



European Union Network for the Implementation and Enforcement of Environmental Law

# SPIDER WEB

Strategic Project to Increase the Detection and Disruption of Environmental Crime in the Western Balkans

## BASELINE STUDY REPORT



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# **Countering Serious Crime in the Western Balkans: Baseline Study Report of waste and nature crime in Albania, Bosnia and Herzegovina, Kosovo\*1, The Republic of North Macedonia, Montenegro and Serbia**

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<sup>1</sup> *\*"This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence"*

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## Executive Summary

Environmental crime represents a significant and growing problem that is undermining government policies to sustainably manage and protect the environment. According to Interpol, significant proportion of both nature and waste crime is carried out by organized crime networks, attracted by the low risk-high profit ratio. As environmental legislation advances, compliance costs increase. To reduce costs, waste criminals take advantage of regional inequalities, weak environmental legislation and low compliance and enforcement chain capacities. Waste and nature crime are activities still too often under reported and under investigated. Effective legislation, increased awareness and enhanced capacities along the compliance and enforcement chain is needed to effectively tackle such serious crimes.

As part of a wider EU environmental *acquis*, the EU Directive 2008/99/EC on the protection of the environment through criminal law is essential in presenting a unified approach to environmental protection across the EU. This Directive compels EU Member States to provide criminal penalties for a minimum set of offenses against the environment to increase compliance with EU environmental law. In the Western Balkan region, Albania, the Republic of North Macedonia, Montenegro and Serbia as EU accession candidates, as well as Bosnia and Herzegovina, and Kosovo\*, as potential candidates face sustained efforts and reforms to harmonise their environmental legal framework with the EU requirements.

Based on an extensive desk review complemented by interviews, this report presents the legal and institutional frameworks of the project beneficiaries to prevent and address environmental crime, particularly waste and nature-related offenses.

Albania, Bosnia and Herzegovina, The Republic of North Macedonia, Montenegro and Serbia have ratified all the main Multilateral Environmental Agreements (MEAs). Kosovo\* has included the main principles of the nature and biodiversity-related Conventions into its legislation. All project beneficiaries are advancing with the approximation of the legislation to the EU environmental *acquis*, although there are differences regarding the level of approximation.

Limited political awareness, weak legislation, inadequate resources, gaps in skills and capacity, and insufficient or no coordination between authorities are the main causes that environmental crimes are still being committed. Sanctions envisaged for waste and nature crime appear to be little deterrent and not effective. The proportionality of some sanctions inflicted to offenders vis-à-vis the actual damages to the environment and human health is also questionable.

However, there are also opportunities. Political attention is slowly growing for this topic. Establishing a regional network on environmental crime in the Balkan region could support efforts to combat with environmental crime. Hereby building on experiences from previous programmes and initiatives, including training and capacity building and setting criteria for institutional frameworks. Civil society organisations and non-governmental organisations (NGOs) are increasingly active and help to raise public awareness and attention of relevant institutions.

## Acknowledgements

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## Acronyms

**AP:** Action Plan

**ASP:** Albanian State Police

**BC:** Basel Convention on Transboundary Movement of Hazardous Wastes and their Disposal

**BD:** Brčko District

**BiH:** Bosnia and Herzegovina

**BIMR:** Biodiversity Information Management And Reporting

**CA:** Competent Authority

**CBD:** Convention on Biological Diversity

**CITES:** Convention on International Trade in Endangered Species of Wild Fauna and Flora

**CMS:** Convention on Migratory Species (Bonn Convention)

**COE:** Council of Europe

**EC:** European Commission

**EAPs:** Environment Action Programmes

**EPR:** Environmental Performance Review

**ERA:** European Reform Agenda

**EU:** European Union

**EPR:** Extended Producer Responsibility

**EUTR:** European Union Timber Regulation

**FBiH:** Federation of Bosnia and Herzegovina

**FP:** Focal Point

**GDC:** General Directorate of Customs

**KINP:** Kosovo Institute for Nature Protection

**IESCE:** Inter-Entity Steering Committee for the Environment

**IMPEL:** European Union Network for the Implementation and Enforcement of Environmental Law

**IPA:** Instrument for Pre-accession Assistance

**MEAs:** Multilateral Environmental Agreements

**MESP:** Ministry of Environment and Spatial Planning of Kosovo\*

**NAPA:** National Agency of Protected Areas

**NEA:** National Environmental Agency

**NSNC:** National Strategy for Nature Conservation

**PAs:** Protected Areas

**POPs:** Persistent organic pollutants

**PROs:** Producer responsibility organisations

**REC:** Regional Environmental Centre

**RS:** Republic of Serbia

**SAA:** EU-Kosovo Stabilisation and Association Agreement

**SCIs:** Sites of Community Importance

**SIEF:** State Inspectorate of Environment and Forestry

**SOC:** Serious and organized crime

**TES:** Trafficking in endangered species

**UNECE:** United Nations Economic Commission For Europe

**UNEP:** United Nations Environment Programme

**UNTOC:** United Nations Convention Against Transnational Organised Crime



# 1. Introduction, background and methodology

## 1.1. Background of the study

Environmental crime does not have a universally agreed upon definition; however, it is regularly used to refer to any illegal activity that harms the environment for the financial benefit of individuals, groups or companies. This can involve illegal exploitation and trafficking of natural resources, including flora and fauna, and soil and water contamination from illegal waste dumping. Some environmental crimes also fall into the category of serious<sup>1</sup> and trans-national organised crime<sup>2</sup> as criminal groups and networks are increasingly engaged in this growing lucrative business. Very often the *modus operandi* of criminal networks involves corruption, money laundering financial crime, loss of tax revenue, parallel trading with other forms of criminal activity, and distortion of the licit market (UNICRI, UNEP, 2012, p.2).

Environmental crimes not only severely affect the quality of air, water and soil, threatening the survival of species and causing uncontrollable disasters; but they also pose security and safety threats to a large number of people with significant negative impacts on development and undermine the rule of law (UNEP 2018, p. 6). A wide number of Multilateral Environmental Agreements (MEAs) exist to address different matters including, inter alia: biodiversity and nature protection, climate change, protection of the ozone layer, desertification, management of chemicals and waste, transboundary water and air pollution, environmental governance and environmental liability.

Even so, environmental crimes often fail to trigger an appropriate governmental response. Frequently perceived as 'victimless' and incidental crimes, environmental crimes frequently rank low on the law enforcement priority list, and are commonly punished with low sanctions, as a result of unclear definitions and misinterpretation of concepts (Huisman J., Botezatu I., Luda di Cortemiglia V. et al., 2015, p.20).

There are international environmental agreements in the UN system that regulate transboundary movement and trade of certain types of goods in different ways (direct ban and/or restriction).

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<sup>1</sup> Serious crime is defined in article 2, subparagraph (b), of the United Nations Convention against Transnational Organized Crime (UNTOC) as meaning "*conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty*". See Conference of the Parties to the United Nations Convention against Transnational Organized Crime (2012), "The notion of serious crime in the United Nations Convention against Transnational Organized Crime", Sixth session Vienna, 15-19 October 2012 [https://www.unodc.org/documents/treaties/organized\\_crime/COP6/CTOC\\_COP\\_2012\\_CRP/CTOC\\_COP\\_2012\\_CRP4.pdf](https://www.unodc.org/documents/treaties/organized_crime/COP6/CTOC_COP_2012_CRP/CTOC_COP_2012_CRP4.pdf)

<sup>2</sup> The United Nations Convention against Transnational Organized Crime does not contain a definition of transnational organized crime or organized crime, but it defines "an organized criminal group in (article 2a) as "*a group of three or more persons existing over a period of time acting in concert with the aim of committing crimes for financial or material benefit*". This definition was also adopted in the EU's Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime. Europol specifically includes trafficking in endangered species among the criminal activities carried out by organised crime groups. See EUROPOL, "Defining serious and organized crime", <https://www.europol.europa.eu/socta/2017/defining-serious-and-organised-crime.html>

Transboundary movement and especially illegal traffic in the field of environment, has found a special place in the [Rio Declaration on Environment and Development](#) and the [Agenda 21](#),<sup>3</sup> which contains a clause stating that trade measures are used where necessary in order to enhance regulatory effectiveness in the field of environment. Such regulation should emphasise the root causes of environmental degradation so that it does not result in unfair trade restrictions. Regulations and control procedures for transboundary movement of goods in the field of environment are most developed in the following international agreements: the [Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal](#) (Basel Convention) and the [Convention on International Trade in Endangered Species of Wild Fauna and Flora](#) (CITES Conventions) (Petkovic G., Prosic S., 2014, pp.373-388).

The Basel Convention is a global and legally binding instrument containing new norms, rules and procedures related to the control of transboundary movement and disposal of hazardous waste (import, export and transit) on the international and national level. The Convention is not just an instrument for controlling transboundary movements of hazardous wastes, but also sets the framework for an environmentally sound management of such waste. One of the requirements is that the Contracting Parties establish an adequate criminal policy in criminal legislation and waste management legislation and strictly punish the illegal traffic of hazardous wastes.

The CITES Convention is a very important international act that represents an important step towards the international legal regulation of international traffic (import, export, transit and re-export) of certain endangered species of wild fauna and flora. The objectives of the Convention implementation relate to the elimination of illegal trade which is subject to wild fauna and flora. A typical violation of the convention and national regulations is primarily seen in the trade of species of wild flora and fauna without a valid permit or certificate, or contrary to the conditions contained in the license or certificate, obtaining a license based on a false declaration, possession of a falsified license or certificate, possession of a species that is illegally acquired. Criminal acts committed in the trafficking of these species generally categorize into economic crime because the motive is most often money gain. The level of profit is extremely high because it usually involves rare and extremely valuable species (Yeater M., 2012, p.17-22).

Over the past few years, the issue of illegal killing of birds has steadily gained prominence on the international agenda. The multilateral environmental agreements such as [Convention on the Conservation of European Wildlife and Natural Habitats](#) (Bern Convention) and [Convention on Migratory Species](#) (Bonn Convention) present international legal instruments for the identification by Parties of criteria for establishing national policing/investigation priorities and gravity factors to be taken into account when combating illegal killing, trapping and trade of wild birds. As the members countries of United Nations and Council of Europe the Western Balkan economies (with exception of Kosovo\*) are Parties to the multilateral environmental agreements adopted within the system of UNEP and Council of Europe (CoE).

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<sup>3</sup> Agenda 21: Programme for Action for Sustainable Development, Report of the UN. Conference on Environment and Development, UN GAOR, UN Doc. A/CONF.151/26/Rev.14 (Vol.I) Rio de Janeiro, 1992.

The European Union (EU) is also party to numerous global, regional or sub-regional environmental agreements on a wide range of issues, such as transboundary movement of hazardous wastes and their disposal and nature conservation and protection of biodiversity. Implementation across EU Member States has nonetheless not been uniform. To counteract the wide disparity in the level of implementation among Member States, in 2001 the European Parliament and the Council adopted non-binding minimum standards for environmental inspections.<sup>4</sup> In addition, in order to improve the enforcement of EU environmental law, Member States have to provide for effective, proportionate and dissuasive criminal sanctions for the most serious environmental offences (EU Parliament, 2018).

The EU candidate countries,<sup>5</sup> are required to transpose the environmental *acquis* into their national legislation, subsequently implement it and finally enforce it. The *acquis* comprises over 200 major legal acts covering horizontal legislation, water and air quality, waste management, nature protection, industrial pollution control and risk management, chemicals and genetically modified organisms, noise and forestry. Compliance not only requires significant investment, but also a strong and well-equipped administration at national and local level its enforcement.<sup>6</sup> The EU supports candidate countries in this process through the Instrument for Pre-accession Assistance (IPA), designed in close partnership with beneficiary countries.

## 1.2. Scope and methodology of the baseline study

The present Baseline Study Report is the outcome of a research project commissioned by the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL), implemented by Sofies,<sup>7</sup> with the goal of collecting adequate and reliable information on the capacity and ability of the four EU accession candidates (Albania, The Republic of North Macedonia, Montenegro and Serbia) and two potential candidates (Bosnia and Herzegovina, and Kosovo\*) in the Western Balkans to prevent and address environmental crime and fight serious and organised crime (SOC) involved in waste and nature-related offenses. The current research project is a component of a wider set of activities being carried out by IMPEL in the region, within the project SPIDERWEB - Strategic Project to Increase the Detection and Disruption of Environmental Crime in the Western Balkans.<sup>8</sup>

The work unfolded in two distinct data collection phases aimed at:

- 1) the production of an overview of the current legal framework, relevant authorities, causes, impact and existence of waste and nature crime;

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<sup>4</sup> See <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:l28080&from=EN>

<sup>5</sup> See <http://ec.europa.eu/environment/enlarg/candidates.htm>

<sup>6</sup> European Neighbourhood Policy And Enlargement Negotiations, "Chapter of the Acquis. Chapter 27 Environment", [https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership/chapters-of-the-acquis\\_en](https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership/chapters-of-the-acquis_en)

<sup>7</sup> For more information on Sofies please visit <https://sofiesgroup.com/en/>

<sup>8</sup> For more information please see "Strategic Project to Increase the Detection and Disruption of Environmental Crime in the Western Balkans" (SPIDER WEB) Project: <https://www.impel.eu/projects/spiderweb/> and <https://cscwb.info/it/giz-sponsors-impels-spider-web-project-to-combat-environmental-crime/>

- 2) the assessment of knowledge and training needs of actors across the compliance and enforcement chain, including police and other relevant law enforcement agencies; prosecution offices; and representatives of the judiciary.

The Research Team has implemented the following research activities focused on several issues:

- Policy, legal framework for the detection, investigation and prosecution of environmental crime;
- Relevant institutions, and compliance and enforcement mechanisms;
- Preliminary knowledge gaps and training needs.

Sofies has prepared the research methodology and approach taking into account the main specifics of the issues and context. The primary methods for collecting the qualitative and quantitative data and information through the whole process of the Report preparation consisted of:

- Desk Research on existing open source reports and data, and legislation on waste and nature crime;
- Identification of members of the focus groups as representatives of the main stakeholders and holding several focus group meetings and interviews with them;
- Preparation of interviews<sup>9</sup> with the main stakeholders (minimum three organisations per project beneficiary) based on target sets of research questions for individual respondents used as guide for the discussion ([Annex 1 – Tentative Research questions](#));
- Analysis of the information collected;
- Preparation of Baseline Study Report.

The desk research was used to review the main national strategic documents (legal framework and various reports relevant to environmental crime at national and regional level) adopted by the high official governmental institutions, as well as academic reports and articles. Sofies Research Team also reviewed the membership of beneficiaries of this project to the international environmental agreements in the field of waste and nature (Basel Convention, CITES Convention, Bern Convention, Bonn Convention) and relevant EU directives, such as: Frame Directive on Waste 2008/98/EC, [EU Habitats Directive](#) (92/437EEC); [EU Bird Directive](#) (2009/147/EC); [EU Environmental Crime Directive](#) (2009/99/EC); [CITES Regulations](#) ([EC/338/97](#), [EC/792/2012](#), [EC/865/2000](#)); Timber Regulation [995/2010](#) (EUTR) and [607/2012](#). This allowed an overview of the current status of legal framework on waste and nature crime, and relevant implementation and enforcement.

A [kick off meeting](#) with experts from IMPEL was held in Lelystad, The Netherlands, on 17 January 2019. Based on the discussions and on the precious inputs received, the research team embarked in the first phase of the data collection, carrying out a thorough [desk research](#) which allowed for the collection and analysis of over hundred existing open source documents ([4. Bibliography](#)), reports and information.

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<sup>9</sup> Some respondent preferred to reply to the questions in writing to overcome language problems.

The desk research also allowed for a comprehensive mapping of relevant stakeholders in the six project beneficiaries, which was shared with IMPEL project team. In addition, the project team designed a [questionnaire \(Annex 1 – Tentative Research questions\)](#) which was used as reference guide during the 49 phone/skype/face to face (and a couple were send back via a written format) semi-structured interviews/discussions with selected stakeholders in the compliance and enforcement chain.

A second phase of the data collection will follow, aimed at the production of the [Training Needs Assessment Report](#), based on the results of on-line questionnaire on training capacities and needs, which will be shared with IMPEL by the end of May 2019.

### 1.3. Mapping of Stakeholders involved in the study

The project has been specifically designed to ensure a level of local participation towards the research and planned capacity building activities. This was achieved through the involvement of key stakeholders in the six project beneficiaries in both the baseline survey, as well as in the training needs assessment, via interviews and on-line questionnaires.

In January and February 2019, Sofies research team has compiled a preliminary list of key experts and representatives of main relevant national and regional institutions concerned with waste and nature crime in [Albania](#), [Bosnia and Herzegovina](#), [The Republic of North Macedonia](#), [Kosovo\\*](#), [Montenegro](#) and [Serbia](#). In addition, a number of experts have been identified among key actors in the compliance and enforcement chain, involved in the inspection, detection, investigation and prosecution of environmental crime cases. Finally, a few experts from regional and international organizations involved in projects related to environmental crime have also been identified. As mentioned, 49 interviews were held in total. [Annex 2 – List of respondents](#) includes the list of stakeholders who have contributed to the baseline study.

### 1.4. Limitations and scope of the baseline study

The objectives of the project were ambitious, aiming at collecting information on the capacities and ability of six project beneficiaries, namely [Albania](#), [Bosnia and Herzegovina](#), [The Republic of North Macedonia](#), [Kosovo\\*](#), [Montenegro](#) and [Serbia](#) to prevent and address waste and nature-related offenses, especially considering short time frame (three months from January until March 2019 for the production of the Baseline study, plus two additional months for the compilation of the Training Needs Assessment Report) and with limited resources.

To this end, the focus of the project has been limited to specific forms of environmental crime, namely waste-related offences, and nature crime (specifically those in violation of CITES, Bird and Habitat Directive and Timber regulations). As mentioned, the study is based on the analysis of existing open source reports, documents and data, complemented by a restricted number of experts' interviews. The desk review revealed a paucity of data and statistics on the current dimensions, impact and dynamics of such crimes in the individual project beneficiaries and at regional level. Also, there was few data available on the number of cases inspected, investigated and prosecuted. Sofies Research Team was able to have access to documents

in national languages of project beneficiaries, but the great majority of sources consulted has been in English. The level of information acquired differed significantly across beneficiaries, although all experts interviewed have been extremely keen in collaborating and contributing to the baseline study.

Taking into consideration the time constraints, the baseline study presents an introductory overview of the current national legal and policy framework in the six project beneficiaries, and a summary of the main authorities and institutions concerned at the ministerial level. It was not possible to further collect and analyse information on legislation and institutions active at lower state levels (provincial, and local levels), or to analyse the large number of existing administrative and regulatory acts and by-laws. A possible future research could be carried out to complete the current findings.

Finally, as the baseline study is intended to be the basis for the development of specifically-tailored capacity building activities in the EU accession candidates and potential candidates, attention has been paid to get a sense on main training needs of the different stakeholders in the compliance and enforcement chain. Nonetheless, findings are based on the relevant information available in existing studies and on the opinion of the individual experts and institutions' representatives involved.

## 1.5 A bird's eye view of waste and nature crime in the Western Balkans

A recent UN Environment report highlights that *"Illegal trade in environmental contraband—including ozone depleting substances, illegal timber and minerals, wildlife, and fisheries—is estimated to be the fourth most lucrative international criminal enterprise, after drug trafficking, counterfeiting, and human trafficking"* (UN Environment, 2019, p.31). The trade in endangered species is driven by the extraordinary 'low risk/high profit' ratio, which makes it attractive to unscrupulous individuals as well as to criminal networks and organized crime (UNODC, undated, p.1).

About 350 million plants and animals worth USD 7 to 23 billion sold on the black market every year (ELI, 2017). The EU estimates that the legal trade into the EU alone is worth EUR 100 billion annually, while the global illegal wildlife trade is estimated to be worth between EUR 8 and 20 billion annually (EU Parliament, 2016, p.8). The scale of revenue from the illegal trade in fauna is dwarfed by the income from illegal logging and forest crime (Nellemann, C.; Henriksen, R., Raxter P., 2014, p.8), which is a global problem with significant negative economic, environmental and social impacts. Forestry crimes, including corporate crimes and illegal logging, account for an estimated USD 51–152 billion (Nellemann, C.; Henriksen, R., Pravettoni R., 2018, p.). Finally, illegal trafficking and dumping of toxic and electronic waste is estimated to be worth about USD 10–12 billion (Nellemann, C.; Henriksen, R., Pravettoni R., 2018, p.16). Assessing the actual scale of environmental crimes is difficult because of its clandestine nature, and the scarcity of accurate and comparable data and statistics. Illicit waste trafficking is often facilitated through cooperation with legitimate businesses, including those in the financial services, import/export and metal recycling sectors, and with specialists engaged in document forgery to acquire permits (Europol, 2011).

Nature and waste crime are a challenge in the Western Balkan region covered by the present study, although reliable up-to-date data and statistics are not available at regional, nor national level. The absence of reporting on criminal offences related to nature crime is significant (Schlingemann L., de Bortoli I., Favilli F., 2017, p. 28). Hereunder a bird's eye view of information on nature and waste crime in the Western Balkans collected during the desk review is summarised.

With regards to nature crime, illegal logging and forestry crimes are reported as a problem in the region. Poor governance of the forestry sector is a common problem in the region. Forest harvesting, wood processing and trade in forest products is often unauthorised and involves many illegal operators. Illegal logging is also on demand: manufacturing plants provide easy-to-access, cheap timber, as opposed to legally sourced and more expensive wood (due to the permitting and harvesting processes) (REC, 2012, p.5). The main types of illegal logging in the Western Balkans include:

- logging without permission or concession from public forests;
- wood theft or illegal logging from private forests;
- false declaration of volumes, species, values or origins of harvested wood;
- logging in non-marked or prohibited areas;
- obtaining logging authorisation through bribes;
- killing or burning trees so that they can be logged; and
- logging in prohibited or Protected Areas, such as national parks (REC, 2012, p.5).

All economies in the region have a legal framework regulating forestry activities. However, this sector is covered by a wide spectrum of sectoral legislation (such as environmental protection law, hunting legislation, tourism legislation, penal codes, spatial planning codes etc.), which often results in reduced power for relevant agencies and institutions and coordination problems among stakeholders in the compliance chain. One of the most pressing regional obstacles, shared by most economies, is an overall lack of coordination and consistency between various institutional and administrative frameworks (REC, 2012, p.5).

While economies in the Western Balkans have acted to protect the region's remarkable biodiversity, there is much need for ongoing work and additional research (EEA, 2010, p.7). Coastal areas in the Western Balkans face a further set of pressures, such as effluents and solid waste from urban and tourist areas (EEA, 2010, p.8). The major threats to biodiversity in Bosnia and Herzegovina include unsustainable use of land and forests, habitat conversion, vegetation succession and invasive alien species, overexploitation of natural resources, waste mismanagement, inadequate fire protection, illegal hunting and fishing and climate change. Habitat change in the Republic of North Macedonia is caused directly through land-use changes, exploitation of mineral resources, continuous urbanisation, disposal of waste, trapping, poisoning, poaching, infrastructure development and industrialisation. The following key sectors were identified to affect the biological diversity: agriculture, forestry, hunting, transport, energy, fishery and aquaculture, water management, industry and pollution and use of natural resources (Ministry of the Environment and Physical Planning of Macedonia, 2018, p. 59).

Forest fires are also a common occurrence in Bosnia and Herzegovina and result in incalculable damage (UNECE 2018b, p. xxvii). The main environmental consequences of forest fires in The Republic of North Macedonia are: forest degradation; deforestation; soil erosion; pest and disease outbreaks; biodiversity loss; emissions of greenhouse gases and other gases (REC 2015d, p.25).

The causes (direct threats) of habitat loss, fragmentation and degradation in the Republic of Serbia include the conversion of native habitats, alteration of natural waterways, transportation infrastructures, use of land and other natural resource activities, invasive species and pollution (Biodiversity Strategy, p. 54). Modifications in the practice of the use of land in Montenegro, connected with urban development and tourism development, as well as introduction of new practice in agricultural production, may lead not only to the loss of natural and semi-natural habitats, but also to the loss of agricultural biodiversity. The greatest danger for water and wetland habitats is created by eutrophication, which is a consequence of pollution from human settlements (Ministry of Sustainable Development and Tourism, of Montenegro 2011, p.48).

With regards to wildlife, reports consulted do not offer many up-to-date statistics. A report by ECRAN of 2015, reports that in the period from 2010-2013, total of 154 illegal trade cases to the EU from ECRAN beneficiary countries<sup>10</sup> were recorded, and almost 70% coming from Turkey, then Albania (23%) and Serbia and Bosnia and Herzegovina (less than 6%). No seizures coming from Montenegro, The Republic of North Macedonia and Kosovo\* were reported. Majority of the illegal trade from these countries includes live reptiles, usually exported from Turkey to Germany by air, and from Albania to Italy (ECRAN, 2015, p. 26).

The illegal hunting and trade in wild birds also affects many countries in South-east and Central Europe. In recent years, the main illegal hunting hotspots have shifted from Hungary to Bulgaria, Romania, Serbia and Montenegro, but illegal hunting also occurs in other economies such as Bosnia and Herzegovina, The Republic of North Macedonia, Albania and Croatia (Traffic, WWF, 2008, p.2). In Kosovo\*, according to newspapers reports, illegal hunting is threatening the extinction of wild animals, as well as some rare species of birds, in the Sharr Mountains (Ramadani D., 2019).

Illegal harvesting of wild birds is also little noticed wildlife crime in the region. However, 11-36 million birds are taken/killed illegally in the Mediterranean every year. According to various reports, hunting of birds in Serbia is serious: it is estimated that 104,000-163,000 individuals are being illegally killed/taken each year. Dead birds are concealed in a variety of ways for smuggling across borders, often hidden among other products in cars and refrigerated trucks. The birds are sold in restaurants in places like Italy and Malta (Schlingemann L., de Bortoli I., Favilli F., 2017, p. 26). The statistical service of the Public Prosecutor's Office of Serbia shows that the most commonly prosecuted crime is for the killing and torturing of animals (51 cases in 2014). However, the statistical service does not provide a breakdown of cases, and it is unclear which of these cases specifically relates to the killing of protected species (Schlingemann L., de Bortoli I., Favilli F., 2017, p. 28).

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<sup>10</sup> See <http://www.ecranetwork.org/>



Among the environmental challenges faced by economies in the Western Balkans, air and soil pollution, water and wastewater treatment, and sustainable waste management are reported as a significant problem (Sanfey P., Milatovic J., 2018, p. 28). The generation of municipal waste has risen steadily in the region in recent years, although data on solid waste is very limited. Municipal waste collection is insufficient in most economies in the region, especially in rural areas, while large numbers of waste facilities are outdated. As a result, abandoned or poorly managed landfill sites are a growing problem in many areas. (REC, undated). Most of the waste is disposed unsafely in legal and illegal dumpsites, deposited directly into watercourses and ending up into the sea, or burned (IBECA 2018, p.26).

With regards to hazardous waste, illegal shipments of hazardous waste from South to Southeast Europe and the Balkans (Romania, Hungary, and Albania) are reported in literature (Rucevska I., Nelleman C., Isarin N., 2015, p. 55 and EUROPOL, 2011).

When it comes to the underlying causes of environmental crime, the situation of the Western Balkan region is similar to that of many other parts of the world. Misperceived as 'victimless' crimes, waste and nature crimes rank very low on the priority list in all economies. Many environmental crimes remain unregistered in spite of the massive scale (Nelleman, Henriksen, Kreilhuber, et al, 2016, p. 39).

Among the primary root causes of environmental crimes are the low risks of being detected; low penalties (usually low administrative fines); high profits generated; weak, contradictory or incomplete legal and institutional frameworks; limited human and financial capacities and capabilities of stakeholders in the compliance and enforcement chain; a generally permissive environment; inadequate institutional and political support, and low stakeholders' incentives (Nelleman, Henriksen, Kreilhuber, et al, 2016, p. 75).

Studies on wildlife crime indicate the lack of transparency and corruption as one of the most critical factors enabling illegal wild birds trafficking. In addition, a general lack of awareness of the seriousness of the crime, low interest in nature protection and conservation and weak institutional controls are also mentioned as problems of considerable proportions (Schlingemann L., de Bortoli I., Favilli F., 2017, p. 28). Other reasons for non-compliance are the lack of awareness and specialised training environmental crime for prosecutors and judges. Convictions therefore are extremely rare and most commonly occur when poachers are inexperienced (Schlingemann L., de Bortoli I., Favilli F., 2017, p. 28).

## 2. Preventing and fighting waste and nature crime in the Western Balkan region

### 2.1 Introduction on the legal framework on nature protection and environmental crime

The European environment policy dates back to 1972, after the first United Nations Conference on the Environment. Since then, the European Commission (EC) has issued multiannual Environment Action Programmes (EAPs) setting out forthcoming legislative proposals and goals for the EU environment policy.<sup>11</sup> The Single European Act of 1987 introduced a new 'Environment Title', which provided the first legal basis for a common environment policy with the aims of preserving the quality of the environment, protecting human health, and ensuring rational use of natural resources.

Over the past 40 years, the European Union (EU) has put into place a very ambitious environmental legislation, related waste management and nature protection, introducing the principle of responsibility, as well as the concept of integrated environmental protection. To increase compliance with environmental law across Europe a set of directives has been developed in the field of environmental protection, which require governments to attach criminal penalties to environmental offenses under their own national laws. For the purpose of this study its worth mentioning: [EU Habitats Directive](#) (92/437EEC); [EU Bird Directive](#) (2009/147/EC); [EU Environmental Crime Directive](#) (2009/99/EC); [CITES Regulations](#) ([EC/338/97](#), [EC/792/2012](#), [EC/865/2000](#)); Timber Regulation [995/2010](#) (EUTR) and [607/2012](#).

The European Directive 2008/99/EC on the protection of the environment through criminal law (hereinafter Environmental Crime Directive) is an essential piece of EU legislation in this field, providing for a unified approach to environmental protection across the European Union. [Albania](#), the [Republic of North Macedonia](#), [Montenegro](#) and [Serbia](#), as EU accession candidates, and [Bosnia and Herzegovina](#), and [Kosovo](#)<sup>\*</sup>,<sup>12</sup> as potential candidates, need to harmonise their environmental legal framework with the EU requirements.

All beneficiaries of this study have introduced crimes against the environment into their Criminal Codes, although harmonisation of national codes with the Environmental Crime Directive varies significantly with regard to the level of compliance with obligations derived from the Directive: some of them fully comply with the Directive, while others only include basic pollution crimes. Many crimes are "partially harmonised", criminalising only certain aspects of the offenses listed in the Directive. Nonetheless, all provide for both accomplice liability and liability of legal persons, as required by the Directive (Keene, 2015, p.2).

