of activities in the nature protection sector will require extensive consultation and communication with a wide range of stakeholders and non-governmental organizations for effective implementation. The recent events of protected species keeping, smuggling, and killing: hunting and fishing with illegal means (dynamite in the sea and electric generator in the lakes) require better inspection control as well as enforcement of penalties (based on Criminal Law). It is urgent to establish an efficient system with general protection for the important habitats, plant and animal species, preventing and stopping illegal and damaging activities causing unsustainable exploitation of natural resources. Regular monitoring is missing on the state level. Regarding marine protection, there is no Marine Protected Area (MPA) proclaimed yet.
- In the **industrial pollution** filed the competent authority was the EPA which is part of the MSDT now. By 2016 the EPA issued five integrated permits. For others, listed in the “Program on harmonization of particular economies with the Law on Integrated Prevention and Control of the Environmental Pollution” among which are the biggest polluters in the country, deadlines were prolonged for three years, from 01th January 2015 to 01th January 2018 with fairly realistic expectations to extend the deadline again. Additional issue is transposition, implementation and enforcement of Seveso Directive that needs establishing of coordination unit since the jurisdiction is divided between MSDT and Ministry of Internal Affairs (MIA).
- In the **chemical** sector, the Parliament of Montenegro adopted the new Law on chemicals and Law on Biocide Products. It is necessary to increase the capacity for implementation and to have a concrete and continuous coordination among all involved stakeholders bearing in mind the chemical and physical characteristics of substances, possible risks arising in their use, life-cycle approach, administration procedure, monitoring issue. The special attention should be given to residual chemicals in old abandoned industrial warehouses (Berane, Bijelo Polje, Rozaje), among which are some dangerous since their validity date has expired.
- In the **noise** field Montenegro is missing the full implementation of legislation. There are no strategic noise maps and action plans.
- **Civil protection** is responsibility of the MIA. The last events have shown that the Directorate for emergency situations has neither the capacity nor the equipment to respond to the challenges like fires, floods and earthquakes.
- In **climate change** sector the legislative framework for implementation of EU Acquis is missing. Ratification of the Paris Agreement is expected by the end of the year, but with the formal confirmation of this agreement, Montenegro must prepare itself for its implementation in line

with the EU 2030 framework for climate and energy policies. Therefore it is necessary to ensure a strong focus to the EU-ETS and MMR. The involvement of stakeholders as a key point for success is necessary at an early stage. The main role in these activities could be played by the Montenegro Business Alliance and/or the Chambers of Commerce to explain to the business sector the importance of implementation of the CC Acquis.

Sincerely Yours,

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