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<sup>11</sup> For more information see: <http://www.europarl.europa.eu/factsheets/en/sheet/71/environment-policy-general-principles-and-basic-framework>

<sup>12</sup> This designation is without prejudice to positions on status and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

The major challenge in the region is related to the compliance and enforcement capacity, largely due to weaknesses in monitoring, and resource and skills limitations. In this regard, environmental laws and regulations should be technically, economically and socially feasible to be implemented, monitored and effectively enforced. They should also provide objectively quantifiable standards to ensure consistency, transparency and fairness in enforcement. In addition, appropriate and proportionate penalties for environmental law violations should be envisaged.

Further development of infrastructure in accordance with international agreements and EU legislation is still required in the Balkan region to improve institutional capacities, in addition to the adoption of appropriate measures to support in the identification of environmental crime cases, and in the prosecution of offenders.<sup>13</sup>

The Environmental Crime Directive requires Member States to establish criminal offenses for certain violations of EU environmental law. Article 3 of the Directive lists nine general types of acts against the environment that must be criminalized by Member States. This has to be considered as a minimum list. These acts are:

1. Illegal discharge of harmful substances or radiation into air, soil, or water;
2. Collection, transport, recovery or disposal of waste in an unlawful manner;
3. Shipping waste in an unlawful manner;
4. Operation of an industrial installation in which dangerous substances are stored or used in a way that causes or threatens environmental harm;
5. Management or handling of nuclear materials or other hazardous radioactive substances in an unlawful manner;
6. Illegally killing or transporting protected plants, animals, or specimens thereof;
7. Illegally trading in specimens of protected plants and animals;
8. Causing habitat deterioration on protected lands; and
9. Production, trade, or use of ozone-depleting substances (Keene 2015, p.3).

Implementing the Environmental Crime Directive requires not only the introduction of the offenses listed in Article 3 into the national Criminal Code, but also the introduction of effective, proportionate, and dissuasive criminal sanctions for such offenses (Art.5). Also, Article 6 of the Directive requires that states must ensure that criminal liability attaches to both natural persons and legal persons. Furthermore, Article 4 provides that not only principal actors, but also those who incite, aid or abet the violations contained in Article 3 should also be held criminally liable.

Full compliance with the Environmental Crime Directive can be expressed as so if they follow four factors (Keene 2015, p.5):

1. Incorporation of all offenses listed in Article 3 of the Directive into the national Criminal Code;

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<sup>13</sup> See BC Decision IV/12. Illegal traffic in hazardous wastes and other wastes and CITES CoP15 Doc. 57 Decision and CoP17 Doc.93

2. Provision of “effective, proportionate and dissuasive” criminal sanctions for the environmental offenses;
3. Establishment of accomplice liability and liability of legal persons;
4. Actual capacity and willingness to prosecute.

The [Waste Framework Directive \(Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste\)](#) provides for a general legal framework of waste management in the EU. It lays down waste management principles for all other EU legislation related to waste, such as the “polluter pays principle” and the “waste hierarchy”, measures to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste and by reducing overall impacts of resource use and improving efficiency.

The [Waste Shipment Regulation \(WSR\) \(Regulation \(EC\) No 1013/2006 of the European Parliament and of the Council of 14 June 2006\)](#) specifies under which conditions waste can be shipped between EU members. This Regulation aims at strengthening, simplifying and specifying the procedures for controlling waste shipment to improve environmental protection. It sets out a system of control for the transboundary movement of waste. The WSR also specifies the documentation to be provided and the security measures to be taken during transportation. The system must consider the principles of self-sufficiency, proximity of waste for disposal and prior informed consent. This should reduce the risk of waste shipments not being controlled. The Regulation concerns almost all types of waste shipped, including national and transit transports, but excludes radioactive waste and a few other types of waste. It is based on the Basel Convention and it is the legal instruments to control illegal trade of waste, as a criminal act, including detecting, investigations and prosecutions of this trade.

The [Birds and Habitats Directives](#) are the two pillars of EU nature protection legal framework. They are intended to protect many different types of species and habitats. EU accession candidates and potential candidates are encouraged to implement the EU nature directives as early as possible. The [European Birds Directive](#) is the oldest piece of EU legislation on the environment. It was unanimously adopted in April 1979 as Directive 79/409/EEC, and subsequently amended in 2009 with [Directive 2009/147/EC](#). It aims to protect about five hundred natural bird species which are listed in the Directive’s Annexes. In particular, Member States should prohibit illegal killing, trapping and trade of wild birds, deliberate destruction of nests and eggs, deliberate disturbance of birds particularly during the period of breeding and rearing. In April 2016, the Commission has developed a [Roadmap aimed at combating illegal killing, trapping and trade of birds](#) (currently at its 5<sup>th</sup> version).

The [Habitats Directive](#) was adopted in 1992 ([Council Directive 92/43/EEC](#)) to help maintain biodiversity: it envisages the protection of over 1,000 animals and plant species and over 200 types of habitats. It also established the EU-wide Natura 2000 network of protected areas, which is the largest coordinated network of protected areas in the world, offering to haven Europe’s most valuable and threatened species and habitats.

The [EU Timber Regulation \(EUTR\)](#), came into force in 2013, with the aim to reduce illegal logging and illegal harvested timber and derived products derived by ensuring that no timber or timber products can be sold on the market in the EU. To ensure this, EU operators who first place timber products on the EU market, must exercise 'due diligence' and keep records of their traded timber products. The regulation applies to timber and a wide range of timber products, including pulp and paper.

All economies in the region have a legislation in place to ensure care for nature and nature conservation (Vasilijevic, Pokrajac, Erg, 2018, p.11). The main law that regulates nature conservation, sustainable use of biodiversity, and protected area systems in all economies is the law on nature and/or biodiversity conservation/protection. Additionally, all economies have also adopted specific laws governing the proclamation of Protected Areas (PAs), mainly national parks. Apart from specific nature conservation or environmental laws, all economies also have a number of by-laws or decrees/decisions/ordinances/codes, which further regulate specific issues (Vasilijevic, Pokrajac, Erg, 2018, p.11).

The four EU accession candidates and two potential candidates covered by the study are at different stages of transposition of the EU Nature Directives (including Council Directive 92/43/ EEC on the conservation of natural habitats and of wild fauna and flora, a.k.a. the Habitats Directive, adopted in 1992; and Directive 2009/147/EC of the European Parliament and the Council on the conservation of wild birds, a.k.a. the Birds Directive, adopted in 1979, amended in 2009). Albania has transposed most of the Birds and Habitats Directives. BiH has made steady progress in the past several years, with a set of subordinate legislation pending adoption. It should be noted that in the case of BiH, it is difficult to discuss transposition of the EU Nature Directives at the national level, since the laws exist only at the entity level. According to the national reports, transposition in Macedonia and Montenegro is progressing well. Both economies have made good progress with transposition of the Birds Directive. In Serbia, the process of transposition of the EU Nature Directives is nearing completion (Vasilijevic, Pokrajac, Erg, 2018, p.11). Little progress has been achieved in Kosovo\* the alignment with the *acquis* on nature protection (EC 2018d, p.69). Implementation of Habitat and Birds directive is at early stage. Concrete steps were taken to designate and manage the Natura 2000 network of protected areas. Further activities are needed to establish a monitoring system of the conservation status of habitat types and species and to implement mechanisms of protection and preservation of integrity of ecological network (e.g. appropriate assessment).

All main multilateral environmental agreements (MEAs) have been ratified by all UN members, except for Bosnia and Herzegovina which is the only country that has not ratified the Convention on the Conservation of Migratory Species of Wild Animals (CMS).

See Table 1 here below:

Table 1 - Main relevant Multilateral Environmental Agreements (MEAs)

| MEA  | Parties |                        |         |                             |            |        |
|--|---------|------------------------|---------|-----------------------------|------------|--------|
|  | Albania | Bosnia and Herzegovina | Kosovo* | Republic of North Macedonia | Montenegro | Serbia |
| <a href="#">Barcelona Convention (1995)</a>  | A       | S                      | -       |                             | A          |        |
| <a href="#">Basel Convention (1989)</a>  | A       | A                      | -       | A                           | R          | A      |
| <a href="#">COE Bern Convention (1979)</a>   | R       | R                      | -       | R                           | R          | R      |
| <a href="#">Convention on Biological Diversity (CBD) (1992)</a>  | A       | A                      | -       | A                           | R          | R      |
| <a href="#">Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973)</a> | A       | A                      | -       | A                           | S          | R      |
| <a href="#">Convention on Migratory Species (CMS) (1979)</a>   | A       | S                      | -       | S                           | S          | S      |
| <a href="#">Espoo Convention (2017)</a>  | R       | A                      | -       | A                           | A          | A      |
| <a href="#">SEA Protocol to the ESPOO (2003)</a>   | R       | R                      | -       | R                           | R          | R      |
| <a href="#">Minamata Convention on Mercury (2013)</a>  | S       |                        | -       | S                           | S          | S      |
| <a href="#">Montreal Protocol (1987)</a>   | A       | R                      | -       | R                           | R          | R      |
| <a href="#">Rotterdam Convention (1998)</a>  | A       | A                      | -       | A                           | A          | A      |
| <a href="#">Stockholm Convention (2001)</a>  | R       | R                      | -       | R                           | S          | R      |
| <a href="#">United Nations Convention to Combat Desertification (1994)</a>                                     | A       | A                      | -       | A                           | A          | A      |

\* This designation is without prejudice to positions on status and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

**Legend:** S: signed R: ratified A: accession S: succession

**Red:** waste related MEAs **Green:** nature related MEAs

**Blue:** close link to waste and nature MEAS

**Source:** <https://www.informea.org/en/node/4/parties>

## 2.1. Albania

### 2.1.1 Policy, legal framework for the detection, investigation and prosecution of environmental crime

Albania has ratified the most important multilateral environmental agreements (see Table 1 above). Also, as Albania has been granted the EU candidate status in June 2014, it is committed to transpose the EU environmental *acquis* into its national legal framework.

All Albanian environmental protection laws since 1993 have emphasised that the protection of environment from pollution and damage is a national priority. The legislative framework on environmental protection has since developed into a wide legal framework, comprising: the Constitution, the Criminal Code, the Framework Law on environmental protection, sectorial laws, and bylaws in compliance with the international environmental treaties to which Albania is a Party.<sup>14</sup>

Basic principles in the field of environmental protection are included in the [Constitution](#) of the Republic of Albania of 1998, which in Article 56, stipulates that: “*Everyone has the right to be informed for the status of the environment and its protection*”. This Article not only recognises a right to be informed on the status of the environment and its protection, in line with the Aarhus Convention ratified in 2000, but it also implies the existence of a duty of protection of the quality of environment (Selimi, Zaganjori, 2014, p.4). Article 59, para.1 d) and dh) of the Constitution further defines the term “environment”, by stating: “*The state, within its constitutional powers and the means at its disposal, aims to supplement private initiative and responsibility with [...] d) a healthy and ecologically adequate environment for the present and future generations ...dh) rational exploitation of forests, waters, pastures and other natural resources on the basis of the principle of sustainable development*” (Shegani, Xhaxha, 2012, p.6). The Constitution also introduces the principle of sustainable development, recognized by several United National and European legal instruments (Shegani, Xhaxha, 2012, p.7).

Criminal offences against the environment can be found in the [Criminal Code](#) of 1995,<sup>15</sup> which includes a specific chapter (Chapter IV), comprising of seven articles (201 to 207); two more offences have been added in 2008<sup>16</sup> and amended in 2013 (Selimi, Zaganjori 2014, p. 5). The Albanian Criminal Code categorizes the criminal offences against the environment as misdemeanours (punished with fine and imprisonment up to 2 years) and crimes. However, harmonization with the Environmental Crime Directive is considered still

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<sup>14</sup> The full list of policies, laws and international agreements concerning the environment can be found at: <http://www.fao.org/faolex/country-profiles/general-profile/en/?iso3=ALB>

<sup>15</sup> The full text in English of the Criminal Code of Albania can be found at: <https://www.legislationline.org/documents/section/criminal-codes/country/47/Albania/show>

<sup>16</sup> Law no. 10023, dated 27.11.2008, as amended by law no. 144, dated 02.05.2013, introduced article 206/a, envisaging the criminal offence of “destruction by fire of forests and of the forestry environment”, and article 206/b, envisaging criminal offence of “unintentional destruction by fire of forests and of the forestry environment”.

minimal by experts and practitioners (Keene 2015, p. 5 and Interview 1, 5). Chapter IV includes the offenses listed below:

- **Pollution of the air** through emission of smoke, gasses and other toxic, radioactive substances (basic offence: fine and up to 2 years of imprisonment; aggravated form for serious consequences to human life and health: up to 10 years of imprisonment) – art. 201 Criminal Code;
- **Transportation of toxic and radioactive waste** (basic offence: 1 to 5 years of imprisonment; aggravated form: 5 to 15 years of imprisonment) – art. 202 Criminal Code;
- **Pollution of waters** of the sea, rivers, lakes, or the springs of the water supply system with waste or other substances (basic offence: up to 5 years of imprisonment; aggravated form: 5 to 10 years of imprisonment) – art. 203 Criminal Code;
- **Prohibited fishing** (basic offence: fine or to up 3 months of imprisonment; aggravated form: fine or up to 2 years of imprisonment) – art. 204 Criminal Code;
- **Unlawful cutting of forests** (basic offence: fine or up to 1 year of imprisonment) - art. 205 Criminal Code;
- **Cutting decorative and fruit trees** (basic offence: fine; aggravated form: sentenced up to 3 months of imprisonment) - art. 206 Criminal Code;
- **Destruction of forests and forestry environment by fire** (basic offence: from 5 to 10 years of Imprisonment; and two aggravated forms: up to 20 years of imprisonment) – art. 206a Criminal Code;
- **Unintentional destruction by fire of forests** and of the forestry environment (basic offence imprisonment from 2 to 5 years; aggravated form: 3 to 8 years of imprisonment) – art. 206b Criminal Code;
- **Breach of quarantine for plants and animals** (basic offence: fine) - art. 207 Criminal Code.

Besides the revision of the offence of “environmental pollution” - which under the previous criminal code of 1977 was classified as a misdemeanour against public health - Chapter IV of the Criminal Code includes other offences previously considered as economic offences, such as illegal fishing or the unlawful cutting of forests. Additional offences are punishable under more general provisions contained in different chapters of the Code, such as the unlawful import and export of ozone-depleting substances which is covered by the more general offence of smuggling of prohibited goods (Article 171) as their import and export has been explicitly prohibited by the Council of Ministers Decision no. 453/2005; or the breach of rules on radioactive substances and trafficking of such substances (Articles 282 and 282/a).

Serious danger or harm to human health and life is not required as a condition for the application of environment offences, except for the offence of breach of quarantine for plants and animals. It is regarded as aggravated circumstances in cases of air pollution, water pollution, transportation of toxic waste and forest fires. Aggravating circumstances mainly relate to human life and health, except for the new provisions on forest fires, which include elements that are directly related to damage to the environment.

It should be noted that except for a few offences that can only be committed intentionally, most of the environmental criminal offences are punishable even when committed unintentionally or by negligence.



Experts interviewed in the context of this research, though, highlighted that the offences included in Chapter IV of Criminal Code are vague and imprecise, in contravention with the principle of *lex certa* (clarity of the law) (Interview 2). Also, the Code does not criminalise pollution of soil, which according to cases prosecuted in the country is often the result of activities of legal companies. The pollution of sand is, in fact, a serious problem in Albania, especially for seaside cities, like Durres, Vlora, Saranda, etc. (Interview 2). Also, Article 202 of the Albanian Criminal Code, does not include the import and the export of toxic and radioactive wastes (just transportation and deposit are sanctioned). Finally, illegal killing of animals is not envisaged in the Criminal Code, which includes only a specific article on illegal fishing (Article 304), and illegal trade in endangered species is not a criminal offence included in the Criminal Code (while it is regulated by a specific law - see below).

The Criminal Code was enacted in 1995, two years after the adoption of the first law on environmental protection, and since then Chapter IV on Environmental Crime has been amended three times. Legal experts taking part in the study have underlined that the Code is old and requires a revision to fully approximate the 2008 EU Crime Directive (Interview 1, 3, 5). Since 2011, there have been several initiatives to amend the environmental chapter of the Criminal Code to fully align it with Environmental Crime Directive (IBECA 2018, p.21). Already in 2013, the Ministry of Environment drew attention to the need to align the Albanian Criminal Code with the Environmental Crime Directive. A project on the revision of the Criminal Code, along with the more general justice sector reform, has been prepared but it is not known when such a reform will be enacted (Interview 3). The [SELEA project](#) also published a Draft Working Paper on Environmental Criminal Law that provided an initial estimation of Albania's compliance with the Directive (Keene 2015, p.5). A draft law for the full transposition of the Environmental Crime Directive has also been pending for one year (Interview 5).

With regards to the adequacy of penalties, experts interviewed underlined that most criminal offences against the environment in the Criminal Code are misdemeanours (i.e. Articles 201/1, 204, 205, 206, 207) and relevant penalties are thus too low, starting with a fine that is 50,000 – 3,000,000 lek, with imprisonment of maximum two years (Interview 2, 4, 5). The deterrence of such sentences and the proportionality to possible damages caused to the environment and human health are thus questioned (Interview 2).

As for the liability regime envisaged for offences against the environment, the Albanian Criminal Code envisages both accomplice liability as well as criminal liability of legal entities. Chapter IV of the Criminal Code generally provides for accomplice liability, for any person acting as “executor”, “instigator” or “helper” in the commission of the act. However, none of the articles in this Chapter indicate the penalty level to be imposed to accomplice, thus the effectiveness of such provisions appears undermined (Keene 2015, p. 6). The punishment for the legal entities guilty for committing a criminal offence depends on the punishments set up in the Criminal Code. However, penalties against legal entities in this field do not seem adequate, dissuasive nor proportionate, according to the experts interviewed. For instance, on the basis to paragraph 5 of Article 11 of Law No.9754 of 2007 (entitled “[For the criminal liability of legal entities](#)”), a legal entity committing a misdemeanour is punished with a fine ranging from 300,000 – 1,000,000 lek. This means that the maximum of the fine for the legal entities is lower than the maximum fine for individuals who commit the same misdemeanour (Interview 2).

Liability for environmental damage is based on the “polluter pays” principle, in line with the European legislation. It entails: the prevention and compensation of the entire damage caused to the environment; the rehabilitation of the environment; and the adoption of measures to minimize the risk of environmental damage (Hitaji, 2015, p. 617). The polluter who caused damage is liable if: a) does not take the necessary precautions; b) does not take the necessary dissuasive measures; c) fails to inform the National Environmental Agency about the risk of damage on the environment, despite of the measures taken or whether the damage has actually occurred. In case of direct threat, the polluter is required to immediately take all necessary preventive measures. Failing to fulfil this obligation, the National Environment Agency (NEA) takes the necessary precautionary measures and the polluter is responsible to cover the corresponding costs (Hitaji, 2015, p. 617). Practitioners interviewed in the context of this study, nonetheless, underlined that, according to the Code of Criminal Procedure and the Law “For the criminal liability of legal entities”, the Prosecutor cannot request the Court, nor the Court can decide, to temporarily suspend the activity of a company, in case of evidence that it has committed a crime against the environment. Thus, the company can continue its (polluting) activity even during the investigation and the trial (Interview 2).

Also, the polluter-pays principle is rarely enforced in practice (Interview 2), and cost-recovering services seem to be applied in very few municipalities (GIZ, *undated*). Besides, the lack of a secondary legal framework for environmental liability and the inappropriate permits and requirements hamper the establishment of an adequate process and assessment of environmental liability for damage to the environment (EC, 2018a, p.86).

Apart from the Criminal Code, Albania has revised its environmental legislation with the adoption of several pieces of administrative legislation covering specific sectors such as air, water, forests, waste management, etc. The [Framework Law on Environmental Protection](#) (No 10431/2011) adopted in 2011 has been part of a wide legal reform, which was undertaken by the Ministry of Environment to provide the necessary legal basis for the transposition of all EU directives. Nevertheless, implementation of the environmental legislation remains a major challenge in Albania, as it has been highlighted in the EU Progress Reports on Albania from 2012 to the latest report in 2018 (EC, 2018a, p.56), and by the experts interviewed (Interview 1, 5).

With regards to the legal framework specifically related to [nature protection](#), Albania is a signatory party of the most important international conventions on biodiversity,<sup>17</sup> and is advancing in the process of approximation of the national legislation to EU *acquis* (Ministry of the Environment of Albania, 2015). Alignment to the Habitats and Birds Directives is considered well advanced (EC, 2018, p.87). According to UNECE 2018 report, “*The Government has taken a drastic approach to combat illegal hunting and logging*” (UNECE, 2018, p. xxviii), although this is done through administrative law. [Law No. 68/2014](#) (amending and supplementing [Law No. 9587 of 2006 on The Protection of Biodiversity](#)) was introduced to ensure full

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<sup>17</sup> Including: such as: Convention of Biological Diversity, Cartagena Protocol on Biosafety, Nagoya Protocol on Access and Benefit Sharing, Ramsar Convention on Wetlands, Bern Convention on the Conservation of European Wildlife and Natural Habitats, Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Bonn Convention/Convention on the Conservation of Migratory Species of Wild Animals (CMS), the United Nations Convention to Combat Desertification (UNCCD), the Barcelona Convention for the Protection of the Mediterranean Sea Against Pollution.

compliance with the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora. A whole section is dedicated to the management and protection of types of natural habitat and fauna including wild birds and plants of interest for the community (UNECE, 2018, p.8). According to Article 54, violations of this law constitute a criminal offence, entailing administrative sanctions such as fines.<sup>18</sup> In 2014, amendments were made to the Law on Protection of Biodiversity to introduce the Natura 2000 concept and increase the transposition of 1992 Directive on the conservation of natural habitats and of wild fauna and flora. Inspections and controls on the implementation of the provisions of the Biodiversity Law are carried out by the State Inspectorate of the Environment (SIEF), the State Police, the Forestry Police, the inspectorates for fishery and plant protection, the zoo technical service and other inspectorates.

In June 2016, the [Law on the Moratorium on Hunting No. 61/2016](#) extended for another five years the ban on hunting initially introduced in 2014 (Mullaj, Hoda, Shuka, 2017, p. 31). But this is an administrative act, not a criminal law, therefore in case of breach the punishment is a fine and often fines end up not being collected (Interview 4). In the same year, Albania imposed a 10-year moratorium on [logging](#) in all its forests and banned timber exports. However, the recent EC progress reports notes that currently there are no special support schemes aiming at protecting landscapes, valuable natural habitats, biodiversity and/or preventing the negative effects that inappropriate agricultural practices can have on natural resources (EC, 2018a, p.66).

Finally, the [Law on Protected Areas](#) (No 81/2017), adopted in 2017, has advanced the legislation in areas of nature and biodiversity conservation (EU Policy Hub, 2017, p.3). The Law on Protected Areas defines general criteria for the designation of protected areas PAs: "A protected area may be any terrestrial, water, sea or coastal territory, defined as an area for biodiversity preservation, of the territory's associated natural and cultural values, which are managed based on existing legal and managerial tools and methods", while national parks are classified as a separate category (REC, 2015a, p.12). Any illegal activity carried out inside national parks, including minor illegal cutting, is regarded as criminal offences. All organisations managing forests and pastures and owners of private forests and pasture areas are obliged to take all the measures necessary to protect these areas (REC, 2015a, p.18). The institutional framework for the development and management of protected areas has improved since the creation of the National Agency of Protected Areas in 2015; however, the EC Progress report maintains that the effective protection for designated protected areas (PAs) still needs to be fully guaranteed (EC, 2018a, p.87).

According to UNDP, "Overall, the key obligations on wild life protection and hunting have been effectively transposed. However certain gaps have been identified and the applicable legal framework remains unclear regarding specific legal measures and concepts due to the fragmentation of rules, different use of terms (deviating from the Nature Directives) or the repetition and overlap of relevant provisions. It is therefore not always clear what is the applicable legislation while certain aspects of the EU legislation are not covered"

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<sup>18</sup> See <http://www.themisnetwork.eu/tools/standard-operating-procedures/albania/pollution-and-nature/overview-of-the-environmental-legal-framework.html>

(UNDP, 2018, p.17). A detailed review of the transposition of Bird and Habitat Directive and CITES is available in the UNDP report (UNDP, 2018, p.26 and following).

Proper organisation of biodiversity data and relevant accessibility is of great importance for the elaboration of policies and strategies, strategic assessments and identification of intervention priorities, both at global and national level. The [Biodiversity National Network of Albania](#) (BioNNA<sup>19</sup>) was developed for supporting the National Biodiversity Strategy and Action Plan of the Albanian Ministry of Environment for the period 2000–2015, serving as a data repository according to international standards of biodiversity data collection (Pacifci M. at al, 2018, p.80). However, the aggregation of a new dataset is not an automated process. Currently, BioNNA aggregates not only data of taxa listed in the Birds and Habitats Directives, but also of several other taxa and potentially of all those which are known to occur in the country. This is of pivotal importance for Albania, since the data aggregated in BioNNA could provide evidence of the need for protection of some endemic/rare taxa or highlight areas of high biodiversity or relevance, deserving some degree of protection (Pacifci M. at al, 2018, p.84).

For what concerns [waste](#), the Albanian legislation has undergone clear improvements during the last years by fully or partially transposing nineteen EU directives and regulations related to waste (UNECE, 2018, p.27). Article 3 of the [Law 10463/2011 on integrated waste management](#) includes the definition of waste, which *"shall mean any substance or object which the holder discards or intends to discard or is required to discard"*.<sup>20</sup> The same law also includes the definition of hazardous waste, *"any waste that displays one or more of the hazardous properties listed in annex 3, attached to this law"*. This law sets the legal basis for the approval of at least twelve Decisions of the Council of Ministers on different waste streams, waste disposal, etc. The purpose of the law on integrated waste management is to protect human health and the environment by: (i) preventing or reducing the negative impacts from waste generation and the management of waste; (ii) reducing the overall impacts of the use of resources and improving the efficiency of such use; and (iii) Ensuring the environmentally sound management of waste. This law requires the development of regional and local integrated waste management plans by local government units. So far, regional waste management plans were developed in all twelve Albanian regions. According to a recent report, some of them were approved by the respective Council, but not yet implemented (IBECA 2018, p.28).

Regarding procedures for wastes controlled according to Basel Convention (Annex VIII and II), two are the main regulations: [Regulation No 4 date 15/10/2003 Procedures for approving of Permit for Export of waste and Permit for Transit of waste](#), and [Law no 9537 dated 18.05.2006 "On hazardous waste management"](#). Natural and legal persons are required to apply for a permit for export of waste or permit for transit of waste to Ministry of Environment, in line with requirements in of the Basel convention.

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<sup>19</sup> ([www.bionna.al](http://www.bionna.al))

Please see: <http://ers.basel.int/ERS-Extended/FeedbackServer/fsadmin.aspx?fscontrol=respondentReport&surveyid=75&voterid=49401&readonly=1&nomenu=1>

The written consent from the Competent Authority of country of import is required.<sup>21</sup> This Regulation does not specify the recovery or disposal of waste.

The EC 2018 Progress Report notes, nonetheless, that the legal framework for waste management is still just partially aligned. The [National Strategy on Waste Management](#) (covering 2010-2025) is being revised, but its implementation remains at an early stage. Work done on waste landfills has brought waste treatment facilities closer to the EU standards, although further efforts are required, including economic incentives to promote recycling and prevent waste generation (EC 2018a, p.86). On [chemicals](#), Albania's national plan to reduce and eliminate persistent organic pollutants (POPs) is currently being reviewed. Some positive steps have been taken towards aligning with the EU Regulation on registration, evaluation, authorisation and restriction of chemicals (REACH). However, the adoption of the implementing legislation and the establishment of adequate capacity are still needed (EC 2018a, p.87).

Overall, important efforts have been made by Albania to comply with its international reporting obligations. However, the absence of monitoring data on species and habitats, air quality and GHG emissions has impacted on timely reporting in these fields (UNECE, 2018, p.7).

Below, in Table 2 there is a summary of the main pieces of legislations on the environment in Albania.

Table 2 - Summary table on Environmental legislation Albania

| Piece of legislation                       | Main provisions  | Gaps and Challenges  |
|--|--|--|
| <b>Environmental protection</b>            |  |  |
| The Constitution (1998 as amended in 2012) | Duty of protection of the quality of environment   |  |
| Criminal Code (1995)                       | Chapter IV (Articles 201 to 207 Criminal Code)<br><br>Additional crimes against the environment envisaged in the Criminal Code are illegal fishing, illegal logging, illegal cutting of decorative trees, setting of forest fires and breach of animal or plant quarantine, none of which directly corresponds to the Environmental Crime Directive. | Art. 201: Pollution of air; Art. 203: Pollution of water; and<br>Art. 202: Importing toxic and radioactive waste into Albania are just partially harmonised with the EU Environmental Crime Directive.<br><br>The Albanian Code does not cover pollution of soil, as required by Environmental Crime Directive Art. 3(a). Article 202 of the Criminal Code partially reflects the Environmental Crime Directive Arts. 3(b) and (c), but fails to introduce liability for the majority of actions foreseen by the Directive, including improper |

<sup>21</sup> Data on waste exported and imported from/to Albania is available at the BRS Convention Secretariat website: <http://ers.basel.int/ERS-Extended/FeedbackServer/fsadmin.aspx?fscontrol=respondentReport&surveyid=75&voterid=49401&readonly=1&nomenu=1>

|  |  |  |
|--|--|--|
|  |  | <p>collection, transport, recovery, disposal, and export of waste, as well as management of waste collection sites.</p> <p>In addition, limits for air pollution in Albania differ from the ones set in the EC.</p>  |
| <p><a href="#">Framework Law on Environmental Protection</a> (No 10431/2011)</p>   | <p>Sets the new framework for strategic planning on the environment, environmental assessments, permitting, environmental monitoring, information, liability for environmental damage and other issues.</p> <p>Article 5 definition of conservation of biological diversity as one of the key environmental elements.</p> <p>Article 62, Inspection</p> <p>Article 63, Field of Inspection</p> <p>Article 64, Obligation to Ensure Compliance</p> <p>Article 65, Compliance Notifications</p> <p>Article 66, Notification of Suspension</p> <p>Article 69 defines 11 administrative violations and specifies the sanctions for each violation.</p> | <p>Some subsidiary acts due to be adopted in accordance with the Law are still lacking, as for instance liability for environmental damage. Also, the Environmental Fund, due to be established under the Law in order to support environmental protection activities, has not been created.</p> |
| <p>Law On Environmental Permits (No. 10448, Dated 14 July 2011)</p>  | <p>Article 24, Inspections:</p> <p>Article 27: revocation of environmental permits.</p> <p>Article 29 defines 12 administrative violations.</p>  |  |
| <b>Waste</b>   |  |  |
| <p>Law 10463/2011 on integrated waste management</p>   | <p>Article 61, Prohibitions, includes five cases of prohibitions.</p> <p>Article 62 defines 62 offences, which, in the case that they do not constitute a criminal offence, are considered administrative violations, including the respective sanctions.</p> <p>Article 63 describes cases of non-compliance with the environmental permit; the application of Law No. 10279, dated May 20, 2010, on Administrative Violations, cases when the environmental permit is revoked etc.</p>   |  |
| <p>Regulation No 4 dated 15/10/2003 Procedures for approving of Permit for Export of waste and Permit for Transit of waste</p> |  |  |

|  |   |  |
|--|---|--|
| Law On hazardous waste management (No. 9537 dated 18.05.2006)  |   |  |
| <b>Nature</b>  |   |  |
| Law on Protected Areas No 81/2017  |   |  |
| Law No. 10006/2008, "On Wild Fauna Protection"   | foresees protecting important habitats for birds in general and migratory birds in particular   |  |
| Law No.9867/2008, "On rules and procedures for international trade of endangered species of flora and fauna" | Article 4, Prohibitions<br>Article 9, Control Authorities: Forestry Inspectorate and Fishery Inspectorate<br>Article 27, Customs Control<br>Article 28, Control<br>Article 29, Measures<br>Article 32, Administrative Violations<br>Article 33, Control<br>Article 34, Seizure<br>Article 35, Documentation   |  |
| Law on Biodiversity Protection No. 9587/2006 (as amended by Law No. 68/2014)                                 | The law establishes rules and procedures for implementing CITES, to ensure that international trade does not threaten the survival of any species.<br>Article 10, Planning for Emergencies:<br>Article 11, Transboundary Impacts<br>Article 49, Inspection and control<br>Article 53, Liabilities<br>Article 54, Sanctions: (violations of the law constitute a criminal offence) |  |
| Law on the Moratorium on Hunting No. 61/2016   |   |  |
| National Biodiversity Strategy and an Action Plan for the Period 2015- 2020                                  |   |  |
| Law No. 9385, dated May 4, 2005, On Forests and Forestry Police, As Amended                                  | Article 37, Responsibilities in the Case of Non-implementation<br>Article 38, Administrative Violations<br>Article 39, Seizures<br>Article 40, Decision on Administrative Violations and Appeals<br>Article 40/1: In the case of criminal and administrative violations of forests, the inspector assesses the damage caused.<br>Article 40/2, Fine Payment                       |  |

## 2.1.2. Relevant institutions, and compliance and enforcement mechanisms

Several different institutions and agencies exist in Albania responsible for different aspects related to environmental protection, *in primis* the Ministry of Tourism and Environment (MOTE) and Ministry of Agriculture, Rural Development and Water Management. Below, a summary of the main relevant authorities for in Albania are:

- **Ministry of Tourism and Environment (MOTE)**, oversees the adoption of national environmental strategies and policies and facilitate the approximation to the EU environmental *acquis*. The MoE is the focal point for the Stockholm Convention, the Rotterdam Convention, the Basel Convention, the Minamata Convention and the Long-Range Transboundary Air Pollution Convention (CLRTAP) (UNDP, 2017, p.18). The Ministry of Environment is designated as management authority for CITES, and its Directorate for Biodiversity and Protected Areas is responsible for issuing permits and certificates (ECRAN 2015, p. 11).<sup>22</sup> In the field of nature protection, MOTE cooperates, among others, with the **Ministry of Agriculture, Rural Development and Water Management** for biodiversity, as well as with the **Directorate General of Customs** for international customs control on trade of endangered species of wild fauna and flora. The current number of staff in the MOTE dealing with environment is very limited and technical departments appear to be severely understaffed (IBECA 2018, p.30).
- **The Inter-Governmental Group on Environment Crime in Albania (IGEC)**, established in 2016 with support OSCE is aimed to strengthen coordination and collaboration between eleven law enforcement agencies and entities within the relevant Ministries to deter, prevent, and prosecute environmental crimes in Albania through information sharing.
- The **State Inspectorate of Environment and Forestry (SIEF)** was established in 2014, as a separate public institution subordinated to the Ministry of Environment (UNECE, 2018, p.15). It comprises four sections: forestry, environment, water and finance. The inspectorate is organised and functions at national and regional level (REC, 2015a, p.11). It currently a staff 460 persons: 12 at the central level and the rest at the regional level (Interview 3). SIEF inspectors have the competence to impose administrative sanctions.<sup>23</sup> They can impose fines, withdraw licenses, suspend or close operations and apply the Criminal Code with regard to the following environmental crimes: air pollution, toxic waste transportation, water pollution, prohibited fishing, illegal cutting of forests, cutting decorative and fruit trees, destruction of forests and forest environment by fire, negligent destruction of the forest and the forest environment with fire, breach of plants and animals' quarantine (Hitaji, 2015, p. 617). SIEF refers to the **Central Inspectorate**, established in 2011 by **Law No. 10433/2011**, which is a central institution under the Prime Minister. The Central Inspectorate is mandated to improve the effectiveness and accountability of inspection activities

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<sup>22</sup> The Scientific Authorities for CITES are the Centre for Flora and Fauna Research (within the Faculty of Natural Sciences of Tirana University) and the Botanical Garden of Tirana.

<sup>23</sup> Administrative sanctions are provided by, among others, the Law on Environmental Protection, the Law on Protected Areas, the Law on Environmental Impact Assessment, the Law on Integrated Waste Management, the Law on Integrated Water Management, the Law on the Protection of Transboundary Lakes, the Law on Chemical Substances and Preparations, the Law on Environmental Treatment of Polluted Waters, and the Law on the Protection of Air from Pollution. See THEMIS Network, "Albania. Administrative enforcement", <http://www.themisnetwork.eu/tools/standard-operating-procedures/albania/general-sop/administrative-enforcement.html>



in the country.<sup>24</sup> The Central Inspectorate is in charge of adopting general rules for risk assessment, scheduling inspections, documenting inspection activities, and reporting the activities of inspectorates. There is a need to improve coordination and cooperation with other stakeholders and institutions. For instance, there is the need to increase the cooperation between State Inspectorate of Environment and Forestry, and regional authorities in management of protected areas (GIZ, 2017, p.28).

- **The National Environment Agency (NEA)** was established in 2014 by the Decision of Council of Ministers No.150 of 2014. NEA is a central institution with branches in 12 regions (National Environment Agency of Albania, p.2). NEA is the competent authority for assessing the conditions for the issuance of environmental permits, but according to recent reports, the Agency faces some serious challenges in the permit administration process. NEA lacks enough human resources to check the validity of information provided by the applicant and therefore environmental permits are issued based on information provided which is often not verified (IBECA 2018, p. 32). NEA is also responsible for the drafting of the national environmental monitoring program and for monitoring of the state of the environment with the publication of annual reports on the state of the environment; conducting environmental pollution measurement services; establishment and management of the environmental information system; establishment and management of the Pollutant Release and Transfer Register; providing environmental information to the public involved in the environmental decision-making process. NEA performs monitoring as well as analyses and reports the data, and is also responsible for the transfer of waste, including hazardous waste. Waste transfer registers have been established in 2015, but so far there is no national data base on mercury waste management. NEA is the national focal point for environmental monitoring, assessment and environmental reporting at national level (including reporting to EEA and some other international organisations). According to one expert interviewed in the context of the study, there are often misunderstandings about the respective legal competences and responsibilities between NEA and SIEF (Interview 2).
- Nature protection and biodiversity is responsibility of the **Directorate of Biodiversity and Protected Areas** and the **National Agency of Protected Areas (NAPA)**, which was established in February 2015, as an institution reporting to the Minister of Environment, setting up for the first time in the country independent administration of Protected Areas (Ministry of Environment of Albania, 2015, p.12). NAPA is in charge of managing the network of protected areas and other natural networks as Natura 2000, and monitors and inventory of flora and fauna in these areas.
- The **Albanian State Police (ASP)**, which has approximately 10'000 officers in equivalent to 257 per 100'000 inhabitants (compared to the EU average of 211 in 2015). Albania re-organised the police structures in December 2015 and is currently working on a new restructuring of the police, which should make it more efficient through department mergers and new accountability lines (EC, 2018a, p.32). The **Forestry Police** (according to Law No. 7623, dated 13 October 1992) is a specialised branch of the police in charge of the ASP, in charge of monitoring the implementation of the forest legislation. The employees of the Forestry Police have a military status.

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<sup>24</sup> More information is available in English on the relevant website, see <http://www.insq.gov.al/misioni-dhe-funksionet/?lang=en>

- **General Directorate of Customs (GDC)** under the Ministry of Finance is responsible for controlling and enforcing rules related to import and export. The General Directorate of Customs should report annually to the Chemicals Office the previous year's data on the import and export of hazardous chemicals. Even exporters and importers should report to the Ministry of Environment each year the imported and exported quantities of hazardous chemicals. GDC owns a database of sources of supply of chemicals. There is currently no monitoring for imported or exported mercury quantities, but the National Environment Agency, as the case may be, requires information from GDC regarding mercury trade. The data serve to draft the Environmental Status Report (UNDP, 2017, p.19).

### 2.1.3 Conclusions

The prompt ratification of recent multilateral environmental agreements shows the political importance that Albania attributes to international cooperation on environmental issues (UNECE, 2018, p.7). Nonetheless, the U.N. Economic Commission for Europe (UNECE) notes that the adoption of the new environmental cross-cutting strategy for the period 2015–2020 has been delayed and, although several issue-specific strategies on environment exist, *"Albania does not have a visionary umbrella policy framework for environmental protection"* (UNECE, 2018, p.5). Also, there is still a serious lack of awareness and knowledge, from all relevant stakeholders and the general public (ECRAN, 2015, p. 28, and Interviews 2, 3, 4).

Albania achieved significant progress in the adoption of new environmental legislation to approximate the EU environmental *acquis*. However, some necessary subsidiary acts are still lacking, and the actual implementation of legislation lags behind (Interviews 1,2,4). Several environmental laws require the development of regular law enforcement reports, which have not been put in place yet. In addition, while regular analysis of transposition of the EU environmental *acquis* is conducted, no such a review is available on the actual implementation and enforcement of national legislation (UNECE, 2018, p.13).

Also, in some cases the legislation is too advanced for the existing administrative, institutional and financial capacities (UNECE, 2018, p.5). Finally, further progress is needed to achieve full compliance with the remaining cross-cutting aspects of the directives on environmental liability, environmental crime and environmental inspection.

A recent report clearly underlines that *"the crucial problem with the legal framework is the limited capacity of implementation and enforcement"* (IBECA 2018, p.25). Among the reasons for this are: lack of ability to measure and monitor compliance; weak enforcement procedures; limited institutional and administrative resources and capacity, and a dysfunctional distribution of competencies among ministries (IBECA 2018, p.25). Overlapping or unclear division of competences between institutions, as for instance between SIEF and NEA has also been underlined as a major challenge in the effective implementation of the existing legal framework (Interviews 1, 2, 4). The EC Progress Report (EC, 2018a) underlines the progress achieved with the introduction in 2014 of the State Inspectorate of Environment and Forestry.

While a risk-analysis-based approach to inspection planning has been introduced, related guidance materials are needed along with specialised training. Other challenges include strengthening the transparency of inspectors' work and improving coordination among various inspectors at local level. Compliance promotion is part of SIEF mandate, but compliance promotion activities are not performed (UNECE, 2018, p.5). Practitioners interviewed in the context of this study underline that environmental crimes (such as pollution of air, pollution of waters, illegal cutting of woods) require long-term investigation and monitoring, not only by the police, but especially by the environmental inspectorate, so as to collect necessary evidence to be presented to the prosecution office (Interview 2 and 4). The State Inspectorate of Environment and Forestry (SIEF) should be more proactive and carry out inspections with more frequency (Interview 2 and 4). One case currently still pending in front of the court, was raised by the Prosecutor against Chief of the Regional Inspectorate of Elbasan for omission of duty, because for two years (2016 – 2017) no inspection was carried out in the three companies most problematic in Elbasan (Interview 2).

Finally, the EC 2014 Progress Report underlined the need for more effective prosecutorial system for environmental crimes (Keene, 2015, p.6). Statistics confirm the little number of proceedings for offences against the environment. In 2013 environmental crimes composed 0.9% of all crimes prosecuted in 2013, (compared to 1.4% in 2012). The total number of environmental crimes registered in 2013 was 255, resulting in 93 prosecutions and 34 convictions. Most reported crimes (191) and convictions (22) were for unlawfully cutting or damaging trees (Keene, 2015, p.6). Prosecutions and convictions for this type of offences have decreased in 2016 and 2017. According to the data from the Annual Report of the General Prosecutor of Albania provided by a respondent to the interview, in 2016 the criminal proceedings about criminal offences against environment (Articles 201 – 207) have been only 0.6% of the total number of the criminal proceedings and in 2017 have been 0.69%.

Table 3 - Environmental prosecutions and convictions in Albania

| Year | Number of prosecutions opened                       | Cases brought to court | Number of defendants | Number of convictions        |
|------|---|------------------------|----------------------|------------------------------|
| 2016 | 190 (out of which 118 for Illegal cutting of woods) | 58                     | 123                  | 73 defendants were convicted |
| 2017 | 216 (out of which 105 for Illegal cutting of woods) | 45                     | 97                   | 32 defendants were convicted |

**Source:** Data from the Annual Report of the General Prosecutor from Albania (Interview 2)

In 2016 and 2017, most prosecutions were opened for offences under Art. 205 of the Criminal Code "The illegal cutting of woods", followed by pollution of the air (Art. 201) and prohibited fishing (Art. 204). In these two years, no prosecution was started for the offence under Article 202 of the Criminal Code "The transportation of toxic wastes" (Interview 2).

Practitioners interviewed highlighted another serious challenge in implementing the legislation which is the lack of a national Institute or national certified laboratory capable of carrying out all the necessary analyses in the cases of environmental crimes. Difficulties have been encountered during investigations and

prosecutions, to find experts or laboratory for such analyses. In addition, the inspectors in the field do not have the appropriate equipment to monitor and measure the level of the pollution in the air (Interviews 2, 3 and 4).

The number of laws and administrative provisions constituting the Albanian legislative framework on environmental crime makes it quite difficult for the stakeholders in the compliance and enforcement chain (such as the police, the Prosecutor and the Judge) to determine which is specific piece of legislation that should be applied in each case (Interview 2).

From a more global perspective, the EC 2014 Progress Report, indicates that some progress has been made in the field of police cooperation and the fight against serious and organised crime (EC, 2014, p. 52). Though, law enforcement institutions need to improve coordination and information exchange to maximise their capacity to investigate such type of crimes. Continuous specialised joint training activities involving police officers, prosecutors and judges remain necessary. Albania needs to develop and introduce strategic threat assessments relating to organised crime in its territory, in close cooperation with Europol. There is a need to improve proactive and intelligence-led investigations. Scattered use is made of special investigative techniques and financial investigations (EC, 2014, p.52); although in March and April 2017 Albania adopted amendments to the Anti-Mafia Law and the Criminal Procedure Code to increase the effectiveness in criminal investigations (EC, 2018a, p.32).

#### 2.1.4 Preliminary findings in knowledge gaps and capacity building needs in the area of environmental crime

In this paragraph, a few preliminary general findings on the knowledge gaps and capacity building needs emerged with the desk review and interviews with key stakeholders are presented.

Even though a number of projects and initiatives have already taken place, in consideration of the low priority granted to environmental crime in general, and the persistent lack of awareness of authorities (as well as the general public), further training and repeated training for all actors in the compliance and enforcement chain should raise awareness on the nature of environmental crime, relevant impact, and dynamics. It should also be noted that no system of training and in-service training on environmental issues of staff in sectoral ministries exists (UNECE, 2018, p.16). UNECE report in fact recommends that: *"The Ministry of Tourism and Environment should establish a training system, including for in-service training, for staff in the Ministry and subordinated institutions to ensure regular and comprehensive coverage of environmental and sustainable development issues"* (UNECE, 2018, p.16).

With regards to environmental inspectors, following the introduction of a risk-analysis-based approach to inspection planning, guidance materials and training is needed (UNECE, 2017, p. 4). In particular, the sessions should cover the operational steps needed for inspection planning, effective cooperation between environmental inspectors and other supervisory authorities, and on how to improve reporting procedures and the evaluation mechanism of the SIEF's work (EC, 2014, p.57). Furthermore, a specific session should be devoted to security measures and soft procedures to be adopted during inspections (Interview 3).

Another topic which was highlighted during the interviews and the desk review has been the importance of coordination and cooperation among different ministries, and state agencies on biodiversity and environmental protection issues (GIZ, 2017, p.27, and Interviews 1, 3).

Currently, police officers are not specifically trained to deal with the investigation of environmental crime, especially in the Prosecution Offices of the districts, while prosecutors and judges have limited knowledge on environmental law and experience on environmental related cases (Interview 2). Training for police and prosecutors should thus focus on how to conduct investigations on environmental crime, with concrete steps to be followed to collect proper evidence to be presented to the prosecutor and the judge. Case studies on prosecution of nature and waste crime carried out in Europe would also be very helpful for capacity building of prosecutors and judges (Interviews 2, 3).

Prosecutors and law enforcement officers would also require training on how to prove the causal connection between the crime such as pollution of air, pollution of water or destroying the woods, and the severe consequences caused to the health or life of people (paragraph 2 of Articles 201 and 203, and paragraph 3 of Article 206/a). Another topic for prosecutors how to quantify the economic damage caused by the pollution to the environment, such as air and water, in order to implement the polluter-pay principle and request payment of damages (Interview 2).

On waste crime in particular, as Albania is at an early stage of alignment with the *acquis* waste, further development of capacities at both central and local level government on the waste international and national legislation and policies is required (EC IPAlI, 2018, p. 33). Also, further training would be required on the Basel Convention from an operational point of view, i.e. how to conduct investigations for law enforcement and inspectors and prosecutors (Interview 3).

With regards to nature crime, continuing building capacities of CITES authorities on EU Regulations and priorities relating to legal and sustainable trade in wild fauna and flora is needed. Training for staff of MoTE is necessary, including management authorities of protected areas, in biodiversity data analysis and processing (GIZ, 2017, p.29). But also training on how to conduct investigations for law enforcement and inspectors and prosecutors on CITES (Interview 3).

## 2.2 Bosnia and Herzegovina

### 2.2.1 Policy, legal framework for the detection, investigation and prosecution of environmental crime

Bosnia and Herzegovina (BiH) is party to a number of multilateral environmental agreements, including those on waste and nature crime (see Table 1 above), although it appears to be lacking effective institutional mechanisms to coordinate the implementation of all such international agreements. A case-by-case approach is currently followed, under which implementation arrangements were established for some MEAs and not for the whole set of environmental agreements to which BiH is committed (UNECE 2018b, p.xxiv).

Bosnia and Herzegovina was identified as a potential candidate for EU membership during the Thessaloniki European Council summit in June 2003. The EU Stabilisation and Association Agreement with Bosnia and Herzegovina came into force on 1 June 2015. Since 2011, Bosnia and Herzegovina has made some efforts to transpose the EU environmental *acquis* into the national legislation; however, according to the Third Environmental Performance Review (EPR), the country is still at an early stage in this process (UNECE 2018b, p.xxi).

Some introductory remarks are necessary to understand the complex political and administrative structure, before the overview of the existing legal and policy framework regarding environmental crime. Bosnia and Herzegovina is administratively divided into two almost independent entities, created by the Dayton Agreement: the Federation of Bosnia and Herzegovina (FBiH); and the Republika Srpska. Each of these entities has its own political structure, administration, with its own government, parliamentary assembly, police and customs department. The FBiH consists of 10 federal units, called cantons. The smallest administrative units in Bosnia and Herzegovina are the municipalities: there are 79 municipalities in FBiH and 64 municipalities in the Republika Srpska (GIZ, 2017, p.6). In addition to the two entities, Bosnia and Herzegovina includes the autonomous Brčko District (BD), which is a shared territory that belongs to both entities but comes under the exclusive sovereignty of the State of Bosnia and Herzegovina. The Brčko District authorities consist of the District Assembly, a multi-ethnic Government, police force and judiciary. See the Figure 1 below:



Figure 1- Bosnia and Herzegovina

Source: <http://ontheworldmap.com/bosnia-and-herzegovina/bosnia-and-herzegovina-political-map.html>

Most of the competences for environmental protection in BiH, in accordance with the [Constitution](#) (Art. 3), are assigned to the two entities, the FBiH and RS. Thus, regulation of environmental matters and management of natural resources differs in the two entities, as well as in the Brčko District. In addition, in the FBiH, for issues not regulated at the entity level, responsibilities are delegated to the relevant ministries of the ten cantons.

Criminal offences against the environment can be found in multiple criminal codes: the Criminal Code of the Federation of Bosnia and Herzegovina; the Criminal Code of the Republika Srpska; and the Criminal Code of the Brčko District (Delalić, Pilipović, and Petrović, 2012, p.54). In this context, the progress in harmonising their criminal codes with the Environmental Crime Directive has been uneven. Articles on offences against the environment differ in the three Codes and do not cover the whole spectrum of offences provided for in the EU Environmental Crime Directive 2008/99/EC (UNECE 2018b, p.54), although both entities and Brčko District provide for both accomplice liability and liability of legal persons. However, the legal provisions on who can initiate court proceedings for damage to the environment, how proceedings can be initiated, what represents such damage, how liability for such damage is determined, who is paid for such damage, and how such damage is repaired, are considered insufficiently specific nor precise, and often incomplete (Keene, 2015).

The EC Progress Report of November 2016 noted that a national policy and strategy on the environment is lacking, except for a few specific schemes on climate change, biodiversity, landscape protection and radioactive waste management exist, and a number of sectoral strategies at entity and Brčko District level.

In July 2017, though, with the adoption of the Environmental Approximation Strategy, environment and climate action has been included in the Indicative Strategy Paper for Bosnia and Herzegovina. The strategy is essential for harmonised countrywide implementation of the EU *acquis* and for ensuring that the sector is addressed in a comprehensive and consistent manner (EC 2018c, p. 31). This document includes a calculation of costs of approximation of EU *acquis* and application of European nature protection standards in Bosnia and Herzegovina (GIZ, 2017, p.8). The revised [2015–2020 Strategy and Action Plan for Biodiversity and Landscapes Protection](#) is in the process of adoption (EC 2018c, p. 31).

A summary of the full environmental legal framework of the two entities and BD is available on the website of the National Clearing-House Mechanism (or National CHM)<sup>25</sup>. Hereunder, we provide a short overview of the main pieces of legislation of the two entities and BD relevant for this study.

- [Federation of Bosnia and Herzegovina \(FBiH\)](#)

The [Criminal Code of the Federation of Bosnia Herzegovina](#) comprises of a specific chapter on crimes against the environment (Chapter Twenty-Six Criminal Offences Against Environment, Agriculture and Natural Resources), which covers *inter alia*:

1. **Pollution of the environment** (basic offence: imprisonment from 3 months to 5 years; aggravated offence in case of severe body injuries or damages: Imprisonment from 1 to 10 years, or up to 12 years in case of death) - Article 303 of the Criminal Code of FBiH;
2. **Pollution through the operation of equipment** (basic offence: fine or a term of imprisonment of not more than 1 year; aggravated form: fine or term of imprisonment of not more than 3 years) – Art. 304 of the Criminal Code of FBiH;
3. **Pollution by waste** (dumping, deposit, collection, storage, recycling, transporting or generally waste management) (Basic offence: fine or up to 3 years imprisonment; in case of negligence the sentence is reduced) - Article 305 of the Criminal Code of FBiH;
4. **Depredation of Forests** (basic offence: fined or imprisonment of not more than 1 year; aggravated form in case of protected area: up to 3 years of imprisonment) - Article 315 of the Criminal Code of FBiH;
5. **Forests Theft**<sup>26</sup> (basic offence: imprisonment of max 3 years; aggravated form: between 1 and 5 years of imprisonment) - Article 316 of the Criminal Code of FBiH;
6. **Forest Fire** (basic offence: between 1 and 8 years of imprisonment; aggravated form: 2 to 12 years of imprisonment) - Article 317 of the Criminal Code of FBiH;
7. **Torture and Killing of Animals** (basic offence: fine or up to max 6 months of imprisonment; aggravated form: max 1 year of imprisonment) - Article 318 of the Criminal Code of FBiH;

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<sup>25</sup> [http://www.bih-chm-cbd.ba/Lf\\_en.htm](http://www.bih-chm-cbd.ba/Lf_en.htm)

<sup>26</sup> Forest theft is defined in article 316 (1) of the Criminal Code of the FBiH as:”

Whoever, for the reason of theft, cuts down one or more trees in a forest and the quantity of timber cut exceeds two cubic meters shall be punished by imprisonment for a term not exceeding three years”.



8. **Illegal hunting** (basic offence: fine or up to max 1 year of imprisonment; aggravated form: between 3 months and 3 years of imprisonment and forfeiture of the equipment) - Article 319 of the Criminal Code of FBiH;
9. **Illegal fishing** (basic offence: fine or up to max 1 year of imprisonment; aggravated form: max 2 years of imprisonment and forfeiture of the equipment) - Article 320 of the Criminal Code of FBiH;
10. **Damage, Destruction and Unauthorized Export of Cultural Monuments and Protected Natural Objects** (basic offence: fine or up to max 3 years of imprisonment; aggravated form: between 6 months and 5 years of imprisonment and forfeiture of the equipment) - Article 321 of the Criminal Code of FBiH.

The FBiH foresees other offences against the environment, in addition to those established by the Directive, such as forest theft (Art 316) and destruction and a number of crimes against livestock and animals (Keene, 2015, p.7). Both accomplice liability and liability of legal person are foreseen in line with the Environmental Crime Directive. Article 32 of the Criminal Code of FBiH imposes criminal liability for incitement, while Article 33 imposes accessory liability. Accomplice liability expressly requires the intent of the accomplice (*mens rea*). Inciters are given the same sanction as principals to the offense (Keene 2015, p.8). Article 135 of the Criminal Code of FBiH foresees criminal liability for legal entities, sanctioned by fine, forfeiture of property, or dissolution of the company (Keene 2015, p.9). Apart from the Criminal Code, a number of other pieces of legislation exist that are relevant in the field of environmental crime, foreseeing administrative offences (mainly punished with fines) (Interview 8).

The [Law on Environmental Protection of the Federation of Bosnia and Herzegovina](#) (OG FBiH, No. 33/03, 38/09) dates back to 2003, and no amendments were introduced in this Law since its approval, but a new law on environmental protection is currently under development (UNECE, 2018b, p.10). The [Law on Nature Protection](#) of 2013 (amending the previous law of 2003) recognises Natura 2000 sites and states that certain areas may be designated for the European program Natura 2000 and engaged in the international ecological network, conservation of natural habitats and habitats of species by a regulation of the Government of FBiH (Art. 33). It also prohibits all forms of deliberate capture or killing, or disturbance of specimens of species listed in the Red List (Art 35), as well as the deliberate picking, collecting, cutting, uprooting or destruction of protected plants and their transport and sale or exchange (Art. 34). The Red Lists of Wild Species and Subspecies of Plants, Animals and Fungi of FBiH were developed in January 2014 (USAID, 2016, p.16), but both lists are currently under revision as not (Interview 6). In 2011, the Federation of Bosnia and Herzegovina adopted the [Regulation on Natura 2000](#) (OG FBiH, No. 43/11). The appropriate assessment procedure for plans and projects that are likely to have a significant effect on the conservation and integrity of ecologically significant areas, i.e. the future Natura 2000 sites, has been introduced in the Law on Nature Protection, but is not yet applied in practice (UNECE 2018b, p.11 and Interview 6). Measures for the conservation of habitat types shall be integrated in spatial planning documents and management plans of protected natural areas (USAID 2016, p.34). According to the latest UNECE report (UNECE 2018b), however, the subsidiary legislation needed to fully implement this law is still missing. Among others, the Law prescribes the establishment of the office or institute for the protection of nature, which has yet to be established. Difficulties in implementation are also connected with the underfinancing of protected

areas (UNECE, 2018b, p.11), and understaffing of relevant institutions in charge for inspections (Interview 6). Three of ten cantons in FBiH have adopted laws on nature protection, including Tuzla Canton (2004), Central Bosnia Canton (2005) and Herzegovina-Neretva Canton (2005). However, given that the federal Law on Nature Protection was adopted in 2013, these laws are outdated and not completely in line with the new federal regulations (GIZ 2017, p. 8).

So far, no forest protection law exists. Forest management in the Federation of Bosnia and Herzegovina was governed by the temporary Regulation on Forests, but was repealed by the Constitutional Court. The development of the new law on forests started in 2010, but no law on forests has yet been adopted at federal level (Interview 6, 10). The main issue at stake is to coordinate the work and responsibilities of municipalities, cantons and the Federation in the forestry sector. In the Federation of Bosnia and Herzegovina, though, in the absence of a law at entity level, a significant body of forestry legislation has been developed at cantonal level (UNECE 2018b, p.16).

As regards to **waste**, very large parts of the EU waste *acquis* still remain to be transposed. The Federation is implementing the 2008-2018 waste management strategy, and the management of municipal waste is regulated by cantonal laws (EC, 2016, p.56). Nonetheless, waste management planning appears to be incomplete (in particular cantonal level plans), or not fully aligned with the requirements of Article 28 (Waste Management Plans) of the Waste Framework Directive ([Directive 2008/98/EC](#)) (Hogg, Vergunst, 2017, p.5). Although producer responsibility schemes for packaging and electric and electronic waste (WEEE) have been implemented, there have been some challenges with the producer responsibility organisations (PROs) that discharge the responsibilities of producers (Hogg, Vergunst, 2017, p.6). Last year the law on waste was changed, bringing in a new definition of waste, but by-laws still need to be adopted and implementation is lacking (interview 10).

According to experts interviewed (Interview 6 and 7), the challenge lies with the actual implementation of the existing legal framework. The great majority of offences prosecuted related to forestry crime (Art. 315 and 316 of the Criminal Code of the FBiH). But, overall, the number of cases on environmental crime that come to the attention of the authorities is very limited, as shown by the data on the criminal charges and convictions in the FBiH carried out in 2018. One of the main reasons reported by respondents involved in the study is lack of awareness by the general public (Interview 7) and low priority granted to crimes against the environment by the law enforcement as well as judicial authorities (Interview 7). Proceedings in FBiH can be either misdemeanour or criminal proceedings. For an overview of the procedures followed in the Federation against environmental crime are available on the THEMIS Network Project website.<sup>27</sup>

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<sup>27</sup> <http://www.themisnetwork.eu/tools/standard-operating-procedures/bosnia-and-herzegovina-english/federation-of-bosnia-and-herzegovina/overview-of-procedures.html>

Table 4 - Reported, convicted and accused persons in Federation BiH in 2018

| Offence  | Total number of criminal charges | Convictions | Prison | Fine | Conditional | Warning | Acquittals of sanctions | Total number of court decisions |
|--|----------------------------------|-------------|--------|------|-------------|---------|-------------------------|---------------------------------|
| <b>Art.303</b><br>Pollution of the Environment   | 2                                | 0           | 0      | 0    | 0           | 0       | 0                       | 0                               |
| <b>Art. 304</b><br>Pollution through the Operation of Equipment  | 0                                | 0           | 0      | 0    | 0           | 0       | 0                       | 0                               |
| <b>Art.305</b><br>Pollution by Waste   | 0                                | 0           | 0      | 0    | 0           | 0       | 0                       | 0                               |
| <b>Art. 315</b><br>Depredation of Forests  | 10                               | 3           | 1      | 0    | 3           | 0       | 0                       | 4                               |
| <b>Art.316</b><br>Forest Theft   | 498                              | 312         | 84     | 15   | 331         | 1       | 1                       | 432                             |
| <b>Art 318</b><br>Torture and Killing of Animal  | 21                               | 8           | 0      | 0    | 6           | 0       | 0                       | 6                               |
| <b>Art. 319</b><br>Illegal Hunting   | 7                                | 1           | 0      | 0    | 1           | 0       | 0                       | 1                               |
| <b>Art. 320</b><br>Illegal Fishing   | 2                                | 1           | 0      | 1    | 1           | 0       | 0                       | 2                               |
| <b>Art .321</b><br>Damage, Destruction and Unauthorized Export of Cultural Monuments and Protected Natural Objects | 1                                | 0           | 0      | 0    | 0           | 0       | 0                       | 0                               |

Source: Federal Prosecutor Office, Federation BiH, 2018.

- **Republika Srpska**

In 2012, the [Criminal Code of Respublika Srpska](#) was amended to partially align with the Environmental Crime Directive. Articles 415-437 contain a number of environmental offenses, some of which are in line with the Directive, while it also introduces additional offenses. A specific chapter of the Criminal Code covers the offences against the environment (Chapter Thirty-Three entitled “Criminal Offences Against Environment), including, in particular, the following:

1. **Pollution of the environment** (basic offence: fine or a term of imprisonment of maximum 2 years imprisonment; and one aggravated form: in case of danger for health of humans and animals is in 1 to 5 years of imprisonment. In case of negligence maximum penalties are decreased) - Article 415 of the Criminal Code of Republika Srpska;
2. **Pollution by waste** (recycling, dumping, depositing, collecting, storing or transporting) (basic offence: fine or a term of imprisonment of maximum 2 years; and one aggravated form: 1 to 5 years of imprisonment) – art. 416 of the Criminal Code of Republika Srpska;
3. **Construction, operation or use of facilities or equipment that pollute the environment** (basic offence: fine or a term of imprisonment of between 3 months and 3 years; Aggravated form: 1 to 5 years imprisonment) – art. 418 of the Criminal Code of Republika Srpska;
4. **Damage and destruction of protected natural goods** (basic offence: up to 3 years of imprisonment; aggravated form: 1 to 8 years) – art. 420 of the Criminal Code of Republika Srpska;
5. **Illegal exporting protected plants or animals** (basic offence: fined or punished by a term of imprisonment up to 3 years) – art. 434 of the Criminal Code of Republika Srpska;
6. **Illegal hunting game** (basic offence: fined or sentenced to a maximum of 3 years of imprisonment forfeiture of the equipment) – art. 436(4) of the Criminal Code of Republika Srpska;
7. **Illegal fishing** (basic offence: fined or sentenced to a maximum of 1-year imprisonment: aggravated offence: fine or sentenced to a maximum of 2 years' imprisonment and forfeiture of the equipment) – art. 437 of the Criminal Code of Republika Srpska.

Comparing with the list of offences envisaged in the EU Directive (see above paragraph 2.1), the Criminal Code of Republika Srpska lacks provisions prohibiting the production and management of nuclear waste (Dir. Art. 3(e)); the degradation of habitats within protected sites (Dir. Art. 3(h)); and the sale of ozone-depleting substances (Dir. Art. 3(i)). The Criminal Code, though, only sanctions the export of protected plants and animals but not the import, and fines applied to identified offenders are in any case considered too low to be effective (Interview 7). In addition, a number of other articles in the Criminal Code cover a variety of offenses against livestock and other unprotected animal species, and the offenses of forest theft or destruction (Keene, 2015, p.7).

Articles 24 and 25 of the Criminal Code of Republika Srpska provide for liability for inciters, and accessories. Accomplice liability is expressly limited by the intent of the accomplice. Inciters are given the same sanction as principals to the offense and accessories may be given reduced sentences. Article 134 of the Criminal Code provides that legal entities may be criminally sanctioned by fine, forfeiture of property, or dissolution.

With regards to nature protection, a new [Law on Environmental Protection of Republika Srpska](#) (OG RS, No. 71/12, 79/15) was adopted in 2012, including the Red List of Endangered Species of Flora and Fauna. The Republika Srpska also established the register of Protected Areas. Eight documents developed since 2011 present data about status of biodiversity using 15 relevant indicators (USAID, 2016, p.1). According to the [Law on Nature Protection](#) of Republika Srpska (OG of the RS, No. 20/14), the Government of Republika

Srpska adopts a regulation that establishes the ecological network and the method of its management and financing, as well as identifying ecologically important areas for the EU, which will become part of the European ecological network Natura 2000 (USAID 2016, p.34). This law prescribes the adoption of a wide number of by-laws (about twenty) to make the Law of 2014 fully operational, but so far just a few by-laws have been adopted (Interview 7). The problem though lies in the monitoring of the application of such pieces of legislation as there is no institution entrusted with the actual monitoring of wildlife and protected areas (Interview 7).

In Republika Srpska, major challenges for implementation of the [Law on Forests](#) (OG RS, No. 75/08, 60/13) are illegal activities in the forestry sector, such as illegal logging, the causing of fires and the grabbing of forest land. Other challenges are fragmentation of private forests, an incomplete system of monitoring of forest biodiversity, and forest health.

Similarly, as in the FBiH, very large parts of the EU [waste acquis](#) remain to be transposed also in the Republika Srpska. A new Waste Management Strategy and Waste Management Plan are in the process of being approved by the government of Repulika Srpska. Despite the lack of an entity strategy, municipalities started the development of Municipal Waste Management Plans, though the process is still not completed (Hogg, Vergunst, 2017, p.6).

- [Brčko District \(BD\)](#)

Chapter 26 of the [Criminal Code of the Brčko District](#) addresses criminal offenses against the environment, agriculture, and natural resources and reproduces the environmental crimes section of the Criminal Code of FBiH (see above) (Keene, 2015, p. 7). Accomplice liability and liability of legal person are foreseen in line with the Environmental Crime Directive in Article 32 and 33 of the Criminal Code of BD. Article 135 of the Criminal Code of BD state that legal entities may be criminally sanctioned by fine, forfeiture of property, or dissolution.

There have been no amendments to the [Law on Environmental Protection of Brčko District](#) (OG BD, No. 24/04, 19/07, 1/05, 9/09) since 2011, while challenges for an effective implementation seem to be mostly capacity-related.

Table 5 - Main pieces of legislation in BiH

| Piece of legislation  | Description  |
|---|--|
| <b>Environmental protection</b>   |  |
| Criminal Code of Bosnia and Herzegovina (OG BiH 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07 and 8/10); | The Criminal Code of BiH deals mainly with criminal offences related to the security of BiH as a state. Article 193, paragraphs b) and c), refers to the unauthorised traffic of chemicals across the territory and in the territory of BiH; and Article 194 refers to the illicit procurement and disposal of nuclear material. |

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|  | The state-level Criminal Code of Bosnia and Herzegovina does not cover any crimes against the environment.   |
|  | A draft law on environmental protection was developed but it never reached the stage of a publicly accessible document.<br>So far, though there is no state-level law on environmental protection.   |
| The Environmental Approximation Strategy of Bosnia and Herzegovina (supplemented by Environmental Approximation Programmes for the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District) of 2014. | It addresses eight subsectors of the EU environmental acquis: horizontal issues (EIA, SEA, liability, access to information, etc.); water management; waste management; air quality and climate change; industrial pollution; chemicals; nature protection; and environmental noise. For each of the subsectors, legal, institutional, economic and financial aspects are analysed and recommendations for short term and mid-term measures provided.  |
| <b>FbiH</b>  |  |
| Criminal Code of FBiH (OG FBiH 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11)  | Chapter XXVI (on criminal offences against the environment, agriculture and natural resources) (Articles 303–322 of the Criminal Code of FBiH).<br><br>Articles do not cover the whole spectrum of offences as provided in the EU Directive 2008/99/EC on the protection of the environment through criminal law. With regard to implementation, the capacity and willingness to prosecute for crimes against the environment are low.   |
| Law on Environmental Protection (OG FBiH 33/03) as amended in 2009 (OG FBiH 38/09)   | In terms of implementation efforts, since 2011, the major focus has been to make the environmental permitting system work. The deadline for existing installations to apply for an environmental permit has been postponed; still, not all operators have applied for environmental permits.<br>A new law on environmental protection is under development in the Federation of Bosnia and Herzegovina.  |
| Law on Inspections in FBiH (OG FBiH 69/05)   |  |
| Law on Nature Protection (OG FBiH, No. 66/13)  | There are multiple challenges with proclamation of new protected areas in the Federation. While existing protected areas and future protected areas that are planned to be proclaimed are usually well reflected in cantonal spatial plans, the development plans of municipalities often do not follow the cantonal spatial plans and the municipalities approve construction in those areas.<br><br>The subsidiary legislation has yet to be developed. The Law prescribes the establishment of the office or institute for the protection of nature; so far, such |

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|  | <p>office or institute has not been established. Difficulties in implementation are also connected with the underfinancing of protected areas.</p> <p>.</p>  |
| The Environmental Protection Strategy of the Federation of Bosnia and Herzegovina for the period 2008–2018 | <p>provides for strategic directions and measures in the legal and institutional field and covers the use of economic instruments, nature protection, land protection, air protection and waste management.</p> <p>As of early 2017, about half its measures are not implemented and remain relevant (UNECE 2018b, p.xxi)</p>  |
| The Law on Hunting (OG FBiH, No. 4/06, 8/10, 81/14)  | <p>Was amended in 2010 to increase penalties for violation of hunting legislation and in 2014 to allow non-governmental hunting associations to use the mechanism of renting the hunting grounds in addition to the mechanism of concessions. This formalized procedure reportedly allows better control in the area.</p> <p>Hunting in excess of the number of animals stipulated in the hunting permit is among typical violations of the legislation in this area.</p>  |
| Regulation on Natura 2000 (OG FBiH, No. 43/11)   | <p>The appropriate assessment procedure for plans and projects that are likely to have a significant effect on the conservation and integrity of ecologically significant areas, i.e. the future Natura 2000 sites, has been introduced in the Law on Nature Protection but is not yet applied.</p> <p>As of early 2017, no subsidiary legislation on Natura 2000 has been adopted.</p> <p>There are no mechanisms in place to ensure that EIA studies take into account the effects on potential Natura 2000 sites.</p> |
| The Environmental Approximation Programme of the Federation of Bosnia and Herzegovina of 2016              | <p>It is more specific than the Environmental Approximation Strategy of Bosnia and Herzegovina in describing the actual status and required changes in the legal framework in the Federation for transposition of the EU environmental acquis.</p>   |
| <b>Republika Srpska</b>  |  |
| Criminal Code of Republika Srpska (OG RS 49/03, 108/04, 37/06, 70/06, 73/10 and 1/12 and 67/13);           | <p>Chapter XXXIII – Criminal offences against the environment (Articles 415–437)</p> <p>.</p> <p>Articles do not cover the whole spectrum of offences as provided in the EU Directive 2008/99/EC on the protection of the environment through criminal law.</p> <p>With regard to implementation, the capacity and willingness to prosecute for crimes against the environment are low.</p>  |
| Law on Environmental Protection (OG RS 71/12) As amended in 2015 (OG RS 79/15)                             |  |

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| The Law on National Parks (OG RS, No. 21/96, 75/10)  | Includes an obligation of the ministry competent for the environment to provide preliminary protection of a natural area if the available data indicate that the area has characteristics of a protected area and if the procedure for protection has been initiated.  |
| The Law on Forests (OG RS, No. 75/08, 60/13)         | Major challenges for implementation are illegal activities in the forestry sector, such as illegal logging, the causing of fires and the grabbing of forest land. Other challenges are fragmentation of private forests, an incomplete system of monitoring of forest biodiversity, and forest health.   |
| The Law on Hunting (OG RS, No. 60/09)                | The main problem is with the missing adoption of by-laws which would allow for the full implementation.  |
| The Strategy of Nature Protection (OG RS, No. 65/11) | <p>Provides long-term vision and measures on nature and biodiversity conservation, linking them also to spatial planning. It defines operational objectives with regard to education and awareness-raising, enhancing monitoring of biodiversity, monitoring of invasive species, establishment of ex-situ conservation and use of GIS technology for the formation of a network of existing and future protected areas. The Strategy is not accompanied by an action plan.</p> <p>Major challenges in nature protection include the lack of substantive funding of protected areas and for effective management of national parks, lack of cooperation between local self-governments and relevant ministries in nature protection, and the conflict of interest between construction and development interests and nature protection.</p> <p>A large number of by-laws needs to be adopted for full implementation of the law.</p> |
| <b>Brčko District</b>                                |  |
| Criminal Code of the Brčko District (OG BD 33/13)    | <p>Chapter XXVI – Criminal offences against the environment, agriculture and natural resources (Articles 297 to 316).</p> <p>The Criminal Code of Brčko District addresses criminal offences against the environment, agriculture and natural resources and is identical to the environmental crimes section of the Criminal Code of the Federation of Bosnia and Herzegovina.</p> <p>Articles do not cover the whole spectrum of offences as provided in the EU Directive 2008/99/EC on the protection of the environment through criminal law.</p> <p>With regard to implementation, the capacity and willingness to prosecute for crimes against the environment are low.</p> <p>Financial sanctions for damage to the environment by legal bodies, the applicable fines are regarded as too light to motivate permit owners not to violate the conditions of their permits.</p>  |



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| Law on Environmental Protection (OG BD 24/04) as amended by (OG BD 19/07 and OG BD 1/05 and 9/09)          | Challenges for implementation are mostly capacity related.  |
| Law on Nature Protection (OG BD 25/04) as amended by (OG BD 10/07, OG BD 1/05 and 9/09)                    |   |
| The Hunting Law of 2015  |   |
| The Environmental Approximation Programme of Brčko District of 2017  | It is a kind of action plan for the Environmental Approximation Strategy of Bosnia and Herzegovina in Brčko District – was approved in early 2017. It is more specific than the Environmental Approximation Strategy of Bosnia and Herzegovina in describing the actual status and required changes in the legal framework in Brčko District for transposition of the EU environmental acquis   |
| The Environmental Protection Strategy of Brčko District in Bosnia and Herzegovina for the period 2016–2026 | It includes five objectives: European integration and implementation of EU Directives; institutional strengthening and reform of Brčko District institutions related to environmental protection and promotion of sustainable development; the strengthening of personnel capacities in the area of environmental protection in all sectors; raising awareness on environmental protection, creating and increasing expert capacities; and the establishment of intersectoral cooperation and coordination and integrating environmental protection principles into other sectors. Measures are defined for each objective, together with deadlines and responsible institutions. |
| <b>Waste</b>   |   |
| <b>FbiH</b>  |   |
| Law on Waste Management (OG FBiH 33/03) as amended in 2009 (OG FBiH 72/09)                                 | <p>The implementation of the Law with regard to the adoption of strategic documents on waste management has advanced. New subsidiary legislation includes: the Rulebook on the management of packaging and packaging waste (OG FBiH, No. 88/11, 28/13); the Rulebook on the management of waste from electrical and electronic products (OG FBiH, No. 87/12).</p> <p>The implementation of the Rulebook on medical waste management (OG FBiH, No. 77/08) is progressing slowly.</p>   |
| <b>Republika Srpska</b>  |   |
| Law on Waste Management (OG RS 111/13)   | <p>The new Law on Waste Management (OG RS, No. 111/13) was adopted in place of 2002 law, it provides for a better framework for transposition of relevant EU legislation. The import of hazardous waste is prohibited.</p> <p>Major changes in waste legislation referred to packaging waste: several rulebooks were adopted and amendments on this issue were introduced into</p>  |

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|  | the new Law in 2015. Also, a new Rulebook on the management of waste tyres (OG RS, No. 20/12) was adopted |
| <b>Brčko District</b>  |   |
| Law on Waste Management (OG BD 24/04) as amended (OG BD 19/07, OG BD 1/05, 2/08 and 9/09)  |   |
| <b>Nature</b>  |   |
| <b>FbiH</b>  |   |
| Law on Protection and Welfare of Animals (OG BiH 25/09)  |   |
| Law on Hunting (OG FBiH 4/06) as amended in 2010 (OG FBiH 8/10)  | See above   |
| Law on Forests (OG FBiH 20/02) as amended in 2003 and 2004 (OG FBiH 29/03 and 37/04)   |   |
| Law on the Requirements for and Manner of Carrying out Woodcutting Activities (OG FBiH 27/97) as amended in 2006 (OG FBiH 25/06) |   |
| <b>Republika Srpska</b>  |   |
| Law on Forests (OG RS 75/08) as amended in 2013 (OG RS 60/13)  | See above   |
| Law on Nature Protection (OG RS 20/14)   | See above   |
| Law on Hunting (OG RS 60/09) as amended in 2013 (OG RS 50/13)  | See above   |
| Law on National Parks (OG RS 75/10)  |   |
| <b>Brčko District</b>  |   |

|   |           |
|---|-----------|
| Law on Forests (OG BD 14/10) as amended in 2016 (OG BD 26/16) | See above |
|---|-----------|

Source: THEMIS Network website

### 2.2.2. Relevant institutions, and compliance and enforcement mechanisms

Environmental responsibilities in Bosnia and Herzegovina are distributed among a number of institutions at various levels. At the state level, there is the Ministry of Foreign Trade and Economic Relation of Bosnia and Herzegovina (MoFTER). But as mentioned above, in accordance with the BiH Constitution, environmental matters are managed at the entity level. Both entities have a ministry responsible for the environment, the Federal Ministry of Environment and Tourism (FMET) in FBiH, and the Ministry of Spatial Planning, Civil Engineering and Ecology (MSPCEE) in Repuklica Srpska. In the BD the responsible state body is the Department of Spatial Planning and Property Affairs.

The main authorities mandated with the detection and prosecution of environmental crimes in BiH (across the two entities and BD) are described in the Figure 2 below:

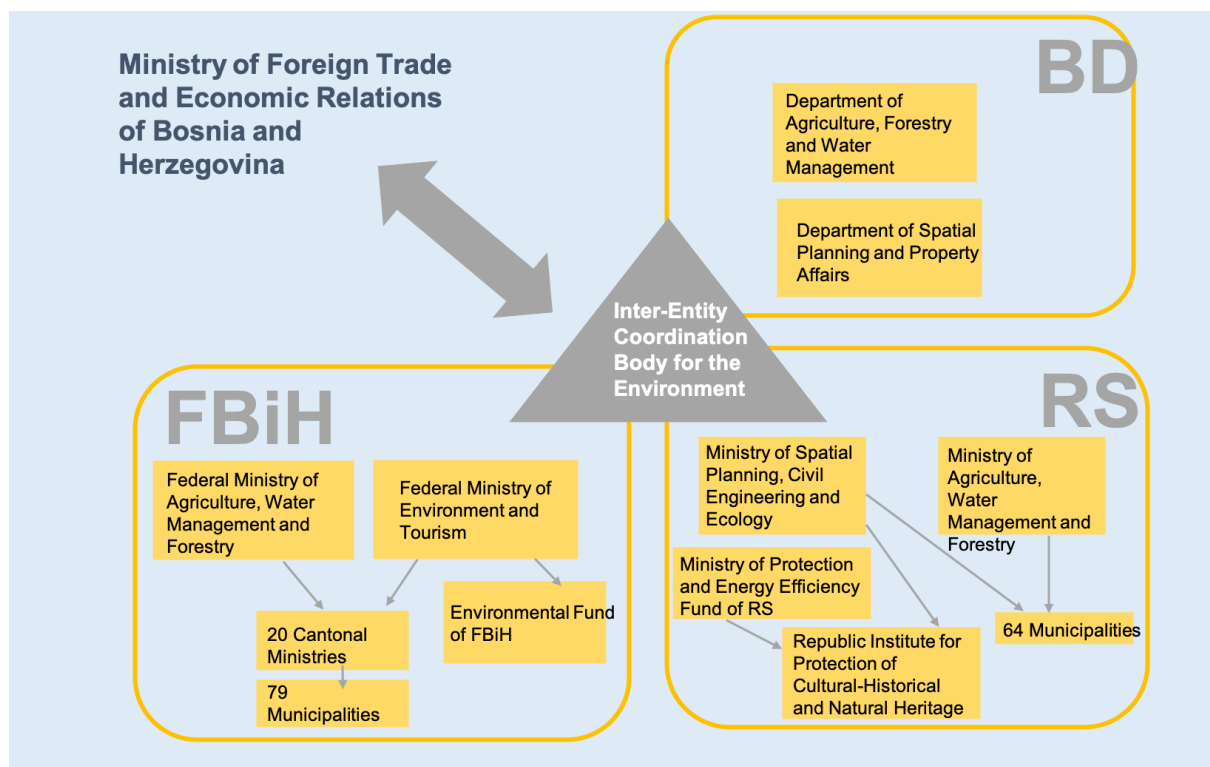


Figure 2 - Main authorities in BiH

Source: Sofies elaboration, information from THEMIS NETWORK Project website (<http://www.themisnetwork.eu/>).

**At national level:**

- **Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina (MoFTER)** holds the responsibility on environmental matters at the state level by virtue of the Law on Ministries and Other Administrative Bodies of Bosnia and Herzegovina (Official Gazette of BiH No. 5/03), which assigns the responsibility for defining general policies and basic principles of environmental protection, sustainable development and use of natural resources by coordinating activities and harmonizing plans of the entity authorities with the international framework. The role of the Ministry is limited, as the primary responsibility for environmental issues is assigned to the entities by the Constitution. To date there is no national environmental agency (UNECE 2018b, p.30). In particular, the **Department of Environmental Protection** is in charge of the cooperation with representatives of the international community and with the Delegation of the European Union and has developed the Strategy approximating the regulations to the *acquis* in the field of environmental protection. MoFTER is acts as CITES Management Authority (while no scientific authority is designated for CITES) and one of the two Basel Convention Competent authorities (CA). The Ministry also has the Stockholm Convention Official contact point (OCP). Finally, the **BiH Administration of Bosnia and Herzegovina for Plant Health and Protection (PHPO)** is an administrative organisation within the MoFTER, acting as the designated national authority for industrial chemicals and pesticides (DNA CP) and hosting the Rotterdam Convention Official contact point (OCP).
- **Inter-Entity Coordination Body for the Environment** was established in 2006 to deal with environmental protection. It is competent for the harmonisation of environmental laws, regulations, standards and action plans; international treaties addressing environmental issues and their implementation; participation in international processes and cooperation with international organisations; environmental monitoring, information systems and information exchange; and transboundary and inter-entity environmental issues. The coordination body comprises eight members, four nominated by the Government of Republika Srpska and four nominated by the Government of the Federation of Bosnia and Herzegovina, for a 4 year term (USAID, p.28). They meet at least six times a year (Interview 8).

**FBiH:**

- The **Federal Ministry of Environment and Tourism (FMET)**, performs administrative and regulatory tasks related to air, water and soil protection; the drafting of environmental strategy and policy; environmental monitoring and standards; tourism development; and other tasks as set in the relevant legislation. The Ministry is the designated State Institution (National Focal Point) for the Convention on Biological Diversity, carries a special responsibility for the overall achievement of the set targets, in cooperation with other relevant institutions in Bosnia and Herzegovina listed in the Action Plan of the Protection of Biological Diversity of Bosnia and Herzegovina (UNECE 2018b, p.32). The Ministry is one of the two Basel Convention Competent authorities.
- The **Federal Ministry of Physical Planning and Environment** is the Basel Convention Focal point (FP).
- The **Ministry of Agriculture, Water Management and Forestry of the Federation of Bosnia and Herzegovina** performs administrative and regulatory tasks in its respective fields. The Forestry and

Hunting Sector prepares legislation and regulations in these two fields and oversees the work of cantonal ministries responsible for forestry and hunting and of forest management companies.

- The [Ministry of Security of Bosnia and Herzegovina](#) is competent on environmental crime cases. This ministry is competent to implement international obligations; cooperate in the implementation of civil protection; and coordinate the activities of the entity civil protection services in BiH and harmonise their plans in case of natural or other disasters on the territory of BiH. In addition, the ministry is competent in the field of international cooperation with INTERPOL, Europol and other security agencies. Also, within this ministry, in the form of administrative organisations, are the [Directorate for the Coordination of Police Bodies of BiH](#), the [Border Police of BiH](#) and the [State Investigation and Protection Agency \(SIPA\)](#), responsible for conducting investigations in the case of criminal offences against the environment.
- The [Administration for Inspection Affairs of the Federation of Bosnia and Herzegovina](#) brings together 10 inspection authorities of the FBiH, including the Water Inspectorate, Forestry Inspectorate (which covers forestry, nature protection and hunting) and Urban-Environmental Inspectorate. It was created in 2007, but has a very limited number of environmental inspectors (5). Currently, the inspection system has clear strategic goals defined in its annual work plan, and reports on implementation are regularly prepared. Inspectors' manuals and checklists are in place. Risk analysis is increasingly used for planning the inspections (UNECE 2018b, p.33). An electronic tool called E-Inspector system is in use, which is highly appreciated for the archiving and storage of information on inspections, but apparently is less suitable for reporting on inspections. Overall, though, the inspectorates with an environment related mandate are understaffed (Interview 6).

### Republika Srpska:

- The [Ministry of Spatial Planning, Civil Engineering and Ecology](#) is responsible for environmental protection. There are four departments within the Ministry: Department of Urban and Spatial Planning, Department of Construction, Department of Environmental Protection and Department of Project Coordination and Development. Their responsibilities range from dealing with environmental protection issues (land, air, water and biodiversity) to solid and hazardous waste management. The Ministry of Spatial Planning is also the second Basel Convention Competent authority (CA). According to the Second EPR of Bosnia and Herzegovina, the Ministry is understaffed.
- The [Ministry of Agriculture, Forestry and Water Management of Republika Srpska](#) supervises the application of laws and regulations within the jurisdiction of RS. It has five departments. The Department of Water Management, The Department of Forestry and Hunting, Department for the Provision of Professional Services in Agriculture. The ministry is a second-instance body in the process of addressing complaints related to inspections of forestry and hunting. The sector for forestry and hunting is responsible for normative-legal, analytical and supervisory activities. The [Agency for Forests of Republika Srpska](#) is an administrative organisation within the ministry, responsible for performing expert, technical and control tasks of general interest related to the management of forests and forest land in accordance with the Forest Law of Republika Srpska and bylaws.

- The [Republic Institute for Protection of Cultural-Historical and Natural Heritage](#), under [Ministry of Education and Cultural Heritage](#), is responsible for activities in the area of protection, conservation, rehabilitation and presentation of cultural-historical and natural heritage in Republika Srpska. With regards to natural heritage, the Institute carries out tasks related to nature conservation and maintains a Register of Protected Natural Resources and other data of importance for nature conservation, operating its own database. A similar organisation with comparable authority does not exist in the FBiH (GIZ, 2017, p.1).
- [Border Police of Bosnia and Herzegovina](#). Tasks carried out by the Border Police include activities related to the prevention, detection and investigation of acts proscribed by the Criminal Code of Bosnia and Herzegovina (including acts connected to environmental protection).
- The [Administration for Inspection of Republika Srpska](#), formed in 2006, brings together 13 inspection services, which were previously subordinated to the line ministries. These include the Forestry Inspection Service, Water Inspection Service, and Urban Planning, Construction and Environmental Inspection Service. The Administration has six regional departments with 250 inspectors. The Inspection Management System has been in use since 2010. Its electronic knowledge database serves as a basis for preventive and corrective actions, risk assessment and identification of those business entities that persistently violate the regulations. Preventive inspection surveillance (consultative visits to large businesses) is an emerging area of work.
- [Indirect Taxation Authority – Department for Customs](#), was established in 2005 and operates within the Department for Customs, which has offices located at state border crossings that control, among other things, cross-border waste trafficking and the illegal trafficking of protected species (under CITES). The offices detect offences against the environment and monitor imports/exports of ozone-depleting substances as well as products that contain substances that could damage the ozone layer.
- [Bosnia and Herzegovina Authority for Plant Health Protection](#), established by a decision of the Council of Ministers in 2004 (Official Gazette of BiH, No. 23/04), is an administrative organisation within the Ministry of Foreign Trade and Economic Relations. It is a national body and is competent for coordination and liaison with regard to plant protection issues and for provisions arising from the International Plant Protection Convention, ratified in 2003, as well as from local legislation. It comprises the [Department for Plant Health Protection](#), the [Department for Phytopharmaceutical Substances and Mineral Fertilisers](#), and the [Department for Seeds and Planting Materials for Agricultural Crops and Variety Protection](#).
- The [Department for Agriculture, Forestry and Water Management of the Brčko District Government](#), within the scope of its competence, carries out forestry management activities.
- The [Veterinary Medicine Office of Bosnia and Herzegovina](#) established in the year 2000, is under the competence of the Ministry of Foreign Trade and Economic Relations of BiH. The office comprises the Department for Animal Health and Welfare; the Department for Food Safety and Conditions in Facilities; the Department for Veterinary Medicine Inspection; and the Agency for Animal Identification. The Veterinary Medicine Office of Bosnia and Herzegovina contributes to the regulation of the field of environmental protection by means of preventive veterinary medicine based on the Law of Veterinary Medicine of Bosnia and Herzegovina (Official Gazette of BiH, No. 34/02).

- The [Bosnia and Herzegovina Agency for Statistics](#), is competent for processing, distributing and defining the statistical data of Bosnia and Herzegovina. One of the ten sectors that make up the Agency for Statistics is the Sector for Agriculture, Environment and Regional Statistics, which comprises two departments: The Department for Environment, Energy and Regional Statistics; and the Department for Agriculture.
- [Directorate of European Integration](#) is responsible for coordinating activities related to the alignment of the BiH legal system with the EU accession standards (*acquis*).
- [Court of Bosnia and Herzegovina](#) established in 2002, whose jurisdiction is regulated by the Law on the Court of BiH (Official Gazette of BiH No. 49/09 and 97/09) and refer to criminal, administrative and appellate jurisdiction. Related to the environmental protection sector, the Court of BiH covers criminal offences. Within the scope of criminal jurisdiction, the Court is competent in relation to criminal offences defined in the Criminal Code of BiH and other laws of BiH.<sup>19</sup>

Similar to the legislative and executive authorities in Bosnia and Herzegovina, the judicial authorities are established as separate authorities at different levels. Given the complexity of the BiH governmental structure, the judicial set-up also differs across certain state-level administrative units.

### 2.3.3. Conclusions

Bosnia and Herzegovina is party to numerous multilateral environmental agreements, but as mentioned, it does appear to be lacking effective institutional mechanisms to oversee and coordinate the implementation of all such international agreements. In practice, a case-by-case approach is followed, and implementation arrangements have established for just a few environmental agreements (UNECE 2018b, p.xxiv).

The country is still at an early stage in transposing the EU environmental *acquis* into its national legislation. Major obstacles in the alignment are due to the complex political and administrative structure of the country, lack of awareness at political level, understaffing and lack of funding. Assistance with analysing the legal and policy framework vis-à-vis the EU environmental *acquis* and drafting new legal and policy documents has been provided to Bosnia and Herzegovina through the EU-funded projects, such as Strengthening of Environmental Institutions and Preparation for Pre-Accession Funds (EnvIS, 2012– 2014) and Capacity Building in the Water Sector in Bosnia and Herzegovina (2014–2016). But due to the complex political and institutional structure, it takes a very long time for documents to receive the necessary approvals (UNECE 2018b, p.9).

Bosnia and Herzegovina has made little progress in transposing horizontal legislation in the field of environment since 2012, as the country's general progress in its accession process slowed in 2013-2014 (Keene 2015, p.6). In particular, BiH has not yet fully transposed the liability and environmental crime directives (EC, 2016, p. 55-56-57). Both entities and Brčko District provide for both accomplice liability and liability of legal persons, as required by the EU Directive 2008/99/EC on the protection of the environment through criminal law. However, the legal provisions on who can initiate court proceedings for damage caused to the environment, how proceedings can be initiated, what represents such damage, how liability

for such damages is determined, who should be paid for such damage, and how such damage is repaired, are insufficiently specific, not precise and clear, and incomplete (UNECE 2018b, p.xxii). Also, financial penalties for legal persons in case of damages to the environment are considered to light to motivate permit owners not to violate the conditions of their permits (UNECE 2018b, p. 42).

The [Environmental Protection Strategy of the Federation of Bosnia and Herzegovina](#) for the period 2008–2018 provides for strategic directions and measures in the legal and institutional field and covers the use of economic instruments, nature protection, land protection, air protection and waste management. Although, UNECE laments that about half its measures are not yet implemented (UNECE 2018b, p.xxi).

The complex political set-up has also led to the lack of integration of the [nature protection](#) legislation at the national level. Hence, nature conservation is regulated through the laws adopted and implemented at the entity level, not aligned at the national level (Vasilijevic, Pokrajac, Erg, 2018, p.11). The alignment with the nature directives is not complete with big differences between the entities. In spite of some EU-funded projects related to Natura 2000 in the past, there is little actual progress. Ensuring adequate resources are allocated to nature protection in Bosnia and Herzegovina is essential to improve the situation (EC, 2018, p. 31).<sup>28</sup> Both nature protection strategies in FBiH and Republika Srpska foresee establishment of continuous inter-entity information flow between the available databases, including establishment of an information network in the framework of the competent ministries and other institutions responsible for nature protection (GIZ, 2017, p.8). However, serious problems are encountered in the enforcement of legislation, limiting the efficiency of the multi-layered government (GIZ, 2017, p.1). In addition, certain activities and responsibilities are still carried out by bodies and institutions at the level of BiH.<sup>29</sup> To overcome these challenges the [Strategy and Action Plan for Protection of Biological Diversity of Bosnia and Herzegovina](#) for the period 2015-2020 was adopted. It covers a wide range of issues from management of species and ecosystems through research and protection of biological diversity, biosafety, to just and fair distribution of the benefits of ecosystem services and use of genetic resources. This document provides appropriate guidance for the entities in Bosnia and Herzegovina responsible for development planning and decision-making, establishing indicators for monitoring progress of implementation, along with the process of strengthening public environmental awareness (Federal Ministry of Environment and Tourism, UNEP, 2016, p.10).

According to the existing nature protection laws, entities and the district are obliged to establish information systems for nature protection. However, these information systems are not yet in place. Only Republika Srpska has introduced a register of PAs (USAID, 2016, p.8). Although putting in place a monitoring system on ecosystems is an obligation in accordance to the entity and Brčko District laws on nature protection, this is not fully implemented to date. A monitoring institution in FBiH is not formed yet, while institutions in Republika Srpska and Brčko District lack human capacities. The ecosystems inventory for BiH has also not

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<sup>28</sup> <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180817-revised-indicative-strategy-paper-2014-2020-for-bosnia-and-herzegovina.pdf>

<sup>29</sup> See THEMIS Network “Institutional framework and competent authorities in Bosnia and Herzegovina”, <http://www.themisnetwork.eu/tools/standard-operating-procedures/bosnia-and-herzegovina-english/bosnia-and-herzegovina/introduction-6/institutional-framework-and-competent-authorities-in-bosnia-and-herzegovina.html>



been developed yet (USAID, 2016, p.13). The most significant change to the policy/regulatory framework since 2011 is the adoption of new entity Laws on Nature Protection in 2013 in FBiH and in 2014 in Republika Srpska (USAID, 2016, p.20).

With regards to **wildlife crime** Bosnia and Herzegovina has no provisions at either the state or entity level aimed at combating the illegal killing of birds, and no actions have been taken for the conservation of bird species and implementation of measures, including legal measures, to reduce and monitor illegal hunting, taking and trade of wild birds (UNECE 2018b, p.54).

Finally, regarding **waste-related** legislation, alignment with EU legislation on sewage sludge, batteries, packaging, persistent organic pollutants (POPs) and end-of-life vehicles (ELV) is at a very early stage. Management of hazardous wastes is particularly challenging. Neither FBiH nor Republika Srpska seem to have suitable plans in place for managing hazardous materials. There was some progress with the closure of illegal dumpsites, which was connected to regional landfill construction. Inventories of illegal dumpsites were prepared in both entities, but there are no data on the impact from illegal or uncontrolled dumpsites on human health and the environment (UNECE 2018b, p.54). Legislation on the shipment of waste is instead harmonised with the Basel Convention (EC, 2016, p.56).

Environmental administration and regulatory control systems are very complex and, in many cases, duplicate one another, especially in consideration of the existing four administrative levels (state, entity, cantonal, municipal) (UNECE 2011b, p.13). There are no specific laws on environmental inspections at the level of entities, Brčko District and cantons.

With regards to the actual enforcement of the existing legislation, while the crimes contained in the Environmental Crime Directive are, to some degree, reflected in all the criminal codes of Bosnia and Herzegovina, as of 2012, prosecution of these crimes was essentially non-existent. A 2012 report on the country's courts (Delalić, Pilipović, Petrović, 2012) indicated that only 0.2% of indictments for criminal offenses against the environment reflected crimes that might correspond to the offenses listed in Article 3 of Directive 2008/99/EC. From 2007-2011 the courts heard over 3,500 criminal cases related to the environment, 97% of which were for the crime of forest theft (Keene, 2015, p.9).

The latest Environmental Performance Review (UNECE 2018b), notes that in case of inspections, immediate sampling of air, soil, water or waste samples cannot be performed. Until May 2017, the environmental inspectorate did not have an accredited laboratory of its own nor a collaborating partner which could be requested to take samples at short notice. The entities' bodies responsible for environmental inspection do not have framework agreements with accredited laboratories to provide such a service. These services are outsourced to private laboratories, are costly and cannot respond in the event of emergencies (UNECE 2018b, p.xxii).

#### 2.3.4 Preliminary findings in knowledge gaps and capacity building needs in the area of environmental crime

Some preliminary findings on the knowledge gaps and capacity building needs Bosnia and Herzegovina have emerged during the desk review and the interviews. Law awareness and prioritisation of the issue requires additional training on environmental crime in general, its dynamics, root causes and damages and the risks of such crimes, and most frequent modalities (Interview 10).

Also, specialised training is required on the procedures to be followed to collect proper evidence and to preserve the chain of control of the evidence. Customs authorities would also benefit from further capacity building on how to detect wildlife and nature crime (Interview 10). Prosecutors are also currently not receiving specialised training on these topics (Interview 7).

On waste issues, there is a need to build capacity in most areas affecting waste management in each of the entities and in the Brčko District. In particular, training management of hazardous wastes is problematic. Neither FB&H nor Republika Srpska have suitable plans in place for managing hazardous materials. Training on the Waste Framework Directive and Waste Shipment Regulation would also enhance the implementation on transboundary control of shipments.

With regards to nature crime, training at improving technical capacities in biodiversity data management is among the first priorities to be addressed (GIZ, 2017, p.17). But operational training is also recommended for police and customs on how to detect illegal trade in protected fauna and flora, as they do not have guidelines on these subjects (Interview 7). Training sessions should also be dedicated to issues related to monitoring of the status of NATURA network and the implementation of mechanisms of protection and preservation of integrity of ecological network (e.g. appropriate assessment). Training on the EUTR Regulation and on the prevention of illegal cross-border activities in the field of forestry, and cooperation with customs and border service would be necessary too.

Finally, training for all actors in the compliance and enforcement chain should also cover the importance of collaboration among different actors involved in the inspection, detection and investigation on crimes against the environment, as actors seem to act in isolation and not be used to share information.

## 2.3 Kosovo\*

### 2.3.1 Policy, legal framework for the detection, investigation and prosecution of environmental crime

The EU-Kosovo\* Stabilisation and Association Agreement (SAA) has been in force since April 2016. In order to define reform priorities, the government of Kosovo\* together with the European Commission launched in November 2016 the European Reform Agenda (ERA). The new government appointed in September 2017 committed itself to the implementation of EU related reforms, however progress to date has been slow (EC, 2018d, p.3)

As Kosovo\* is not a Member of United Nations, it has not ratified the nature and biodiversity-related international conventions and treaties, but it has included the main principles of such Conventions in its national legislation.

In Kosovo\*, types of conduct that damage the environment can be sanctioned by administrative or criminal rules and proceedings. As for the other economies in the region, there is not a general environmental law, but several fragmented administrative laws covering different sectors exist (EFFACE, 2015, p. 15). The Criminal Code of 2004 has been amended and the revised version will enter into force in April 2019 (Interview 9). The 2004 [Criminal Code of Kosovo\\*](#) (Code No. 04/L-082) covers environmental crimes in a dedicated chapter (Chapter XXVIII Criminal Offences Against the Environment, Animals, Plants and Cultural Objects). Offences against the environment included in the Criminal Code are:

- (1) **Polluting, degrading or destroying the environment** (basic offence: fine or by imprisonment of up to 1 year; three aggravated forms: fine and by imprisonment up to 8 years) - Article 347 of the Criminal Code.
- (2) **Unlawful handling hazardous substances and waste** (basic offence: fine or by imprisonment of 1 to 3 years; three aggravated forms: punished with imprisonment up to 12 years) – Art. 348 of the Criminal Code.
- (3) **Construction or operation of facilities that pollute environment** (basic offence: fine or by imprisonment up to 3 years; one aggravated form: fine and imprisonment of 6 months to 5 years) – Art. 349 of the Criminal Code.
- (4) **Destruction of vegetation by harmful substances** (basic offence: fine or by imprisonment (basic offence: fine or by imprisonment of up to 2 years; aggravated form: fine or imprisonment from 3 months to 3 years) - Article 356 of the Criminal Code.
- (5) **Devastation of forests** (basic offence: fine or by imprisonment up to 2 years; aggravated form: fine or by imprisonment of up to 3 years) - Article 357 of the Criminal Code.
- (6) **Forest theft** (basic offence: fine or imprisonment of up to 1 year; aggravated form: imprisonment of 3 months to three 3 years. The attempt is also punished) – Art. 358 of the Criminal Code.

- (7) **Sale or removal of wild animal trophies** from the Republic of Kosovo\* (basic offence: fine or by imprisonment of up to 2 years; aggravated form: fine or by imprisonment of up to 3 years) – Art. 360 of the Criminal Code.
- (8) **Sale or removal of protected goods of nature, plants or animals** out of the Republic of Kosovo\* (basic offence: fine or by imprisonment of up to 2 years; aggravated form fine or by imprisonment of up to 2 years) – Art. 361 of the Criminal Code.
- (9) **Unlawful fishing** (basic offence: fine or by imprisonment 3 months; aggravated form: fine or by imprisonment of up to two (2) years) – Art. 362 of the Criminal Code.

In the revision of 2012, the Criminal Code introduced liability for a number of new criminal offenses against the environment, including offenses for applying technologies that cause large-scale pollution and selling or exporting protected species. The new Code also stiffened the minimum penalties for several crimes, including pollution and waste pollution (EC, 2018d, p.69).

Articles 31 – 35 of the Criminal Code of Kosovo\* provide for accomplice liability, generally. Under these articles, a person can be held criminally liable for acting as a co-perpetrator, inciting a crime, assisting the commission of a crime or conspiracy in inciting or committing a criminal offense. For liability of accomplices the intent of the accomplice (*mens rea*) is required. Sanctions generally mirror the punishment for the offense itself (Keene, 2015, p.10). General criminal liability of legal persons is foreseen in Article 40 of the Criminal Code. According to the Law on Liability of Legal Persons for Criminal Offenses (2011), which states that all offenses under the Criminal Code are applicable to legal persons unless expressly stated otherwise. No such statement exists for any environmental crimes. The sanctions applicable to legal entities may consist of fines, suspended sentences, a range of “security measures”, and stop-work orders or dissolutions (Keene, 2015, p.10).

According to the 2015 Policy Brief by the EFFACE project, the EU has constituted a model for Kosovo\* legal instruments and institutions for the protection of the environment. It has also provided extensive funds and expertise to deal with harmonization with EU legislation, support in the enforcement level. However, the enforcement of the legislation is reported as quite weak, “*particularly in the Serbian municipalities of Kosovo due to the prevailing circumstances inherited from the war and the international administration*” (EFFACE, 2015, p. 2).

Environmental protection in Kosovo\* combines characteristics of models adopted in Europe and in the USA, i.e. the civil law and the common law systems. Instead of adopting a general law or code for the protection of the environment, Kosovo\* has a wide variety of statutes to protect the environment by sectors that establish sanctions for their infringements, and also refers to criminal investigations and procedures that can be initiated by the administrative authorities i.e. the Environment Inspectorate (EFFACE, 2015, p. 2).

The main principles of nature protection are defined by the [Constitution of the Republic of Kosovo\\*](#). Article 52 of the Constitution defines the responsibilities for environment with the following paragraphs: “1. *Nature and biodiversity, environment and national inheritance are everyone’s responsibility. 2. Everyone should be provided an opportunity to be heard by public institutions and have their opinions considered on issues that*

*impact the environment in which they live. 3. The impact on the environment shall be considered by public institutions in their decision making processes."*

The first provisions about the nature conservation are initially set in the [Environmental Protection Law](#) (Law No. 2002/8), which dedicates a special chapter (Chapter V) to the nature protection issues covering nature protected areas (Article 33) and biodiversity conservation (Article 34) (Zeqir, Behxhet 2015, p.2). This law recognises the "need to bring environmental standards in Kosovo into harmony with those of the European Union". A number of other legislative acts have followed since to improve nature protection. To approximate the legislation to the EC Wild Birds Directive (79/409) or Habitats Directive (92/43), the [Law on Nature Conservation](#) (No.02/L-18) was adopted in 2005, aiming at defining the basic requirements for nature conservation and for its sustainable utilisation. This law covered main principles of environmental protection (i.e. principle of sustainability, principle of cooperation, user pays principle, principle of integration, etc.), along with important policy documents for nature conservation (i.e. the Strategy and Action Plan for the Nature Conservation, which is to be approved by the Assembly of Kosovo), and programs of nature conservation adopted by municipalities (Zeqir V., Behxhet M., 2015, p.3). The [Law on Environmental Protection](#) (No. 03/L-025), [Law No. 02/L-53 on hunting](#) regulates sustainable management, breeding, protection, hunting and use of wild fauna as natural wealth of general interest which enjoy special protection.

The [Law on Nature Protection](#) (Law No.03/L –233), adopted in September 2010, prescribes the complete set of measures, provisions and the system for the general protection and conservation of nature and its values (all biological and landscapes diversity) on the territory of Kosovo\*. A number of administrative acts (administrative instructions and decisions) have derived from the Law on nature protection to ensure proper implementation of it. The inspectorate within the Ministry of Environment and Spatial Planning (MESP) is responsible for ensuring compliance with the Law on Nature Protection. If the competent inspectorate establishes the existence of illegal activities, the competent inspectorate shall decide whether to initiate misdemeanour proceedings; or submit a criminal charge. When carrying out their duties, inspectors should be aware of the *ne bis in idem* principle in order to avoid simultaneously initiating misdemeanour and criminal proceedings for the same (factual) illegal act. Inspectors should inform the prosecution immediately when they have reasonable doubt that a criminal act has been or is being committed. When the situation is not so obvious, further assessment should be made after consultation with the state prosecution. If an inspector submits a criminal charge and the prosecutor decides that a certain case is not a criminal offence but a misdemeanour, the inspector is obliged to initiate misdemeanour proceedings.

The 2018 EC Progress Report further progress is needed for full alignment and implementation of the remaining cross-cutting environmental directives. The lack of enforcement of Environmental Liability Directive undermines the effectiveness of environmental protection (EC, 2018d, p.68). The implementation of the "polluter pay principle" is also still needed (EC, 2018d, p.68).

Environmental inspectorates lack staff and capacity and are unable to ensure effective enforcement although some efforts have been made for alignment with the Environmental Crime Directive. The strategy on environment still needs to be updated and implemented. Implementation of priority measures is

undermined by insufficient funding, a lack of administrative capacity and technical skills. The use of environmental and strategic impact assessments needs to be improved considerably, especially in industrial sectors with significant effects on the environment such as energy and transport. Meaningful involvement of the public and civil society is necessary (EC, 2018d, p.68).

With regards to waste, the legal framework is partially aligned but waste remains one of the most significant problems. Most waste streams end up in legal and illegal landfills. Collection coverage needs to further increase. The strategy and master plan for waste management 2013-2022 are only partly reflected in municipal plans for solid waste. The responsible authorities should take steps towards a circular economy approach, by introducing separation of waste at the source, recycling and recovery of waste streams (EC, 2018d, p.69).

A 2015 European Policy Brief (EFFACE, 2015) cited several major institutional problems in giving effect to the new laws. The report states that Kosovo cannot currently bring itself into compliance with *the Environmental Crime Directive because it lacks secondary legislation that would establish "threshold values and standards"* in determining when actions merit criminal liability (EFFACE, 2015, p.2). The Brief also noted that Kosovo currently lacks the financial and human resources necessary for effective enforcement against environmental crimes. Kosovo has made some efforts to boost this capacity, including by sending several representatives to participate in THEMIS trainings on environmental crimes (Keene, 2015, p. 10-11).

The Wild Birds Directive and the Habitats Directive are fully transposed by the [Law No.03/L-233 on Nature Protection](#), which also prohibits the use of any device for capturing and killing wild animal species. The full implementation is expected to take place by 2022. Kosovo\* is not a Party of the CITES Convention, however, it has made efforts to establish a system for implementation of CITES Regulations as part of the overall EU approximation process. Efforts have been made to establish the permitting system for the import of specimens listed in the Annexes, along with the permitting/certification system for the export/re-export of specimens listed in the Annexes. The MESP plans to proceed with the implementation on these requirements based on the administrative Instruction to regulate transboundary trade with protected wild species. Further efforts are also required in order to set up the system for the determination of specimens born and bred in captivity and artificially propagated specimens, and to establish a system to control the movement of live specimens during import and export to the Community (ECRAN, 2015, p. 5). Authorities, though, seem to face a number of problems with recognition of our documents (permits and certificates) from Custom authorities in neighbouring countries. One of the main challenges seems to be the lack of know-how with procedures in implementation of CITES for all involved stakeholders (ECRAN 2015, p. 12).

Even if Kosovo\* is not part of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the legal base for the implementation of CITES is established with the Law on Nature Protection No.03/L-233 and the Administrative Instruction on cross-border movement and trade in wild protected species No. 26/2012/ 10. 12. 2012 which regulates the procedures for issuance of permits, certificates and other necessary documents for import/re-import, export/re-export, trade and movement of wild species in line with CITES (ECRAN, 2015, p.12).

[Law No. 02/L-53 on hunting](#) regulates sustainable management, breeding, protection, hunting and use of wild fauna as natural wealth of general interest which enjoy special protection (Art. 1).

As regards [timber](#), Kosovo\* has developed Forest Information System Fis-Kos, where all forest data are located in one database. The system can make analyses for public forest, create special reports and aggregate data in specific areas. Currently however, Kosovo\* does not export timber in the region, in EU nor in China (ECRAN, 2015, p. 17). Nonetheless, there are still many shortcomings in the existing legislative and policy framework related to timber, mainly related to capacity building, lack of professional staff and educational trainings.

In 2011, the Assembly of Kosovo approved the [Strategy and Action Plan for Biodiversity 2010-2020](#), while other strategies are under the approval. The Strategy and Action Plan determines long-term objectives for conservation of biodiversity and landscape diversity, protected nature value, and also the manner of implementation in harmony with general economic, social, cultural development in Republic of Kosovo\*. At present there is no inventory of fauna in Kosovo\* (Republic of Kosovo, 2016, p. 2016). Furthermore, from illegal hunting most vulnerable are roe deer and wild goats, while the brown bear and wolf are less hunted. However, the greatest risk up to extinction is for the Balkan lynx. Migratory bird species are endangered.

In the environmental legislation, in addition to the Kosovo Environmental Strategy and Action Plan there are a number of sectoral strategies, action plans and programs for key sectors of the environment such as biodiversity, climate change, soil protection, forests protection, etc.

The [Strategy of Wildlife Management and Hunting](#) (2012-2022) is a long-term document for conservation of ecosystem and ecological balance, adequate protection of wild animals, ensuring their welfare and conditions for economic utilization of their natural resources.

The [National Strategy for The Sector of Non-Wood Forest Products](#) (SNWFPs) is the basic document for the protection, cultivation, collection, use and trading of NWFP, which sets out long-term goals for the conservation of this national asset that is of interest for the economic development of rural areas of Kosovo\*.

The aim of this strategy is the development of a legal and institutional framework, where activities within the sector strategy on NWFP would contribute to the management and sustainable use of resources, thereby facilitating income generation in rural areas. The strategy focuses on the socio-economic, environmental and legal aspects (National Institute for Nature Protection, 2015, p. 20).

Finally, with regards to the implementation of existing legislation, some data was collected through the interviews conducted with stakeholders in the compliance and enforcement chain in Kosovo\*. In 2018, the Inspectorate of Ministry of Environment and Spatial Planning has performed 803 inspections. In the same period, the Inspectorate has initiated 117 court cases for minor offences (administrative offences) and three criminal cases, for a total 143 decisions (Interview 9).

The Kosovo Environmental Protection Agency in 2018 proceeded 280 cases on illegal timber logging and presented requests for damages for 515,199.00 Euro before the court. According Kosovo Forest Agency data in 2018, about 5.770 criminal cases are preceded in Court with total volume of wood confiscated 14.764 m<sup>3</sup> (Interview 9). From the inspections, the number of cases of illegal collection of aromatic and medicinal plants without permit is increasing, specifically of protected and endangered species (e.g. *Gentiana lutea*, the great yellow gentian). Illegal hunting of endangered species, such as Wild goat (*Rupicapra rupicapra*), Wild cat (*Felis silvestris*), some species of Deer (Dreri shqip), is also on the rise (Interview 9).

Table 6 - Main pieces of legislation Kosovo\*

| Piece of legislation   | Description   |
|--|---|
| <b>Environmental protection</b>  |   |
| Criminal Code of the Republic of Kosovo Nr. 04/L-082   | Chapter XXVIII respectively from Article 347 to 364 includes the criminal offenses against the environment, animals, plants and cultural objects.<br>A new Criminal Code will enter into force in April 2019, aimed at fully transposing the EC Environmental Crime Directive   |
| Law No. 03/L-233 on Nature Protection KOG No. 85/09 (November 2010);   | According to Article 1 of this law, nature represents all biological and landscape diversity. The law regulates nature protection, the sustainable use of nature, and the protection, conservation, rejuvenation and sustainable use of natural resources.<br>Article 2 also ensures the right of citizens to a healthy environment, relaxation and recreation in nature.<br>The border veterinary inspection supervises the importing and transit of live animals and animal products into Kosovo* at border crossings in close cooperation with the Customs. (Article 102). |
| Law No. 03/L-25 On Environment Protection KOG No. 50/09 (April 2009)   |   |
| Law on the Inspectorate of Environment, Waters, Nature, Spatial Planning and Construction (Law on Environmental Inspection). |   |
| The Hunting Law of 2015  |   |
| <b>Waste</b>   |   |
| Law No.04/L-060 on Waste (adopted by the Assembly of Kosovo on May 24, 2012)   |   |
| Law on Waste Management (OG BD 24/04) as amended (OG BD 19/07, OG BD 1/05, 2/08 and 9/09)                                    |   |



| Nature   |  |
|--|--|
| Law No. 2003/3 On Kosovo Forestry with amendments 2004/29  | It incorporates disclosure, transparency and sustainability in forest management, as well as new approaches, and a move toward free market-oriented economy in forestry.   |
| Law No. 02/L-95 on Plant Protection , (31 January 2007);   |  |
| Law No. 02/L – 41 on Fire Protection   |  |
| Law No. 02/L-53 on Hunting , (11 August 2006)  | Law No. 02/L-53 on hunting regulates sustainable management, breeding, protection, hunting and use of wild fauna as natural wealth of general interest which enjoy special protection.   |
| Wildlife Management Law  |  |
| Strategy and Action Plan on Biodiversity 2011 - 2020, approved by the Assembly of Kosovo, date 07 October 2011 | Is considered a fundamental document for protection of nature, which determines long-term objectives for conservation of biodiversity and landscape diversity, protected nature value. The objective of the strategy is: • Conservation biodiversity; • Sustainable development based on sustainable use of natural resources; • Creation of revenue and • Share of benefits from the use of biodiversity in equal manner. |
| The strategy of wildlife management and hunting (2012-2022)  | is a long-term document for conservation of ecosystem and ecological balance, adequate protection of wild animals, ensuring their welfare and conditions for economic utilization of their natural resources.  |
| The strategy of non-wood forest products (NWFP)  | is the basic document for the protection, cultivation, collection, use and trading of NWFP, which sets out long-term goals for the conservation of this national asset that is of interest for the economic development of rural areas of Kosovo*  |

### 2.3.2. Relevant institutions, and compliance and enforcement mechanisms

Kosovo\* has a number of institutions dedicated to nature protection and environmental crime, led by the Ministry of Environment and Spatial Planning and the Ministry of Agriculture and Rural Development.

- The [Ministry of Environment and Spatial Planning](#) (MESP) coordinates activities in the field of environmental protection in order to promote the coherent development of relevant policies, develops norms and standards and guidelines, and monitors the implementation (Ministry of Environment and Spatial Planning and KEPA, 2015, p. 26). It performs administrative and technical tasks. To achieve such goals MESP has set up a number of departments, institutes and the Environmental Protection Agency (Interview 11). The [Nature Protection Division](#), under the Environmental Protection Department and performs administrative and professional work related to the conservation of biodiversity, protection of natural heritage values, and protection of soil from

pollution and sustainable use of natural resources. Inspective tasks are carried out by [Department of Inspectorate](#).

- The environmental legislation is monitored by the [Kosovar Environment Protection Agency \(KEPA\)](#), established by Law 2003/9, and enforced by the Inspectorate services. The Kosovo Environmental Protection Agency is a governmental institution, under the MESP, which through integrated environmental monitoring, effective environmental information system, and continuous reporting on the state of the environment, aims to maintain the quality of air, water, soil and biodiversity, to promote the use of renewable energy resources, and sustainable use of natural resources, in order to ensure a healthy environment for present and future generations, in concordance with the progress of economic and social developments. is responsible for regulating issues related to forests and forest lands, implementation of forestry legislation, issuing permits for using forestry wood and non-wood products. KEPA does not have inspectors, but can initiate cases on natural parks, and bring them to court (Interview 8).
- [Kosovo Institute for Nature Protection \(KINP\)](#), operating under the Kosovo Environmental Protection Agency, carries out monitoring activities and data collection and analysis of biodiversity in nature protected areas.
- [The Institute of Spatial Planning](#) is a competent institution for drafting Spatial Plans for Special Protected Areas, according to the Law on Spatial Planning No. 04/L-174.
- The [Ministry of Agriculture and Rural Development \(MAFRD\)](#) was established by the Regulation 2001/19, and is responsible for drafting and developing forestry policies, Laws and by laws regulating the field of forestry, wild animals and ecotourism. The MAFRD administers forests through the [Department of Forestry](#) and the [Kosovo Forestry Agency \(KFA\)](#). The Department of Forestry develops policies and sets the regulatory framework for forest management. It compiles the ministry's 10-year strategy for governing the forestry sector. The Kosovo Forestry Agency (KFA) is the implementing body of the ministry. It acts as the administrator and manager of forest land (with the exception of the territory of the IbarLeposavić Forest Management Unit in northern Kosovo\*, which is affiliated to the Srbijašume public enterprise based in Belgrade) (REC, 2015, p. 8). [Kosovo Forestry Institute](#) Provides technical and scientific support for Forestry Department and Kosovo Forestry Agency.
- The [Environmental Inspectorate](#), under the Ministry of Environment and Spatial Planning, is the institution in charge of adopting administrative sanctions and initiating criminal procedures to enforce environmental laws. Law No. 04/L-175 on the Inspectorate of Environment, Waters, Nature, Spatial Planning and Construction regulates the powers and role of the inspectorate. Environmental crimes and offences can be detected through routine inspection by inspectors, perform inspection supervision and control by implementing laws related to the field of environmental protection, or by the [Kosovo\\* Police](#) which has the duty to inform the competent environmental inspectorate of violations of environmental protection. The Inspectorate can impose administrative sanctions and initiate criminal procedures. Currently, the operational capacity is limited by the little number of inspectors (Interview 11), since the Environmental Inspectorate currently has just 13 inspectors (6 inspectors for environment; 3 inspectors for water; 1 inspector for nature protection and 3 inspectors for spatial planning and construction - Interview 9).

- The [Border Veterinary Inspection](#) is in charge of supervising imports and transit of live animals and animal products into Kosovo\* at border crossings in close cooperation with the [Customs](#). (Article 102 of the Law on Nature Protection). Supervisors, or “rangers”, are responsible for the enforcement of nature protection legislation in protected areas. Other inspectorates competent in the field of nature or environmental protection are: the [State Water Inspectorate](#), the [Environmental Protection Inspectorate](#), the [Forest Inspectorate](#), and the [Construction Inspectorate](#) and the [Nature Protection Inspectorate](#) in detecting offences and prosecuting perpetrators. If the offence involves protected flora or fauna species or protected habitats, the inspectorates shall inform the Nature Protection Inspectorate as the competent inspection service.
- The Municipalities have responsibilities in nature conservation issues, as well (Hunting, forestry etc.). At the municipal level are the [Municipal Assembly Committees for Urban Planning, Cadastre and Environmental Protection](#); and the [Directorate for Urban Planning, Constitution and Environmental Protection](#), acting under the supervision of the municipality mayor. Inspection for environmental compliance is also conducted at the municipal level. Inspection supervision for a Municipality Environmental Licence is carried out by the municipality environmental inspector.<sup>30</sup>
- The [Prosecution Office](#) is an independent institution with authority and responsibility for the prosecution of persons charged with committing criminal acts specified by law, including crimes against the environment. Given the complexity of environmental crimes, the [Judicial Institute in Kosovo\\*](#) sometimes provides trainings for judges and prosecutors regarding the procedures for prosecuting environmental crimes. However, prosecutors rarely participate in legal seminars and workshops together with inspectors to exchange experiences and share information in dealing with environmental crimes.
- [Kosovo\\* Police](#) also has a Serious Crimes department which investigates more serious offences against the environment.

### 2.3.3 Conclusions

From the legal point of view, Kosovo\* is at an early stage of preparation on environment. Environmental protection and climate change require considerably more political willingness to tackle the growing challenges (EC 2018d, p. 68). Regarding horizontal legislation, further progress is needed for full alignment and implementation of the remaining cross-cutting environmental directives (EC, 2018d, p.68). The new Criminal Code which will enter into force in April 2019 will possibly represent an important step forward in this direction.

The lack of enforcement of Environmental Liability Directive undermines the effectiveness of environmental protection. Some efforts have been made for alignment with the Environmental Crime Directive, but overall the environmental inspectorates lack staff and capacity and are unable to ensure effective enforcement (EC 2018d, p. 68).

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<sup>30</sup> See THEMIS Network Project <http://www.themisnetwork.eu/tools/standard-operating-procedures/kosovo-english/sector-specific-sops/inspectorate-procedures.html>

Preparations for the implementation of the Timber Regulation by determining the institutional set-up and the division of responsibilities between the public administration institutions are at an early stage (EU-Kosovo, 2017, p.3). The current solid waste management system in Kosovo\* is environmentally unsustainable. The legal framework is partially aligned with the EU environmental *acquis* but waste remains one of the most significant problems. Most waste streams end up in legal and illegal landfills. The strategy and master plan for waste management 2013-2022 are only partly reflected in municipal plans for solid waste (EC 2018d, p.68).

On nature protection, little progress has been recorded in the latest EC Progress Report on the alignment with the *acquis*. Effective protection for designated protected areas seems to be not in place yet. One issue which requires increased attention is that of illegal constructions in protected areas. Infrastructure plans need to ensure that nature protection obligations are respected, particularly in areas suitable of becoming Natura 2000 sites (EC 2018d, p. 69). Also, experts interviewed highlight the lack of trained human capacity for implementation of EU Regulations and laws related to nature crimes and CITES (Interview 9, 13).

Most of primary legislation concerning the establishment of databases related to different sectors of nature resources has been adopted, including biodiversity and environment, but the bylaws defining standards and methodologies for data collection and storage seem to be still missing (GIZ, 2017 p.19). Nonetheless, steps have been taken to start the inventory and mapping of natural habitats types and of biodiversity. However, the process of Natura 2000 designation is still at the very beginning due to a lack of technical and staff capacities in relevant institutions (EC 2018d, p. 69).

The strategy on environment still needs to be updated and implemented. Implementation of priority measures is undermined by insufficient funding, a lack of administrative capacity and technical skills. Very small number of inspectors in central and local level restricts supervision of the entire territory of Kosovo, and especially in the National Parks and protected areas (Themis Network Secretariat, 2015, p. 2, and Interview 9 and 11).

Implementing of the legislation, and enforcement are reported as weak in Kosovo\*, as in the other economies covered by this study (Interview 9 and 11).

Prosecutors are lacking specific training on environmental crime issues (Interview 11). Investigations and prosecutions are also hindered as Kosovo\* is currently missing experts or laboratories which can provide the technical expertise for the quantification of environmental damages, and on aspects related to rehabilitation and compensation (Interview 11). The judiciary is still inefficient in terms of penalties for misuse of natural resources and for environmental crime cases. In most cases the penalties are very soft or not classified as crimes at all (Themis Network Secretariat, 2015, p. 2, and Interview 10). One expert also mentioned the possibility of having a specific pool of specialized Lawyers at the State Advocacy working on environmental crimes and organising specific training sessions on these issues for the judiciary (Interview 11).

Some responsibilities in the field of natural resource management are shared between MESP and MAFRD, enhanced cooperation in terms of proper management of environmental and biodiversity data is required (GIZ 2017, p. 18). Finally, interaction and collaboration between central institutions and municipalities in the environmental sector needs to be further improved. In the environmental sector, both horizontal and vertical administrative coordination are of vital importance. Communication and interaction between the central and local levels of government need to be further improved in relation to environmental protection. The same applies to communication between the Police, inspection units and prosecution agencies in preventing the occurrence of environmental crimes (Themis Network website). Coordination should be improved between the Ministry of Environment and Spatial Planning; the Ministry of Agriculture, and the Ministry of Internal Affairs, as well as coordinating actions with Judicial Council, Prosecution, local Courts and Kosovo Police (Themis Network Secretariat, 2015, p. 4).

#### 2.3.4. Preliminary findings in knowledge gaps and capacity building needs in the area of environmental crime

In this paragraph, few preliminary findings on the knowledge gaps and capacity building needs emerged with the desk review and interviews with key stakeholders are presented. These findings will be complemented with the information to be collected through the online Training Needs Assessment tool.

Special training on environmental issues has been facilitated through EU programmes that have financed networks that temporarily have benefitted human resources. However, this aid has had a limited impact over time (EFFACE, 2015, p.2). Training on the implementation of EU Regulations and laws related to nature crimes in general has been risen by different respondents (Interview 9, 11, 12).

According to the interviews carried out, little training was provided to Environmental Inspectors on waste crime issues (Interview 10), or to any other actors in the compliance and enforcement chain. More information should be provided on illegal transboundary waste shipments, particularly to customs officials, enabling them to identify illegal waste.

Some training was provided on wildlife crime and on the CITES convention, but law enforcement authorities need for more information on CITES. Further capacity building for all stakeholders is required (ECRAN 2015, p. 12 and Interview 10). In particular, capacities of CITES units and that of enforcement agencies should be enhanced on illegal wildlife trade (Interview 13).

Operational training on how to detect and investigate waste and nature crime would be extremely important. The Kosovo Police would benefit from specific capacity building on how to start criminal investigations regarding environmental crimes (Interview 13).

As for prosecutors and judiciary, awareness should be raised on how to distinguish minor environmental offences from more serious environmental crimes (Interview 10).

Finally, training should also include how to enhance cooperation and coordination between relevant environmental authorities and institutions in the implementation of EU legislation in cases of criminal offences against environment (inspection services, customs, police, etc.)

## 2.4 The Republic of North Macedonia

### 2.4.1 Policy, legal framework for the detection, investigation and prosecution of environmental crime

North Macedonia's accession to the European Union has been on the current agenda for enlargement of the EU since 9 April 2001, when it became the first among the stabilisation association process countries to sign a Stabilization and Association Agreement. On 22 March 2004, in Dublin, it submitted the membership application to the EU, confirming its continuous and clear political commitment for joining the European Union as the highest strategic priority for the country's government. It was granted EU candidate status at the Brussels Summit on 17 December 2005. Since then, by the end of each year, the European Union has published regular progress reports for the Republic of Macedonia. On 12 March 2009, the European Parliament adopted a Resolution on the 2008 Progress Report calling for the start of negotiations for membership in the EU. After publishing its Report on 14 October 2009, the European Commission recommended opening negotiations for its accession to the European Union. As of September 2018, Macedonia was included as one of five candidate countries, together with Albania, Montenegro, Serbia and Turkey, after the latest round of enlargement concluded in 2013 with the accession of Croatia.<sup>31</sup> The National Strategy for Environmental Approximation which has adopted in April 2007,<sup>32</sup> with National Programme for the Adoption of National Programme for Adoption of the *acquis communautaire* for the period 2017- 2019<sup>33</sup> are based on the prioritised EU legislation, ratified international agreements and Governmental priorities. These documents present the comprehensive framework of actions for the alignment of national legislation with the EU environmental and climate *acquis*. One of the great challenges for Macedonia in the approximation process is the ratification of the international agreements already ratified by the EU, which constitute part of the internal legal system of the North Macedonia.<sup>34</sup>

The Constitution adopted on 17 November 1991 ("Official Gazette of RM," No. 52/91) contains articles related to fundamental principles upon which the sustainable development is founded. The Constitution guarantees one of the fundamental values, such as the right to a healthy environment and environmental protection (Art 8 and 43) and provides the basis for the concrete treatment of environmental issues through laws and regulations. The national legal framework consists of more than 80 laws and a large number of rulebooks, decrees and other legal instruments. Since 2011, most environmental laws were amended to be aligned with specific EU directives, especially those related to the waste and nature protection.

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<sup>31</sup> All relevant agreements with EU, national and EU documents concerning the accession of the North Macedonia to the European – Government of the North Macedonia, Secretariat for European Affairs, <http://www.sep.gov.mk>.

<sup>32</sup> The National Strategy for Environmental Approximation (2008), Ministry of Environment and Physical Planning, The Republic of North Macedonia. <http://www.moep.gov.mk>

<sup>33</sup> National Programme for the Adoption of the *Acquis Communautaire* (NPAA) for the period 2017- 2019, Secretariat for European Affairs, The Republic of North Macedonia, January 2017, <http://www.sep.gov.mk>

<sup>34</sup> The list of ratified MEAs is available to the public on the Ministry of Environment and Physical Planning website. <http://www.moep.gov.mk>.

Environmental crime covers all forms of activities resulting in environmental degradation envisaged as criminal offences in the [Criminal Code](#) (“Official Gazette of RM,” No. 37/1996) and relevant amendments.<sup>35</sup> The criminal liability of environmental damage is based on the Criminal Code which contains a special Chapter XXII “Crimes Against Environment and Nature”. The Environmental Crime Directive 2008/99/EC has been mostly transposed into domestic legislation through provisions of the Criminal Code. In 2014, amendments to the Criminal Code, aimed at aligning it with the Environmental Crime Directive, introduced the following criminal acts in the field of nature protection such as: unauthorized hunting, keeping and transfer of ownership of wild animals and birds; killing or destroying protected species of wild flora or fauna; unauthorized introduction of wild species in the nature; unauthorized trading, import or transport of wild flora or fauna. Environmental criminal offences are foreseen in the Criminal Code from Article 218 to Article 234. Overall 27 offences are included under this chapter, which can be grouped into four categories:

- 1) *general offences against the environment*: pollution of the environment and nature (Article 218);
- 2) *offences relating to hazardous materials*: endangering the environment and the nature with waste (Article 230); unauthorized procurement and possession of nuclear materials (Article 231);
- 3) *offences against the flora and fauna*: unauthorised production of, dealing with, and trade in dangerous materials or harmful organisms or seed and planting material (Article 232); killing or destruction of protected species of wild flora and fauna (Article 232-a); unauthorised introduction of wild species into the nature (Article 232-b); unauthorized trade, import or transport of wild flora and fauna (Article 232-c); torturing animals (Article 233); grave crimes against the environment and the nature (Article 234);
- 4) *offenses relating to illegal hunting, fisheries and fire*: devastation of forests (Article 226); causing a forest fire (Article 227); unlawful hunt (Article 228); unauthorized hunting, keeping and transferring of ownership of wild animals and birds (Article 228-a); unlawful fishing (Article 229);
- 5) *other specific offences*: production, trade or use of substances that impoverish the ozone layer (Article 218-a); pollution of drinking water (Article 219); production of harmful products for treating livestock or poultry (Article 220); unscrupulous provision of veterinary assistance (Article 221); transmitting infectious diseases among animal and plant life (Article 222); pollution of livestock fodder or water (Article 223); destruction of crops by using harmful substances (Article 224); appropriation of immovable’s (Article 225); illegal exploitation of mineral raw materials (Article 225-a).

Many are the issues related to this level of environmental protection, such as: partial and uncompleted law dispositions for environmental protection; inadequate distribution of competences and authorisations of an environmental character; lack of preventive and punitive measures for environmental protection for state organs and the civil sector, etc. In comparison with European standards, the legal framework related to environmental issues needs to be further improved, and several acts ought to be harmonized with EU

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<sup>35</sup> Criminal Code (“Official Gazette of RM“, No. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 41/2014, 115/2014, 132/2014, 160/2014, 199/2014, 196/2015, 226/2015, 97/2017).



criteria. Also, the variation of punishments makes it hard for judges to decide about environmental damages (Zejneli I., Durmishi B., Shabani F., Ismaili L., 2008, pp.19-20).

Environmental crimes are generally punishable by a fine or a term of imprisonment up to 10 years. Most of the environmental criminal offences are punishable even when committed unintentionally or by negligence. The Criminal Code introduces a separate criminal offense for "*Serious Crimes Against the Environment*", which causes serious physical injury, death, long-term consequences, or large-scale property damage. The offenses relevant to the Article 3. Environmental Crime Directive are summarised in Table 7 and Table 8 on Types of criminal environmental offenses and sanctions in the Criminal Code of the Republic of North Macedonia.

The concept of criminal liability of legal entities was introduced in 2004. Thus, legal entities are liable only in those cases where that are explicitly stipulated by the Criminal Code. The crimes for which a legal entity can be held liable include: environmental offences, fraud, smuggling, money laundering, trafficking etc. (V.Stojanovski, p. 3, <https://www.law.muni.cz>).

Standard Operative Procedures (general one, for motor waste oil, and rangers in protected areas) have been developed for the implementation of Criminal Code. These procedures are intended for environmental inspectors, as well as for authorised staff of the Ministry of the Interior, the Customs Administration and other law enforcement agencies competent in the suppression of environmental crimes.<sup>36</sup> In the period 2014–2017, only two cases in the water and waste sectors have been registered as criminal offences. The 2018 data of the State Statistical Office ("Perpetrators of criminal offences in 2017") presents crimes against environment and nature in total number, as follows: devastation of forests – 7; unlawful hunting – 13; unlawful fishing – 28; and torturing animals – 25.<sup>37</sup> The majority of the criminal cases were in the forestry sector, and have been processed by the State Forest and Hunting Inspectorate. Measures adopted by the state inspectors are decisions. In most of the crimes related to unlawful fishing and torture of animals the decision is for complaint dismissed; in the remaining crimes when the perpetrators were known the decision is indictment. From 2011 until 2017, a total of 1,514 environmental crimes were reported, including 461 committed by unknown perpetrators. In 2017 out of 151 reported crimes: 43 were reported by the individual victims (suffering damage); 4 by business entities victims (suffering damage); 4 by other individuals; 9 by inspectors; 88 by the Ministry of Internal Affairs; 1 by the public prosecutor office; and 1 other (Draft UNECE EPR, 2018, pp. 57-58).

There are still cases of illegal hunting, especially on the border with Albania. Poaching remains a problem, as there have been a few reports of killing of Balkan lynxes (Appendix II of CITES). Overall, little progress has been achieved and implementation of the CITES Convention is still at its initial stages (Draft UNECE EPR 2018, p.146). In 2012, 106 persons were accused, while in 2017 this number dropped to 68. In addition, in

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<sup>36</sup> See: Themis network, REC funding by Austrian Development Cooperation. <http://www.themisnetwork.eu/tools/standard-operating-procedures/macedonia-english.html>.

<sup>37</sup> State Statistical Office, Statistical Review, Perpetrators of criminal offences in 2017, p. 15, Skopje, June 2018, No. 2.4.18.07 898, <http://www.stat.gov.mk/Publikacii/2.4.18.07.pdf>.

2012 the number of convicted persons was 92, while in 2017 this number dropped to just 62. Statistical data on environmental crimes collected is provided in the

Table 9. Entitled "Review on sanctions imposed on environmental offences in the Republic of North Macedonia for the period 2010-2017".

The methodology adopted by the Statistical Yearbook of the State Statistic Office envisages indicators divided into six groups according to incrimination in the Criminal Code (pollution of the environment; illegal hunting; unauthorised disposal of nuclear materials; entering dangerous substances in the country; animal torture; and "other"). This approach seems to be inappropriate, as at least 50% of the reported, charged or convicted persons are documented in the category "Other" (A.Ivanov, M.Malic Sazdovska, D.Blinkov, <http://www.themisnetwork.eu/> p.6).

North Macedonia is Party to the Basel Convention according to the [Law on the Ratification of the Basel convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal](#) ("Official Gazette of RM", 49/97). The control system of the Basel Convention (permits, notification and movement document) is applied by the provisions of the [Law on Waste Management](#) ("Official Gazette of RM", No. 68/2004, 71/2004, 107/2007, 102/2008, 143/2008, 124/2010, 51/2011, 123/2012, 147/2013, 163/2013, 51/2015, 146/2015, 156/2015, 192/2015, 39/2016, 63/2016), and [Rulebook on the Format and Content of Transboundary Movement of Hazardous Wastes](#) ("Official Gazette of RM", No. 37/03 and 38/03).

The Law includes the general rules related to import/export/transit of waste. It is prohibited to import: 1) any waste for storage for disposal and disposal; and 2) hazardous waste mixed with non-hazardous waste or with other components that reduce harmfulness and hazardous characteristics of the waste. Waste that can safely be: 1) processed without risk of endangering the environment, life and health of people; 2) used as a raw material; 3) used as a source of energy, can instead be imported. It is permitted to export waste which can be processed and disposed without danger to the environment, life and health of people in importing country. According to the [Decision on the Single Information Desk for Import, Export and Transit of Commodities](#) ("Official Gazette of RM," No. 134/08) a single information desk has been created, i.e. EXIM. The import/export organized under the EXIM system is monitored by the responsible inspectorates at the point of loading (for exports) or unloading (for imports) of the shipment. Practical problems arise though because of the lack of a laboratory for waste testing, and the low knowledge for waste detection at the border. No reporting to the Basel Convention has taken place in the last years (last annual reports for 2001 and 2002).<sup>38</sup>

In the transboundary movement of wastes with the EU Member States, the lists of hazardous wastes of the Basel Convention, Regulation 1013/2006/EC on transboundary waste shipments and the regulations of the Republic of North Macedonia are applied. Fully alignment with Shipment Regulation is expected by the date of the accession of the Republic of North Macedonia to the European Union (Interview 15).

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<sup>38</sup> See: EXIM, <http://customs.gov.mk/index.php/en/e-carina-2/exim-en>. National Reporting, [www.basel.int](http://www.basel.int).

The [Waste Management Strategy](#) (2008-2020) reflects the national policy in waste management and represents the basis for preparation and implementation of an integrated and cost-effective waste management system. The 2009 [National Waste Management Plan](#) (2009–2015) has ended. Separate plans have been adopted, such as: The 2011 [Programme for Management of Packaging Waste](#), and the 2013 [Plan for Waste Management of Electrical and Electronic Equipment](#) for the period 2013–2020. No evaluation of their implementation was conducted so far. A new national waste management plan for the period 2018–2024 is currently being prepared and is in the process of public consultation. In 2011, the Ministry of Environment and Physical Planning adopted (MEPP) a Plan for Closing of Non-Compliant Landfills where 54 priority action for non-complaint landfills were identified. This plan largely remained on paper since no funding was available for closure of non-complaint landfills. There is no policy document that would explicitly target the hotspots of historic pollution. Hot-spot remediation can be financed only on a case-by-case basis because of the lack of the regulatory provisions in laws on privatisation and on the environment (environmental liability), as well as a result of the lack of appropriate institutional framework and funding mechanisms (Waste Management Strategy 2008-2020, p.33).

The legal framework on waste management comprises of: the 2004 [Law on Waste Management](#); the 2009 [Law on Management on Packaging and Packaging Waste](#) ("Official Gazette of RM", No. 161/2009, 17/2011, 47/2011, 136/2011, 6/2012, 39/2012, 163/2013, 146/2015); the 2010 [Law on Management of Batteries and Accumulators and Waste batteries and Accumulators](#) ("Official Gazette of RM", No. 140/2010, 47/2011, 148/2011, 39/2012, 163/2013, 146/2015, 39/2016); 2012 [Law on Management of Electric and Electronic equipment and Waste Electric and Electronic Equipment](#) ("Official Gazette of RM", No. 6/2012, 163/2013, 146/2015, 39/2016).

The [Framework Directive 2008/98/EC on Waste](#), as well as directives on specific waste streams, are just partially transposed. There is a lack of proper infrastructure in the country for treatment of waste subject to the extended producer responsibility (EPR), so such waste needs to be exported. EPR is introduced for packaging waste, batteries and accumulators and electric and electronic waste (WEEE). The producers are not eager to pay the related fees, and some escape both from making contracts with collective handlers and from paying the fee. Despite the introduction and operation of the extended producer responsibility schemes, separate collection and recycling, the overall recycling rate in the country remained very low (Draft UNECE EPR 2018, p. 14).

North Macedonia is Party to the Basel, Stockholm and Rotterdam (BRS) Conventions. There is close synergy between conventions (the link is end of life chemicals - when chemicals became wastes) at the international level and they need to be implemented at the national level. The country has made some progress in establishing synergies between BRS conventions. The project "Strengthening the national capacities for the coordinated implementation of the Basel, Rotterdam and Stockholm Conventions in the former Yugoslav Republic of Macedonia" (2013), was aimed at assisting the Government to strengthen its capacities to effectively implement the BRS conventions in a coordinated and integrated manner (Interview 18).

For some waste types both the State Statistical Office and the Ministry of Environment and Physical Planning collect and publish data (e.g., municipal solid waste, hazardous waste), but there are discrepancies

in data published. Calculation methodologies are not adjusted, and there is a lack of clear delineation between the two institutions and their responsibilities in data collection, which leads to overlapping.<sup>39</sup>

In 2018, the policy framework for nature protection was strengthened with the adoption of the [National Strategy for Nature Conservation \(NSNC\)](#) for the period 2017–2027 and [the National Biodiversity Strategy \(NBS\) and Action Plan for the period 2018–2023](#). The seven objectives of the NSNC integrate both geodiversity and biodiversity protection, based on data and information on water, biodiversity, mineral resources, tourism, energy and other sectors, as well as actions stemming from the international agreements. The action plan, which is part of the NSNC, details the studies to be performed and documents to be prepared, including the red lists and red books which are planned to be adopted by 2024. Several measures also aim at preparing the country for Natura 2000 through better description and understanding of potential areas for the Natura 2000 network (NCNC with Action plan, pp.85-87, p.109, p.146).

The NBS with Action Plan for the period 2018–2023 includes the analysis of implementation of the 2004 Strategy and action plan in the period 2003–2013. It concludes that only 64 actions (29%) have been implemented; 56 (26%) have been implemented partially; and 96 actions (44%) have not been implemented. The strategic goals of the new Strategy include: 1) address the underlying causes for biological diversity loss through its mainstreaming across the society; 2) reducing direct and indirect pressures on biodiversity; 3) improving the status of biodiversity by conserving ecosystems, species and genetic diversity in order to increase the benefits of biodiversity and ecosystem services; and 4) enhance the knowledge and availability of all relevant information on biodiversity (NBS with Action plan, pp. 110-117).

The Habitat and Bird Directive are partially transposed in the 2004 [Law on Nature Protection](#) ("Official Gazette of RM", No. 36/09, 88/10, 91/10-corrigendum, 14/16), 2008 [Law on Fishery and Aquaculture](#) ("Official Gazette of RM", No. 7/2008, 67/2010, 47/2011, 53/2011, 95/2012, 164/2013, 116/2014, 154/2015, 193/2015, 39/2016, 83/2018) and 2009 [Law on Hunting](#) ("Official Gazette of RM", No. 26/09, 82/09, 136/11, 1/12, 69/13, 164/13, 187/13).

The establishment of the Natura 2000 is at the initial stage. In the period from 2002 to 2008, the National Emerald network was designated including 35 Areas of Special Conservation Interest (ASCI) (Interview 16). Annex 1 to the EU Bird Directive includes 65 bird species from North Macedonia in their reproductive period, also to be the basis for the definition of Natura 2000. Four species are listed in Appendix 1 to the CITES. The national lists of strictly protected and protected wild species include 28 and 79 species, respectively, but there is a lot of space for improvement in terms of the content of these lists. A total of 28 basic sets of habitats have been identified in North Macedonia (NBS with Action plan, pp.38-40, p.99).

The Law on Nature Protection requires re-proclamation of all protected areas. This process starts with preparation of a valorisation study for a protected area, continues with proclamation and then preparation of a management plan. The subsidiary legislation governing the preparation of valorisation study and

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<sup>39</sup> See: State Statistical Office, 2018. <http://www.stat.gov.mk>.

management plan is in place (Draft UNECE EPR 2018, p.13), while the finalization of the process of protected areas re-designation (Action 11.1.2) is due to be completed by 2023.

A new [draft Law on Nature Protection](#) with subsidiary acts (including List of birds, habitat types and species of plants and animals) have prepared for adoption in line with two directives (Interview 2). A plan for the implementation of Birds and Habitats Directives was prepared and adopted. Eight potential Sites of Community Importance (SCIs) under the Habitats Directive, and three potential Special Protected Areas (SPAs) under the Wild Birds Directive have been identified and a plan for future field research work has been developed. The Geographic Information System for nature protected sites, in compliance with the Natura 2000 network, was developed and a functional database established (2013 IPA Twinning contract “Strengthening the capacities for effective implementation of the *acquis* in the field of nature protection, <http://natura2000.gov.mk>).

Certain illegal activities, such as poaching, and failure to fulfil the obligations by entities that manage hunting grounds and game, are still present and cause negative impacts both for hunting development and overall biological diversity. Inappropriate use of chemical preparations in agriculture, in certain cases, due to game poisoning, especially grey partridge and rabbit. In addition, intensive application of clear cutting over large areas causes negative impacts, especially on the status of large game. The introduction of concession-based management under the [Law on Hunting](#) should overcome certain problems from the past with regard to the care for game survival and reproduction (National Biodiversity Strategy, p. 69).

A number of gaps have been identified in the implementation of these directives. The absence of adequate monitoring data on species and habitats (mostly due to the lack of adequate national financing for these activities) had some impact on timely reporting, as well as on the quality of the national reports in these fields (Draft UNECE EPR 2018, p.143). Also, the establishment of Natura 2000 is at an initial stage. A MOU on prevention of illegal trade and killings of species between competent authorities is lacking and there is no mechanism to grant interim protection, which does not allow to prevent economic activities or construction in the protected areas (Interview 16). Comprehensive monitoring of biodiversity in the country is also missing. Further activities are related to development of methodology for monitoring performance of the conservation status of habitat types and species.

The 2008 [Law on Fishery and Aquaculture](#) (“Official Gazette of RM”, No. 7/2008, 67/2010, 47/2011, 53/2011, 95/2012, 164/2013, 116/2014, 154/2015, 193/2015, 39/2016, 83/2018) regulates fisheries in the country by awarding concessions for fish catching following the requirements of the Law on Concessions and Public Private Partnership. Issuance of a permit for recreational fish catching is based on an awarded concession.

North Macedonia is a Party to the CITES Convention since 2000 according to the [Law on the Ratification of the Convention on International Trade of Endangered Species of Wild Flora and Fauna](#) (Official Gazette of RM, No. 82/99). In the period from 2006 to 2014, the Government adopted several regulations, such as the lists of threatened and protected wild species, decree on the manner and procedure of issuance of permits or certificated, decree on manner and procedure applied by customs authorities and other competent bodies, and decision on distribution of goods to import-export forms. Rulebooks were adopted on the format

and the content of the form of application, permit and certificate for trade in threatened and protected wild species of plants and animals and their parts, as well as documentation enclosed with the application (Interview 16). Regular reports on trade, implementation and enforcement data were sent to the CITES Secretariat in the form of annual (last one for 2016). No bi-annual reports and reports on illegal traffic are reported.<sup>40</sup> The report for 2017-2018 has prepared and contains the main gaps in the implementation of CITES Convention. No seizures, confiscations or forfeitures of CITES specimens have been reported; neither have there been any criminal prosecutions of significant CITES-related violations reported. Also, the obligation of issuing electronic CITES permit (only hard copy) is not legally established. One of the main gaps with the CITES enforcement issues includes lack of training customs administration to recognise the endangered species. There is need to develop cooperation between Ministry and customs, as well as organising trainings of customs officers for identification of endangered species (Interview 16).

The 2006 [Strategy for Sustainable Development of Forestry](#), valid until 2026, covers forests, forestry, non-timber forest products and game management and addresses planning, information, enforcement, education and training and research. No reports on implementation of the Strategy were prepared. One of the key measures of the Strategy which was not implemented is the establishment of an Agency for Forests and Hunting.<sup>41</sup> Another key measure – to increase the forest covered areas through forestation of bare grounds – has been a challenge. Barriers for implementation of the Strategy are partially related to the availability of data. Forest health monitoring does not work properly. The country is well known for its non-timber forest products, but data on quantity and value of removed products are not available. In 2018, forest certification has been the introduced and development (granted endorsement in 2018 for the first time under the Programme for the Endorsement of Forest Certification (PEFC) (Draft UNECE EPR 2018, pp. 23-24).

Aligning the 2009 [Law on Forests](#) ("Official Gazette of RM", No. 64/2009, 24/2011, 53/2011, 25/2013, 79/2013, 147/2013, 43/2014, 160/2014, 33/2015, 44/2015, 147/2015, 7/2016, 39/2016) with the EU Timber Regulation is still a task for the future. Protection of forests and forest management are regulated by the Law on Forests. No forest inventory has been prepared so far.

Illegal logging increased from 7,164 m<sup>3</sup> in 2008 to 25,230 m<sup>3</sup> in 2014, but a decrease has been observed in 2015 (22,054 m<sup>3</sup>) and 2016 (18,662 m<sup>3</sup>). High level of illegal logging activities has been a challenge. In addition, owners of private forests have faced barriers from the State to log and sell their timber legally (Draft UNECE EPR 2018, p.14). There are identified destruction of forest, illegal logging, hunting and torturing animals as primary unlawful legal acts (Interview 16).

The basic environmental legislation is provided in Table 11.

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<sup>40</sup> See: [www.cites.org](http://www.cites.org). See: Existing regulations regarding the list of species: Lists determining the strictly protected wild species and protected wild species ("Official Gazette of RM", No.139/2011) and Lists of threatened and protected wild species of plants, fungi, animals and their parts ("Official Gazette of RM", No. 15/2012), <http://www.moep.gov.mk>.

<sup>41</sup> Illegal logging activities in the Former Yugoslav Republic of Macedonia, REC, Skopje, 2009.

## 2.4.2. Relevant institutions, and compliance and enforcement mechanisms

The key competences in the field of environmental crime, nature protection and waste management are divided between several ministries and bodies such as: the Ministry of Environment and Physical Planning, the Ministry of Agriculture, Forestry and Water Economy, as well as different enforcement bodies.

Below, a summary of the main institutions and relevant mandate is provided:

- The **Ministry of Environment and Physical Planning** (Focal point - BC and CITES) is responsible for the implementation of the Basel and CITES Convention, Habitat and Bird Directive<sup>42</sup> as well as: monitoring the condition of the environment; protection of water, soil, flora, fauna, air and ozone layer against pollution; protection against noise, radiation, protection of the biodiversity, national parks and protected areas; establishing and maintenance of national biodiversity and waste management information restoration of the polluted areas of the environment; proposing measures for treatment of solid waste; and other activities.
- The **Department for Nature** (Natura 2000, biodiversity, natural parks, issuing permits) is a part of the Administration for the Environment responsible for development of policies and they provide technical expertise in the preparation of legislation and their implementation in the field of biodiversity and landscape diversity, protected areas, natural heritage and GMOs. The Department issues four types of permits: CITES permit; permit for scientific research; permit for keeping wild animals in captivity; and permit for extraction of wild plants, fungi and animals from nature outside forests (in forests, this permit is issued by Macedonian Forests). Department has 13 employees.
- The **Department for Waste** (waste management, specific waste streams, permits) is a part of the Administration for the Environment) develops policy; provides technical expertise in the preparation of legislation on waste (except agricultural and radioactive waste); pursues international cooperation on waste; prepares projects and coordinates their implementation; and works with municipalities and public communal enterprises. Due to the low capacity of the Department for Waste, major role in waste permitting is played by **the Department for Coordination of Work of the Local Self-government units**, under the Ministry of Environment and Physical Planning. Still, some of the permits, for example, for collective schemes and for export/import/transit of waste, are issued by the Department for Waste independently.
- The **Ministry of Agriculture, Forestry and Water Economy** (forest protection, hunting)<sup>43</sup> is responsible for transposition and implementation of the Habitat and Bird Directive and EUTR Regulation, as well as the development and implementation of policies on plant protection, agricultural land management, forestry (including use and management of forests, forestation, reforestation and forest protection), and hunting.

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<sup>42</sup> (<http://www.moep.gov.mk>)

<sup>43</sup> (<http://www.mzsv.gov.mk>)

- The **State Environment Inspectorate (SEI)**<sup>44</sup> controls the implementation of environmental laws and regulations and produces annual plans and reports on its activities. In 2014, the State Environmental Inspectorate became a separate legal entity with 24 employees of whom 17 are inspectors (2 nature inspectors, 1 water inspector and 14 environmental inspectors). In the Republic of North Macedonia, the State Environmental Inspectorate, the **State Agriculture Inspectorate**, **State Forestry and Hunting Inspectorate** and other inspectorates are all separate from each other. The **Inspection Council** coordinates the work of 14 state inspectorates and monitors the efficiency of their work and deals with the training of inspectors. It is composed by the representatives of various thematic fields from environmental protection, human health, agriculture, forestry, veterinary and food safety (draft UNECE EPR 2018, pp. 34-36).  
SEI has been strengthened through the twinning project "Strengthening administrative capacities at the central and local level for the implementation of the environmental legislation" (2015–2016), although it is difficult to assess to what extent the materials drafted by the project are used in practice. Within the project a draft Law on Environmental Inspection has been developed. This project helped to improve inspection planning and reporting, including has provided a Manual for inspection, check lists, a long-term training plan and a training programme for inspections in the environment, establishment of a website<sup>45</sup> (not updated since 2015), electronic system for inspection activities and producing of annual reports on its activities (but reports for 2015–2017 are not available on its website). State Environmental Inspection is responsible for submission of misdemeanour procedure application, fines, submission criminal penalties applications, prohibition of performing, activity or duty, collecting and monitoring data in accordance with the Law on Inspection Supervision (No. 50/2010, 162/2010, 157/2011, 147/2013, 41/2014, 33/2015, 193/2015, 53/2016, 11/2018, 83/2018, 120/2018) (Interview 14).
- The **State Forestry and Hunting Inspectorate** controls the implementation of laws on forestry, reproductive material from forests and hunting, according to the Law on the Forestry and Hunting Inspection (No. 88/2008, 6/2010, 36/2011, 74/2012, 164/2013, 43/2014, 33/2015, 149/2015, 53/2016, 83/2018). This inspectorate is a separate legal entity within the Ministry. It has one hunting inspector and 13–14 forestry inspectors. The **State Agricultural Inspectorate** (a separate legal entity within the Ministry) controls implementation of laws and regulations on agriculture, organic production, plant protection, Phyto-sanitary protection, fishing and rural development.
- **The Forestry Police** controls all entities that manage the forests (including other legal persons and private citizens), monitors and reports on the state of forests in connection with illegal logging and forest theft, forest fires, plant diseases, forest pests, and other disasters and inform the competent authorities for illegal appropriation of forests and forest land, and brings proceedings against offenders before the competent authority.
- **Customs Administration**<sup>46</sup> is an administration within the Ministry of Finance responsible for the control of import, export and transit of the goods (waste, endangered and protected species) that are subject to special measures for the protection of flora and fauna, transboundary movement of

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<sup>44</sup> (<http://www.sei.gov.mk>)

<sup>45</sup> (<http://www.sei.gov.mk>)

<sup>46</sup> (<http://www.customs.gov.mk>)



wastes, as well as timber products placed on the market<sup>47</sup>. It took part in international operations to detect and prevent illicit trade in hazardous waste, and high-risk chemicals. Cooperation continued with the regional intelligence offices of the World Customs Organization, United Nations Office on Drugs and Crime and Europol. On administrative and operational capacity, professional integrity standards and internal controls were systematically applied. A risk management approach has been developed and risk analysis is applied to transit operations. The use of simplified procedures is well developed. Capacities for carrying out customs control and combating cross-border crime were strengthened (EC 2016 d, pp. 71 and 77).

- **Ministry of the Interior**<sup>48</sup> is responsible for the control of border crossing points with respect to the smuggling of transboundary movement of wastes, international trade on endangered species or their derivatives and timber, as well as detection and investigation of crime. A track record of detection, investigation and prosecution of cross-border crime in coordination with all competent law enforcement authorities needs to be established. The main burden of investigation for more complex crimes is on the **Department for the Fight against Serious and Organized Crime**. An important part of the law on criminal procedure is the investigative centre intended to institutionalize cooperation between prosecutors and police, to date only one investigative centre was formerly established, but it is still not operational due to lack of staff and equipment. The law on the freezing, confiscation and management of criminal assets needs to be improved. **Ministry of the Interior** and the **Public Prosecutor's Office** have established specialized units fighting serious and organized crime. Ministry of the Interior was established Illegal trafficking in Drugs, Weapons, Hazardous Substance Unit (EC 2016 d, pp.67-68).
- The **Ministry of Justice**<sup>49</sup> and **Ministry of Environmental and Physical Planning** are the competent authorities for transposition of Environmental Crime Directive into national legislation. As for the implementation of this directive, the following institutions are responsible: the **State Prosecution Service**<sup>50</sup> (Basic Prosecutor's Office and Prosecutor of the Higher Prosecutor's Office), and the competent courts (primary of first instance and Appeal court in the second instance). The Basic Prosecutor's office is competent for criminal offences for which a fine or imprisonment of up to five years may be imposed. The Higher Prosecutor's Office is competent for criminal offences for which a prison can be pronounced ten years. The work of the Public Prosecutor's Office includes prosecution of perpetrators of criminal offences and misdemeanours against the environment and nature (Strategy for Reform Judicial System, pp. 20-21). The reforms of the judicial system will continue through the implementation of the Strategy for Reform of the Judicial System 2017-2020 with Action Plan. Such reforms will aim to strengthen the judiciary in relation to other branches of the authority, strengthening strategic planning, efficiency, competence, transparency and communication capacities of the management system of judicial institutions.
- The **State Statistical Office**<sup>51</sup> is under the Government and not subordinated to any Ministry. In its Department of Environmental and Agricultural Statistics two staff work on environmental issues.

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<sup>47</sup> (<http://www.customs.gov.mk>)

<sup>48</sup> (<http://www.mvk.gov.mk>)

<sup>49</sup> (<http://www.pravda.gov.mk>)

<sup>50</sup> (<http://en.jonsk.mk>)

<sup>51</sup> (<http://www.stat.gov.mk>)

- Municipal administrations (executive bodies) have sectors responsible for environmental issues (waste, water, soil issues, nature etc) and inspection authorities.

### 2.4.3 Conclusions

Some general characteristics related to the prevention and fight against environmental crime in the country are the following: mild penal policy; frequently pronounced fines and conditional convictions, encouraging recidivism; lack of prevention. A comprehensive human resources management strategy of judicial system is needed (EC 2016, p.55). Further efforts are also required on the transposition and implementation of Environmental Crime Directive (EC 2018e, p.79).

**Waste management** remains a major challenge. Assistance will be provided to support the implementation and enforcement of proper waste management legislation (in particular the approximation to the Waste Framework Directive), and to support investments in integrated waste management systems at regional level, compliant with the Waste framework Directive 2008/98/EC. As part of the transition to circular economy, awareness on the new EU package for waste management needs to be improved. The level of recycling and re-use of waste is very low and the country will need to increasingly focus on other forms of waste management, following the waste hierarchy, and using landfilling as a last resort. In the area of **nature protection** and sustainable management of natural resources, support by the EU will be provided for the establishment of the Natura 2000 network based on sound scientific data, as well as for development and implementation of plans for protection of critically endangered species. The capacities of the national parks and the environmental institutions to ensure the protection of the Natura 2000 zones and other parks and implement the legislation will be enhanced.<sup>52</sup>

According to the EC 2016 Progress Report, the implementation of the Waste Directive is still at an early stage. Regional waste management structures are still not fully operational, suffering from a lack of administrative and financial resources. The actions set out in the adopted regional waste management plans are only partially implemented. Preparations continued to close non-compliant landfill sites and establish regional waste management centres. The selective collection of different types of waste should also be increased (EC 2016d, p.74).

The legal framework in the field of waste management is partially aligned. The work on further alignment of legislation related to special waste streams has commenced and the national waste prevention plan is under preparation. A new law on waste, incorporating the updated circular economy principle, is being prepared and was expected to be adopted by the end of 2018. Regional waste management plans and technical documentation for establishing waste management centres have been developed for seven regions. The existing regional waste management structures still suffer from lack of administrative and financial resources and are not fully operational. Considerable efforts are needed to invest in establishing integrated

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<sup>52</sup> ANNEX to the Commission Implementing Decision amending Commission Decision C(2014)5861 of 19.8.2014 adopting the Indicative Strategy Paper for the former Yugoslav Republic of Macedonia for the period 2014-2020, p.27-29.

waste management system. Economic incentives to promote recycling are still limited and the lack of organized extended producer responsibility scheme is hindering the market (EC 2018e, p.80).

Alignment with the *acquis* started in the field of [nature protection](#), in particular the Habitats and Birds Directive. Initial steps were taken to designate and manage the Natura 2000 network of protected areas. Concerns remain high about the insufficient protection of protected areas, areas of high natural value and potential Natura 2000 sites, and also about the cumulative impact of planned hydropower investment projects. A strategic approach in hydropower development is needed, in which projects should be carried out in line with the EU *acquis* requirements (SEA/EIA/Bird and Habitat Directives) (EC 2016 p. 74). Further alignment with Birds and Habitats Directives has been achieved by developing a new law on nature protection and subsidiary regulations. Special activities are needed to establish a monitoring system of the conservation status of habitat types and species. Implementation of CITES Convention remains at early stage. Nature protection obligations should be recognized and respected by the central government whenever hydropower, mining and large infrastructure investments are planned (EC 2018e, p.80).

The law on environmental inspection needs to be adopted without any further delay. Successful implementation of the law may be considerably hampered by the existing law on inspection supervision, which is not in line with EU *acquis* and relevant best practice. An information and reporting system for inspection services was also developed and the software works well in its initial stage (EC 2016d, p.74).

The customs administration took part in nine international operations to combat the illicit trade in counterfeit and pirated goods, drugs, weapons, dangerous waste and high-risk chemicals. Customs systematically cooperated with the Southeast European Law Enforcement Centre and with Interpol, by taking part in operations related to crimes against the environment, including illegal cross-border movements of hazardous waste and chemicals (EC 2018e, p.42).

#### 2.4.4 Preliminary findings in knowledge gaps and capacity building needs in the area of environmental crime

Some preliminary findings related to knowledge gaps and training needs are presented in this section.

Current identified gaps in the implementation of Criminal Code were addressed during the interview, as for instance as: inadequate institutional setup for suppression; low awareness among certain competent entities; inadequate system of statistical data processing; and limited social action. The research found that such challenges in implementation of Criminal Code are mainly related to several issues: quality of criminal charges, individuality of cases, complex detection procedures, necessary situational expertise and engaging expert witnesses, capacity building of customs, police, prosecutors, judges (Interview 17).

Substantial institutional re-organisations, additional human resources and their capacity building is required in order to implement the National waste management strategy. Primarily the institutional capacities for the approximation of environmental legislation are rather low: to implement the legislative, institutional and organisational measures, as well as financial resources and public awareness as required.

Also, there is the need to develop and implement monitoring, supervision and enforcement mechanisms regarding waste generators and waste management infrastructures at national and local level (municipal waste management in disposal facilities, industry, other waste generators).

The Ministry's tasks of monitoring/inspecting/enforcement the waste management operations and nature protection require the strengthening of the human and technical capacities of the inspectorate (Strategy on Waste Management, pp. 62-64).

Major impediments for implementation of legislation on nature protection have also been highlighted, namely: lack of financial resources; low prioritisation of biodiversity conservation; lack of capacity in the Ministry of Environment and Physical Planning; insufficient co-ordination and cooperation between the departments in the Ministry, as well as with other relevant ministries; non-compliance with the legislation (illegal fishing, illegal logging, etc.); and slow procedures for proclamation of new protected areas (National Biodiversity Strategy, p.85).

General trainings are not frequent. For example, the staff of the Ministry of Environment and Physical Planning participated to only two general trainings in 2018. Ministry's staff is encouraged to use distance learning and electronic training, but no information is available on the numbers of staff who have undertaken such trainings. The system for regular training of staff of the Ministry of Environment and Physical Planning is in place, but it does not function properly (Draft UNECE EPR, pp. 40-41).

With regards to the reasons for gaps in the implementation of transboundary movement regulations, one main problem is the lack of experience of customs officials on the border controls in these fields (operating procedures, detection and investigations). In addition, lack of capacities in the Ministry and the lack of laboratory for waste testing amplify the problem (Interview 15).

The implementation of CITES is faced also by a number of challenges, such as: the lack of specific technical institution on national level for nature protection, CITES Management authority, and general lack of administrative, technical and institutional capacities (Interview 16).

An annual training programme outlines the needs for general and specialised trainings in the MEP, which is unfortunately poorly financed and has no resources for specialised training. Specialised training courses on environmental issues are entirely project-based. There is no system of training and professional development on environmental issues for staff in sectoral ministries, nor for prosecutors and judges (Interview 14).

Cooperation with customs is generally good, but there is need for establishing National Environmental Security Task Force comprising the representatives of environmental inspection, police, customs, prosecutors, judges, and Misdemeanour Commission. Customs regularly cooperate with the Southeast European Law Enforcement Centre and with Interpol, Europol, by taking part in operations related to crimes against the environment, including illegal cross-border movements of hazardous waste and chemicals (Interview 14). Improvement of the knowledge and skills of the customs officers, with regards to conducting

customs investigations, and selective controls based on risk analysis and risk assessment efficiency of the special customs units, at the borders, but also the inland territory is high priority (Strategic Plan of the Customs Administration of the Republic of Macedonia 2018-2020, pp.6-8).

Specifically, the following areas are very important:

- Enhancing full alignment with Environmental Crime Directive through the implementation of the Criminal Code;
- Establishment of National Environmental Security Task Force for effective cooperation and coordination between environmental inspection, police, customs, prosecutors, judges, Misdemeanour Commission (preparation of Strategy for dealing with environmental crime), adopting an operational Action plan; adopting Sectoral Operational Manuals including procedures and institutions involved);
- Full alignment with the Waste Framework Directive and Shipment Regulation through strengthening capacities for its implementation (establishment of laboratories for waste testing), development of EPR schemes and technical capacities for environmental sound management on the territory of NMK (especially landfills and hot spots);
- Strengthening the capacities of CITES implementation and enforcement (administrative, technical and institutional) on illegal wildlife trade, especially birds;
- Full alignment with Habitat and Bird Directive (designating and managing future Natura 2000 sites, monitoring the status of habitat types and species, establishment of ecological network and appropriate assessment etc);
- Initiate transposition and implementation of EUTR Regulation and development an institutional framework for combating with illegal trade.

In order to improve implementation of Environmental Crime Directive and relevant EU *acquis* in the field of waste and nature the following activities should be taken (Interview 14, 15, 16, 17. and 18):

- Need to develop guidance on the control of illegal traffic of hazardous waste and chemicals, as well as guidance on illegal traffic of endangered species;
- Strengthening the cooperation between inspection, customs, police, prosecutors and judges (development of memorandum on cooperation and coordination of enforcement activities, joint operations, joint trainings);
- Exchange of experiences and good practices in the region on environmental crime cases and establish training programmes (CITES, waste), for inspectors, police, prosecutors and judges
- Need to develop Manual in the field of waste and wildlife prosecution and organisation of trainings for prosecutors;
- Need to develop Manual in the field of waste and wildlife criminal crime and organising trainings for judges for raising awareness and proper recognition of the environmental crime and the manner of categorization of different cases;
- Training in the field of forensic science in the environment;
- Standard operation procedures/manuals in the field of environmental crime.

## Types of criminal environmental offences and sanctions in the Criminal Code of the North Macedonia

Table 7 - Offences on waste and nature crime relevant to the Article 3. on Environmental Crime Directive

| Criminal Code NMK   | Environmental Crime Directive | Premeditation   | Organized crime/Negligence   | Suspended Sentence  |
|---|-------------------------------|---|--|---|
| <b>Pollution of Environment and Nature</b><br>(Article 218)                                   | Article 3 (a)(h)              | Imprisonment of four to ten years<br>Responsible person in legal entity-at least four years<br><u>Weight qualification:</u><br>Imprisonment of one to eight years and a fine<br>Legal entity – Fine   | <u>Organized crime-</u> serious physical injury or serious deterioration of the health of several people<br>Imprisonment of one to ten years.<br><u>Negligence:</u><br>Fine or imprisonment up to three years<br><u>Weight qualification:</u><br>Imprisonment of six months to five years and a fine | Environmental protection measures                                   |
| <b>Endangering the environment and the nature with waste</b><br>(Article 230)                 | Article 3 (b) and (c)         | Imprisonment of one to five years trade in waste without authorization<br>Organizer of offence;<br><u>Weight qualification</u><br>Imprisonment at least four years<br>Imprisonment at least eight years   | <u>Organized crime-</u> serious physical injury or serious deterioration of the health of several people<br>Imprisonment of one to ten years.  | Measures to correct the detrimental consequences to the environment |
| <b>Killing or destruction of protected species of wild flora and fauna</b><br>(Article 232-a) | Article 3 (f) (h)             | <u>Killing, destroying, keeping or taking specimens of protected species of wild flora and fauna</u> –<br>Imprisonment of one to three years and a fine<br>Imprisonment of one to three years for a crime extinction of indigenous wild species<br><u>Creating a possibility of indigenous wild species extinction-</u><br>Imprisonment of six months to one year | <u>Organized crime-</u> serious physical injury or serious deterioration of the health of several people<br><br><u>Negligence:</u><br>Imprisonment of up to one year or fine   |   |

|   |                   |   |  |         |
|---|-------------------|---|--|---------|
| <b>Torturing animals</b><br>(Article 233)   | Article 3 (h) (f) | Roughly abusing an animal, or exposing it to unnecessary torment, or causing unnecessary pain<br>Fines or imprisonment for up to a year<br><u>(specially protected species: fine or imprisonment up to three years)</u><br><u>Organizing, financing, or hosting animal fights:</u><br>Imprisonment of three months to three years and a fine  |  |         |
| <b>Unlawful hunt</b><br>(Article 228)   | Article 3 (f)     | <u>Closed season and where is forbidden:</u><br>Fine or imprisonment up to one months<br><u>Kills or wounds game or catches it alive:</u><br>Fine or imprisonment up to three year (tall game: fine or imprisonment from six to five years<br><u>Destroy game in large numbers, rare or relatively rare game or hunts without a special permission game:</u><br>Imprisonment from one to five years |  | Seizure |
| <b>Unlawful fishing</b><br>(Article 229)  | Article 3 (f)     | <u>Fishing by means forbidden:</u><br>Fine or imprisonment up to one year<br><u>Weight qualification:</u><br>Property damage to larger extent or causes greater property benefit:<br>Imprisonment form three months to three years<br>Fish-kill to a larger extent:<br>From six months to five years<br>Committed by a legal entity-fine  |  | Seizure |
| <b>Unauthorized introduction of wild species into the nature</b><br>(Article 232-b) | Article 3 (g)     | <u>Without a license:</u><br>Imprisonment of six months to one year.  |  |         |

|   |               |   |  |  |
|---|---------------|---|--|--|
|   |               | Serious disturbances in the natural balance or disturbances in the biological variety<br>Imprisonment of one to three years.  |  |  |
| <b>Unauthorized trade, import or transport of wild flora and fauna</b><br>(Article 232-c) | Article 3 (g) | <u>Without authorization, trade, imports, exports or transports</u> life or dead specimen of protected species of wild flora or fauna in a quantity that has significant impact on their protection, or parts or derivatives thereof<br>Imprisonment of one to three years or shall be fined. | <u>Negligence:</u><br>Imprisonment of up to one year |  |

Table 8 - Offences regarding the forestry crime relevant to the EUTR Regulation/nature/waste

| Criminal Code NMK  | Environmental Crime Directive | Premeditation   | Negligence  | Suspended Sentence |
|--|-------------------------------|---|---|--------------------|
| <b>Devastation of Forest</b><br>(Article 226)  | Article 3 (f)                 | Changes the purpose, cuts or digs out forests, or cuts off the bark of trees;<br>Fine or imprisonment up to three years<br><u>In personal forest-</u> fine or sentence to imprisonment of up to three year.<br><u>Weight qualification:</u><br>Cutting trees in protected forest, national park or other forest intended for special purpose:<br>Imprisonment of from one to five years<br>Legal entity-fines |   | Seizure            |
| <b>Unauthorized production of, dealing with, and trade in dangerous materials or harmful</b> | Article (f) and (g)           | Produces, processes, handles, uses, maintains, keeps, packs, repacks, transports, imports, exports, <u>waste</u> or disposes of <u>fauna and flora</u> , or seed or planting material or live plants and  | <u>Organized crime-</u> serious physical injury or serious deterioration of the health of several people<br>Imprisonment of one to ten years. |                    |



|   |  |   |  |  |
|---|--|---|--|--|
| <b>organisms or seed and planting material</b><br>(Article 232) |  | <p>live parts of plants, including seed beds, or forest and decorative types of trees which have not undergone health control - Imprisonment one to five years of imprisonment.</p> <p><u>Person in the legal entity</u>- one to ten years of imprisonment.</p> <p><u>Weight qualification</u>: causes danger to the life of people or to the property of a great extent or destruction of the fauna and flora of a great extent</p> <p>At least three years of imprisonment.</p> |  |  |
|---|--|---|--|--|

Table 9 - Reported, accused, and convicted adult persons in North Macedonia for the period 2010-2017

| CRIME AGAINST ENVIRONMENT AND NATURE | Accused Persons | Women | Convicted Persons | Non convicted            |                |                 | Security measure |
|--------------------------------------|-----------------|-------|-------------------|--------------------------|----------------|-----------------|------------------|
|                                      | Total           | Total | Total             | Investigation terminated | Charge dropped | Charge Rejected | Total            |
| 2010                                 | 90              | 3     | 82                | -                        | 3              | 5               | -                |
| 2011                                 | 88              | 2     | 70                | 2                        | 3              | 13              | -                |
| 2012                                 | 106             | 4     | 92                | 2                        | 6              | 6               | -                |
| 2013                                 | 97              | 4     | 64                | 10                       | 5              | 18              | -                |
| 2014                                 | 103             | 3     | 90                | 6                        | 2              | 5               | -                |
| 2015                                 | 71              | -     | 47                | 10                       | 11             | 3               | -                |
| 2016                                 | 85              | 4     | 77                | 2                        | 1              | 5               | -                |
| 2017                                 | 68              | 4     | 62                | 3                        | 2              | 1               | -                |

Source: Adult perpetrators of Criminal Offenses in the Republic of North Macedonia (2010/No. 2.1.11.19; 2011/No. 2.1.12.12; 2012/No. 2.1.13.13; 2013/No. 2.1.14.11; 2014/No.2.1.15.13, 2015/No. 2.1.16.17, 2016/No. 2.1.17.18, 2017/No.2.1.18.17

Table 10 - Review on reported crimes, indictments and unknown perpetrators for the period 2011 –2017

|  | Total                 |            |                      |
|--|-----------------------|------------|----------------------|
|  | Total reported crimes | Indictment | Unknown perpetrators |
| <b>Total</b>   | <b>1 514</b>          | <b>576</b> | <b>461</b>           |
| Pollution of the environment and nature                          | 26                    | 4          | 9                    |
| Illegal exploitation of mineral resources                        | 24                    | 8          | 0                    |
| Usurpation of real property                                      | 200                   | 105        | 0                    |
| Destruction of forests   | 109                   | 19         | 66                   |
| Unauthorized hunting, keeping and sale of wild animals and birds | 7                     | 7          | 0                    |
| Illegal hunting  | 209                   | 106        | 45                   |
| Illegal fishing  | 77                    | 35         | 28                   |
| Torturing animals  | 113                   | 47         | 32                   |
| Bringing dangerous materials into the country                    | 2                     | 1          | 1                    |
| Unauthorized procurement and possession of nuclear materials     | 4                     | 0          | 3                    |
| <b>Other</b>   | <b>743</b>            | <b>244</b> | <b>277</b>           |

Source: State Statistical Office, 2018. <http://www.stat.gov.mk/>

Table 11 - Summary of Basic Environmental Legislation with Reference on Supervision and Penalties

| Piece of legislation   | Relevant provisions  |
|--|--|
| <b>Environmental Protection</b>  |  |
| The Constitution ("Official Gazette" RM, No. 52/91)  | Proclaims the rights of all citizens to a healthy environment, as well as the duty of all citizens to protect and develop the environment in compliance with law |
| Criminal Code ("Official Gazette RM" No. 37/1996)  | Chapter XXII Criminal Offences Against Environment, Art. 218-234   |
| <b>Waste</b>   |  |
| Law on the Ratification of the Basel convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal ("Official Gazette of RM", 49/97)   | Law on ratification is integral part of the legal system and applies directly  |
| Law on Waste Management ("Official Gazette of RM", No. 68/2004, 71/2004, 107/2007, 102/2008, 143/2008, 124/2010, 51/2011, 123/2012, 147/2013, 163/2013, 51/2015, 146/2015, 156/2015, 192/2015, 39/2016, 63/2016) | Waste management permits (Art.32)<br>Import, Export and Transit of Waste (Art. 102/107)<br>Supervision (Art. 126-137)<br>Penalties (Art.139-143g)                |
| Law on Management of Packaging and Packaging Waste ("Official Gazette of RM", No. 161/2009, 17/2011,   | Packaging Waste management (Art.16-34)<br>National targets (Art.35-36)<br>Supervision (Art. 44-52)   |

|  |  |
|--|--|
| 47/2011, 136/2011, 6/2012, 39/2012, 163/2013, 146/2015)  | Penalties (Art.53-63)  |
| Law on Management of Electrical and Electronic Equipment and Waste Electrical and Electronic Equipment ("Official Gazette of RM", No. 6/2012, 163/2013, 146/2015, 39/2016)             | WEEE Waste management (Art.14-46)<br>National targets (Art.26)<br>Supervision (Art. 47-59)<br>Penalties (Art.60-77)  |
| Law on Management of Batteries and Accumulators and Waste Batteries and Accumulators ("Official Gazette of RM", No. 140/2010, 47/2011, 148/2011, 39/2012, 163/2013, 146/2015, 39/2016) | Banned import of waste batteries and accumulators without the producer submitting the registration certificate and registration number (Art 13)<br>Waste management (Art. 14-34)<br>National targets (Art. 35-36)<br>Supervision (Art. 43-52)<br>Penalties (Art. 53-69)              |
| <b>Nature</b>  |  |
| Law on Nature Protection ("Official Gazette of RM", 36/09, 88/10, 91/10- corrigendum, 14/16)   | Protection of species and habitats (Art.54-64)<br>Protected areas (Art.51)<br>Endangered and protected species (Art. 36, 48, 71-96)<br>Appropriate assessment (Art. 18)<br>Ecological Network, Natura 2000 (Art. 52-53)<br>Supervision (Art. 169-174a)<br>Penalties (Art. 181-183a). |
| Law on Hunting ("Official Gazette of RM", No. 26/09, 82/09, 136/11, 1/12, 69/13, 164/13, 187/13)   | Protection of Wildlife (Art.6-27)(prohibitions, measures) and hunting (Art.28-40, 51-65)<br>Supervision (Art.73-76)<br>Penalties (Art.77-84)   |
| Law on Fishery and Aquaculture (No. 7/2008, 67/2010, 47/2011, 53/2011, 95/2012, 164/2013, 116/2014, 154/2015, 193/2015, 39/2016, 83/2018)  | Protection and Sustainable Use of Fish (prohibitions, measures) - (Art.85-101)<br>Fishery in Protected areas (Art.59)<br>Trade (Art.70-73)<br>Supervision (Art. 107-109)<br>Penalties (Art. 110-115a)  |
| Law on the Ratification of the Convention on International Trade of Endangered Species of Wild Flora and Fauna ("Official Gazette of RM, No. 82/99)                                    | Law on ratification is integral part of the legal system and applies directly  |
| Law on Forest ("Official Gazette of RM", No. 64/2009, 24/2011, 53/2011, 25/2013, 79/2013, 147/2013, 43/2014, 160/2014, 33/2015, 44/2015, 147/2015, 7/2016, 39/2016)                    | Protection of forest (Art.47-69)<br>Trade of wood (Art.70-71)<br>Supervision (Art. 98-100)<br>Penalties (Art. 100a-107)  |
| Law on Inspection Supervision ("Official Gazette of RM", No. 50/2010, 162/2010, 157/2011, 147/2013, 41/2014, 33/2015, 193/2015, 53/2016, 11/2018, 83/2018, 120/2018)                   | Inspection Council (Art.16 and 16a); Status of inspectors (Art.18-22c); Rights, obligations and authorizations (Art. 18-31): Procedures and specializations (Art.32-62), Penalties (Art.63-64)   |

## 2.5 Montenegro

### 2.5.1 Policy, legal framework for the detection, investigation and prosecution of environmental crime

Since multilateral environmental agreements make an integral part of the EU *acquis*, their implementation will contribute to the achievement of full compliance of waste management and nature protection in Montenegro.<sup>53</sup> Montenegro signed the *Stabilisation and Association Agreement* with the EU on 15 October 2007 which entered into force on 1 May 2010. In 2008, Montenegro applied for EU membership and it was granted EU candidate status on 17 December 2010. In November 2013, based on the Screening Report presented by the EC,<sup>54</sup> The Council decided that Montenegro needed to fulfil the opening benchmark in order to open the negotiations with the EU for Chapter 27 (Environment and Climate Change). The Government of Montenegro adopted the [National Strategy with Action Plan for Transposition, Implementation and Enforcement of the EU acquis on Environment and Climate Change 2016-2020](#) (hereinafter referred to as: the "Strategy with the AP") on 28 July 2016 in order to respond to requirements of the opening benchmark for Chapter 27 – *Environment and Climate Change* (Strategy with the AP, p.1).<sup>55</sup> The drafting of the Common Negotiating Position was preceded by the adoption of Negotiating Position for Chapter 27 at the Government's session on 8 February 2018. At the Intergovernmental Conference held on 10 December 2018, the negotiating Chapter 27 was open. Draft of Common *Negotiation Position* is publicly available after the European Commission approved the access, use and distribution of the Common Negotiating Position on 15 January 2019.<sup>56</sup>

The [Constitution of Montenegro](#) ("Official Gazette of Montenegro", No.1/07) states that Montenegro is a democratic, social and ecological state. The Constitution treats the right to a healthy environment as a human right, which is positioned in common provisions on human rights and freedoms. The EU integration process is reflected in most of the fields of environment as they are being transposed into national environmental legislation.

The criminal liability of environmental protection is based on the [Criminal Code](#) of Montenegro. The EC Directive 2008/99/EC has mostly been transposed and implemented into domestic legislation through provisions of the Criminal Code ("Official Gazette of RMNE", No. 70/03, 13/04, 47/06, "Official Gazette of MNE," No. 40/08, 25/10, 32/11, 64/11, 40/13, 56/13, 42/15, 58/15, 44/17 and 49/18) and Law on Liability

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<sup>53</sup> List of multilateral international agreements is given in Table 1. of this document.

<sup>54</sup> Screening Report (2013) Montenegro, 28 November 2013.

<sup>55</sup> (2016) National Strategy with Action Plan for Transposition, Implementation and Enforcement of the EU acquis on Environment and Climate Change 2016-2020, <http://www.mrt.gov.me/en/ministry>.

<sup>56</sup> Common Negotiation Position on Chapter 27. <https://www.eu.me/en/press/press-releases/item/3704-common-negotiating-position-for-chapter-27>

of Legal Persons for Criminal Offences ("Official Gazette of RMNE," No. 2/07, 13/07 and "Official Gazette of MNE," No. 30/12).

Environmental Crime Directive 2008/99/EC has been fully transposed into the national legislation (Screening Report 2013, p. 4, Strategy with the AP, pp.141-142). The implementation of this directive is at an early stage due to insufficient inspection and prosecution capacities (EC 2018f, p.79).

Chapter XXV of the Criminal Code encompasses criminal acts against environment. All 30 offences under this chapter can be grouped into five categories:

- 1) general offences against the environment;
- 2) offences relating to hazardous materials;
- 3) offences against the flora and fauna and
- 4) offenses relating to illegal hunting and fisheries; offences directly related to the veterinary medicine.

*The general offences against the environment* include: 1) environment pollution (Article 303); 2) omission to take preventive environment protection measures (Art. 304); 3) unlawful construction and operation of facilities and installations which pollute the environment (Art. 305); 4) damage to the facilities and apparatus aimed at environment protection (Art. 306); 5) damage to the environment (Art. 307); 6) failure to enforce a decision on environmental protection measures (Art. 316); 7) violation of the right to be informed about the current state of the environment (Art.317); 8) Construction of a building without registration and documentation for construction (Art. 326a); 9) Construction of a complex engineering facility without a building permit (Art. 326b); 10) Unlawful connection to infrastructure (Art. 326c).

*The offences relating to hazardous materials* include: 11) environmental pollution caused by waste (Art.303a); 12) ozone layer damage (Art. 303b); 13) unlawful export radioactive and other hazardous substances and hazardous waste (Art.313); 14) unlawful handling hazardous substances (Art. 314); 15) illicit construction of nuclear power plants (Art.315).

*The offences against the flora and fauna* include: 16) abuse of genetically modified organisms (Art.307a) 17) destruction of plants (Art. 308); 18) killing and torturing animals and destroying their habitat (Art. 309); 19) destruction and damage to the protected natural property (Art. 310); 20) theft of protected natural property (Art.311); 21) extracting and importing protected natural assets and specially protected plants and animals and trading them (Article 312); 22) transmission of contagious animal and plant diseases (Art. 318); 23) producing harmful products for treating animals (Art. 321); 24) contamination of livestock food and water (Art. 322); 25) devastation of forests (Art. 323); 26) forest theft by falling timber (Art. 324).

*The offenses relating to illegal hunting and fisheries* include: 27) poaching game (Art. 325); 28) poaching fish (Art. 326).

Finally, the *offenses relating to veterinary medicine* include: 29) unconscious provision of veterinary assistance (Art. 319); 30) quackery in veterinary medicine (Art. 320).

Beside the protection of the environment proscribed by the Criminal Code, the relevant prohibitive measures have also been transposed to the sectoral laws as misdemeanour (e.g. Law on Waste Management, Law on Nature Protection, etc.). Criminal offenses from this chapter mostly present are: killings and torture of animals and destruction of their habitat, destruction of forests, forest theft, illegal hunting, illegal fishing. Criminal sanctions for the perpetrators are primarily warning measures - suspended sentences, and punishments - penalties for work in the public interest. Legal entities are held responsible for criminal offences based on the principle of objective accountability, and the responsible persons in a legal entity are held responsible based on the principle of subjective accountability.

Between 2009 and 2013, the environmental inspectorate submitted 15 criminal charges to the State Prosecutor's Office, most of them concerning environmental pollution; illegal mining in protected areas; and killing protected animal species or poaching. Six criminal charges have been rejected by the prosecution and no information was brought to the inspection concerning the other nine cases. The forestry inspection filed 20 criminal charges in 2013 (UNECE, 2015a, p. 48). In the period 2013-2018, verdicts were pronounced for 44 forest thefts, 37 construction without registration, 10 illegal fishing, 3 hunting and 6 other crimes (Interview 24). The offences on waste and nature crime relevant to the Article 3. the Environmental Crime Directive are summarised in Table 12 and

Table 13 below.

Montenegro is moderately prepared to apply the *acquis* and European standards in this area and has made some progress overall. The legislative framework on the judiciary intended to increase its independence and professionalism has yet to be fully implemented (EC 2018f, p.13). Montenegro's action plan for Chapter 23 outlines comprehensive judicial reforms. In addition, a 2014-2018 Judicial Reform Strategy and accompanying bi-annual action plan to implement it are in place. A mechanism for monitoring the implementation of the strategy is also in place (EC 2018f, p.14). Imprisonment as the main punishment is prescribed for all crimes from Chapter XXV of the Criminal Code. Thus, in 2011, 239 persons were accused, while in 2017 this number dropped to 166. In addition, in 2011 number of persons which were convicted was 210, while in 2017 this number was dropped to 159. Statistical data on environmental crimes collected are provided in Table 14.

Montenegro applies the control system of transboundary movement of hazardous waste according to the Basel Convention ([Law on Ratification of Basel Convention on the Control of the Trans-boundary Movements of Hazardous Waste and their Disposal](#) - "Official Gazette of the Federal Republic of Yugoslavia," International Treaties, No. 2/99), [Law on Foreign Trade](#) ("Official Gazette of the RMNE," No. 28/04 and "Official Gazette of MNE," No. 37/07), [Law on Transport of Dangerous Substances](#) ("Official Gazette of MNE," No. 05/08) and Rulebook of the content of documentation, which has to be submitted together with an application for the issuing of a permit for import, export and transit of waste and a list for classification of

waste ("Official Gazette of MNE," No. 83/16 and 76/17).<sup>57</sup> Currently, the Ministry reports the implementation of the Basel Convention to the Secretariat of BC in the form of annual report. There was no case of illegal traffic to be reported to the Secretariat of BC.<sup>58</sup>

Basic principles of waste management that EU waste management is based on, are still not fully applied in the system of waste management in Montenegro, even though they are integrated in the [National Waste Management Strategy](#) and [National Plan for Waste Management \(2014-2020\)](#), particularly when it comes to the hierarchy principle which ensures compliance with the order of priorities in waste management (prevention of waste creation, preparation for re-use, recycling and other recovery operations (use of energy) and waste disposal). This also applies to the management of specific waste streams in Montenegro. Thus, the adoption of the Strategy with AP 2016-2020 together with full implementation of National Waste Management Plan is an important step towards sustainable waste management (Strategy with the AP, pp. 26-27).

The [National Waste Management Strategy](#) until 2030 and the [National Waste Management Plan 2015-2020](#) are in place. Considerable efforts are needed to implement them and Montenegro needs to decide on its basic waste management model. Affected municipalities need to remedy illegal waste disposal and the use of temporary waste disposal sites. Urgent action is needed to set up infrastructure for separate waste collection and recycling and to provide adequate financial and human resources, including for inspection activities (EC 2018f, p.80). Legislative framework comprises of a large number of legal acts transposing, to a certain extent, the EU requirements in the field of waste management. In Montenegro, the [Law on Waste Management](#) ("Official Gazette of MNE, No. 64/11 and 039/16), regulates terms and mode of transboundary waste shipments, import, export and transit of waste and prohibition of trans-boundary waste shipments. Import of hazardous waste is ban. It is forbidden to import non-hazardous waste for the purpose of disposal and use as a fuel or otherwise for the production of energy. Export of non-hazardous waste may be carried out by a business company or an entrepreneur that is registered in the register of non-hazardous waste exporters. For import and transit of non-hazardous waste, export and transit of hazardous waste the permit of the Ministry of Sustainable Development and Tourism is required (Interview 28).

A high degree of transposition has been achieved with respect to the Framework Directive 2008/98/EC on Waste. EU requirements regarding the management of special waste streams and extended producer responsibility have been partly transposed. Shipment of waste governed by Regulation (EC) No 1013/2006 have been regulated by secondary regulations to a small extent. Further harmonization is planned and need technical assistance (Strategy with the AP, pp. 25, 152-155). Full alignment with Shipment Regulation is expected by the date of accession (Interview 28).

According to the 2016 EC Progress Report the legal framework on waste management is partially aligned. The new law on the environment was adopted in July 2016 as well as the national strategy for transposition, implementation and enforcement of the EU *acquis* on the environment and climate change and its 2016-

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<sup>57</sup> Montenegro succeeded to the Convention on 23 October 2006. The Convention became effective for Montenegro on 3 June 2006, the date of State succession. Montenegro also succeeded to the Ban Amendment on 23 October 2006.

<sup>58</sup> See: National Reporting. [www.basel.int](http://www.basel.int).

2020 action plan. In order to further align with the *acquis*, amendments to the law on waste management were adopted in 2015 and 2016. Considerable efforts are needed to ensure implementation of the national strategy for waste management until 2030 and the 2015-2020 national waste management plans (EC 2016a, pp.75-76).

Montenegro is a Party to the CITES Convention in accordance with the Law on the ratification of the Convention on International Trade of Endangered Species of Wild Flora and Fauna ("Official Gazette of FRY", International Agreements, No.11/01).<sup>59</sup> Legislative compliance of the national framework with the CITES Regulation (EC) No 338/97 on trade in wild plant and animal species is partial. [Law on Nature Protection](#) ("Official Gazette of MNE", No. 54/16) gives the legal basis for the detailed procedures regarding import and export which should be fully in line with EU by the adoption of all subsidiary regulation on transboundary movement and trade in protected species.<sup>60</sup> Montenegro reports the trade, implementation and enforcement data to the CITES Secretariat in the form of annual (last one for 2015) and bi-annual reports (last one 2007-2008).<sup>61</sup> Cross-border control is carried out in accordance with the Memorandum of Cooperation concluded between the Environmental Protection Agency and the Customs Administration in 2012. Training of customs officer is maintained, but it is necessary to conduct training on identification of wild species more often. Meetings of representatives of both institutions are held twice a year when the results of the work are analysed (Interview 22).

[The National Biodiversity Strategy with Action Plan](#) (NSBAP) for the period 2016-2020 has been adopted and it established a strategic framework for the implementation of the Convention on Biodiversity, including the measures and actions to reach objectives in accordance with the Strategic Plan for Conservation of Biodiversity 2011-2020 and the EU 2020 Biodiversity Strategy. The protection of nature is governed in Montenegro by a significant number of regulations of which the Law on Nature Protection may be considered a primary legislation that governs most issues in the subsector of environmental protection. 24 rulebooks have been adopted pursuant to this legislation. A number of specific issues in the subsector of nature protection are governed by the [Law on National Parks](#) ("Official Gazette of MNE", No. 28/14), [Law on Forests](#) ("Official Gazette of MNE", No. 74/10,47/15), with two implementing regulations (rulebooks) adopted for its enforcement and the [Law on Wildlife and Hunting](#) ("Official Gazette of MNE," No. 52/08, 40/11, 48/15) followed by one rulebook. It is important to identify the scope of the EU *acquis* that should be transposed in this subsector and determine the Strategy and the AP elements important for the implementation of this Strategy in order to achieve full transposition of the EU legislation into the legal system of Montenegro in the medium term (3-4 years)(NPAA, pp.35-36).

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<sup>59</sup> Montenegro succeeded to the Convention which became effective for Montenegro on 3 June 2006, the date of State succession.

<sup>60</sup> Subsidiary regulations applies until alignment with CITES regulation: Rulebook on conditions for transport and handling of protected wild species during transport ("Official Gazette of MNE", No. 67/10); Rulebook on safety measures and maintenance of crossings for wildlife ("Official Gazette of MNE, No. 80/10); Rulebook on detailed conditions and manner of collection, use and transport of unprotected wild animals, plants and fungi that are used for commercial purposes ("Official Gazette of MNE", No. 62/10).

<sup>61</sup> See: [www.cites.org](http://www.cites.org).



Provisions of the [Habitat Directive 92/43/EEC](#) have been transposed in following national regulations: [Law on Nature Protection](#) (“Official Gazette of MNE”, No. 54/16) and subsidiary regulations.<sup>62</sup> [Law on Wildlife and Hunting](#) (“Official Gazette of MNE”, No. 52/08, 40/11, 48/15) regulates exploitation of wild game species. Freshwater fishing and Marine fishery acts regulate fishing. With regard to the legislative activities initiated to ensure full compliance with and implementation of the Directive, the following legislative activities are foreseen in the upcoming period: adoption of ordinance on appropriate assessment; adoption of the implementing acts on ecological network, establishment of Natura 2000, amendment to the regulation on measures for protection of protected and strictly protected plants, animals and fungi with measures to protect their habitats (Strategy with the AP, pp. 172-173).

The proposal for 32 Emerald sites in Montenegro was adopted by Standing Committee of the Bern Convention in December 2011. Other designated areas in Montenegro include: 5 Important Bird Areas (IBAs); 27 Important Plant Areas (IPAs); 5 Primary Butterfly Areas (PBAs). The red lists have not been finalised because of the lack of resources and expertise (UNECE, 2015a, pp. 13 and 88). These areas will serve as a basis for identifying the proposed areas for the future environmental network Natura 2000 in the context of implementing national legislation previously harmonised with Bird Directive 2009/147/EC and Habitat Directive 92/43/EEC. In April 2016, the IPA project “Establishment of the NATURA 2000 network in Montenegro” started (Strategy with the AP, pp. 38-40). Basically, the mapping phase of the territory is underway. The first phase of the project will be completed in April 2019, a part of the territory has been completed. Therefore, the activities of collecting data intensively need to be set. In addition, future activities are planned such as: establishing a system of monitoring, management, and adequate appropriate assessments (Interview 19).

The Bird Directive is partially transposed by the Law on Nature Protection (“Official Gazette of MNE”, No. 54/16) and subsidiary regulations,<sup>63</sup> Law on Wild Game Species and Hunting (“Official Gazette of MNE”, No. 52/08) and Rulebook on hunting seasons (“Official Gazette of MNE”, No. 60/10) and subsidiary regulations.<sup>64</sup> Full transposition is foreseen by the adoption of the implementing acts on ecological network, appropriate assessment, protection of rare, thinned, endemic and endangered plant and animal species, list of types of habitats and list of wild birds as well as hunting regulations, which will regulate the matters of use of a single methodology for establishing the number of game (Strategy with the AP, pp. 172-173).

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<sup>62</sup> Decree on protection of rare, thinned, endemic and endangered plant and animal species (“Off. Gazette of MNE”, No. 76/06); Rulebook on the types and criteria for determining the types habitat, manner of making maps of habitat, way of monitoring and the threat of habitat, content of annual reports, measures of protection and preservation of habitat types (“Off. Gazette of MNE”, No. 80/08.); Rulebook on detailed contents of the annual program of monitoring of the state of conservation of nature and the conditions that have to be met by legal person that performs the monitoring (“Official Gazette of MNE”, No. 35/10); Rulebook on detailed conditions that have to be met by the manager of a protected area (“Official Gazette of MNE”, No. 35/10).

<sup>63</sup> Decree on protection of rare, thinned, endemic and endangered plant and animal species (“Official Gazette of MNE”, No. 56/06); Rulebook on the manner of monitoring of population of protected wild birds (“Official Gazette of MNE”, No. 62/10).

<sup>64</sup> <https://epa.org.me/regulativa/>

The provisions of the EUTR Regulation (995/2010) are partially incorporated into national regulations: Law on Forests ("Official Gazette of MNE" No. 74/10); Law on Inspection Supervision ("Official Gazette of RMNE", No. 39/03 and "Official Gazette of MNE", No. 76/09, 57/11, 18/14, 11/15 and 52/16); Law on Customs Administration ("Official Gazette of MNE", No. 3/16) and Law on Nature Protection ("Off. Gazette of MNE", No. 54/16). The provisions of the Directive are at a very early stage of transposition. The Law on Forests contains provisions which prescribe which wood products can be traded only on the basis of certificates of origin issued by the user of the forests owned by the state or the owner of the privately owned forests. Further alignment is planned through amendments to the Law on Forestry and subsidiary regulations (Strategy with the AP, pp. 172-173). The Law on Forests envisages a penalty of 1.200-15.000 Euro for legal entities, responsible person 300-2.000, entrepreneurs 800-5.000 Euros. In 2017, regulation has prohibited the export on the period of two years. It is planned to extend the validity of the ban in the coming period. Full compliance will be achieved by the adoption of subsidiary by-laws, no later than the date of accession of Montenegro to the European Union (Interview 20). The Government of Montenegro adopted the [National Action Plan \(NAP\) to combat illegal activities in the forestry](#), including forest harvesting, capturing forest land illegally, the deliberate planting of forest fires, the prevention of proving the destruction of boundary lines between state and private forest, the corruption in the forestry sector, with special emphasis on illegal activities in forest exploitation and trade in illegally harvested timber.

The coordination mechanism (Strategy with the AP, p.38) has to provide for in particular the following issues: 1) Habitat and Bird Directive and EUTR Regulation between ministry of environment and ministry competent for forest issues; 2) implementation CITES Convention and CITES EU legislation between the Ministry of Environment and Customs Office. On [nature protection](#), Montenegro is partially aligned with the *acquis*. Montenegro further aligned with the Habitats Directive and streamlined the institutional framework for designating future Natura 2000 sites, but still needs to strengthen administrative capacity to manage Natura 2000 in the future. Resolute and urgent action is needed to protect the potential Natura 2000 site Ulcinj Salina, including its full bird protection value. Potential investments in hydropower and touristic developments need to comply with nature protection requirements. Work for the identification and designation of marine protected areas needs to start. Enforcement and inspection capacity should also be further strengthened, particularly through skills development (EC 2018f, p. 80).

Table 15 provides a summary of the environmental legislation with reference to supervision and penalties.

### 2.5.2. Relevant institutions, and compliance and enforcement mechanisms

The AP Strategy states that there is need for the preparation and implementation of the plan for raising awareness of all stakeholders in the criminal-law protection of the environment (Strategy with AP, p.143).

With regard to capacity building for all implementation levels, in 2017 Montenegro adopted the [Plan of Institutional Adjustment and Strengthening of Administrative Capacities for Environment and Climate Change Sectors](#) for the period 2017-2020, aimed at strengthening the organizational and institutional framework for the full implementation of EU *acquis* (PIAC, p.10).<sup>65</sup>

Below an overview of the main institutions involved in environment protection:

- [The Ministry of Sustainable Development and Tourism](#) is responsible for transposition of Shipment Regulation, Habitat and Bird Directive, CITES and EUTR Regulation. Organisation in the field of waste management characterised the following organisational structure. 1) The [Directorate for Waste Management and Utility Development](#) - Division for Waste Management (four employees) is competent for transposition of Waste Frame Directive 2008/98 and Shipment Regulation, as well as the monitoring and implementation of national legislation. Testing of waste is performing by the authorised laboratories for waste testing. 2) The [Division for Nature within the Directorate for Environment](#) (one employee) has competences in the preparation of nature conservation policies, developing regulations on habitat in compliance with EU policies, establishment of environmental network Natura 2000, reporting to the European Commission and implementation of national legislation. With regard to Bird Directive, CITES and EUTR Regulation the Ministry is in charge of natural habitats of wild flora and fauna relating to the issues of hunting, hunting wildlife species and the methods of their protection, CITES endangered species and timber (PIAC 2017, pp.49).
- [The Environmental Protection Agency and Nature \(NEPA\)](#) is responsible for the implementation of legislation in the field of waste management and nature protection. [Sector for permits](#) (twelve employees) is competent for issuing permits for transboundary movement of wastes, permits for waste management. In the field of nature protection this sector is responsible for issuing the following acts: permits for trade on CITES, approvals for the collection, use, breeding, keeping and trafficking of wild animals species; approvals for the picking, collection, use, cultivation, keeping and movement of protected wild herbs and fungi, approvals for cave activities etc. [Sector for Nature Protection, Monitoring, Analyses and Reporting](#) (twenty employees) is in charge, in cooperation with other professional and scientific institutions in the field of nature protection, to collect data and prepare documents for the establishment of an ecological network in the territory of Montenegro; for scientific and educational researches on protected natural resources; for defining measures of protection of strictly protected and protected species of plants, animals and fungi, and measures to protect their habitats, for conducting nature feasibility assessment procedures, monitor of natural habitats and species, preparation and maintenance of databases on biodiversity and waste etc. (PIAC 2017, pp.49).
- [Ministry of Agriculture and Rural Development](#) is responsible for setting policies, developing regulations, maintenance of compliance with EU policies and legislation on forest management and protection, fishery, hunting wildlife species and wood products. [Directorate of Forestry, Hunting](#)

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<sup>65</sup> Plan of Institutional Adjustment and Strengthening of Administrative Capacities for Environment and Climate Change Sectors in Montenegro for the Period 2017-2020 has been adopted in June 2017. <http://www.mrt.gov.me/en/library/document>

and Wood Processing industry has seven employees. *Division of Forestry* (three employees) is in charge of forest management and protection issues, development of management plans and programs and of implementation of protection measures. *Division on hunting* (one employee) is responsible for hunting issues. Special *Division on monitoring and hunting issues* have only three employees. In *Division for Wood Processing Industry* there is no employees for transposition and implementation of EUTR Regulation. *The Forest Administration* is the body within the Ministry competent for forest management and protection issues, preparation of management plans and programmes and for implementation of protection measures. Also, it is competent for issuing certificates of origin for wood products. It counts 12 employees who deal with nature protection issues in the context of protection of forest habitats (the ratio is 2 (PIAC 2017, pp. 52-53)).

- *Research institutions* (e.g. universities, natural history museum, institute of marine biology) are in charge for technical researches, inter alia: specific species status, biology and requirements, habitat management and species and habitat conservation value criteria, potential involvement in creating a list of SPAs, development of indicators.
- *The Administration for Inspection Affairs* is an independent state administration unit doing inspection supervision in a range of areas including the environment, shipment of waste, endangered species and timber, forestry, protection of plant species, hunting and forest plan protection. The main competences are related to supervision of the implementation of environmental requirements in accordance with environmental laws and regulations and Law on Inspections ("Official Gazette of RMNE" No. 39/03 and ("Official Gazette of MNE" No. 76/09, 57/11, 18/14, 11/15 and 52/16). This administration is responsible for submission of misdemeanour procedure application, fines, submission criminal penalties applications, prohibition of performing, activity or duty, collecting and monitoring data. *The Ecological inspection* carries out border control at the invitation of the customs. The Inspection Directorate has 23 employees out of which 8 Environmental inspectors within the Sector of Environmental and Spatial Protection- Department for Ecological Inspection (PIAC, p.57). The new systematisation foresees an increase in the number of inspectors (strengthening inspection - 5 for nature protection and waste). In 2018, 2,237 inspections were carried out. 800 irregularities were identified, 600 decisions were passed, 43 were fined. 66100 Euros charged. 10 misdemeanour orders issued. 44 requests for misdemeanour motion filed. 15 criminal reports filed (Interview 23). As of 2017, Montenegro has not yet become a member of IMPEL.
- The *Department for Forestry, Hunting and Plant Protection Inspection* within Sector of Protection and Safety of Human, Animal, Plant and Forest Health the has 11 inspectors (PIAC, p. 57). In 2018, 1.566 inspections were carried out: 390 irregularities were found, 272 cases were issued, 43 decisions were made. 76 misdemeanour orders, a fine of EUR 31.800. 38 requests for initiation of misdemeanour proceedings have been filed and 25 criminal charges (illegal seizure mostly, 2 illegal hunting). In practice, the rate of rejected applications has been around 25-30%. If a criminal offense is committed for the first time, a fine is imposed and for returnees sentenced to imprisonment. For the 2018, there are no convictions for hunting related offences. 250 m<sup>2</sup> of wood assortments were temporarily seized. Illegal logging takes place during the heating season. In case of suspicion of illegal traffic customs call the forest inspector (Interview 24).

- The **Police Administration** is responsible for the control of border crossing points with respect to the smuggling of transboundary movement of wastes, international trade on endangered species or their derivatives and timber (Strategy with AP, p. 40). All types of actions are undertaken regarding the insight, identification of persons and things, the provision of persons and places, gathering evidence, conducting searches, using methods of undercover investigation (interception, interception, etc.) (Interview 21).
- **The Customs Administration**, under the Ministry of finance, is responsible for the control of import, export and transit of the goods that are subject to special measures for the protection of flora and fauna, transboundary movement of wastes, as well as the control of import, export and transit of the timber products placed on the market. There are Sector for Customs and Legal Affairs, 10 border crossings in Montenegro where customs officers control cross-border movements of products subject to regulations regulating trade in protected flora and fauna species. In 4 customs offices – Regional Unit Customs Offices of Podgorica, Bijelo Polje, Kotor and Bar four coordinators for CITES have been nominated (PIAC, p.22). Customs officers controls all goods that are in the licensing regime under the Nature Protection Act and the Law on Waste Management.
- The **Ministry of Justice** (with one employee) and **Ministry of Sustainable Development and Tourism** (with four employees) are the competent authorities for the transposition of Environmental Crime Directive into national legislation (Strategy with the AP, p. 14-15). In addition, the implementation of directive is also responsibility of the **State Prosecution Service (Basic Prosecutor's Office and Prosecutor of the Higher Prosecutor's Office)**, **Misdemeanour Councils** and competent courts (*primary and higher courts* of first instance and *Appeal court* in the second instance). Basic Prosecutor's office is competent for criminal offences for which a fine or imprisonment of up to five years may be imposed. The Higher Prosecutor's Office is competent for criminal offences for which a prison can be pronounced ten years. The submission of a case for a criminal offense to a state prosecutor may be filed by a natural or legal person, police, inspections or other state authority, or the state prosecutor may form a criminal case *ex officio*, upon the knowledge that there is a suspicion that a criminal offense has been committed. In the practice, according to the practitioners interviewed, there are almost no classical crimes against the environment (Interview 26). Institutional strengthening measures are foreseen in the **Strategy for the Reform of Judiciary (2014-2018)**. In this strategy, it is stated that the main problems are the backlogs, the length of court proceedings and the inadequate judicial network. Moreover, this strategy comprises numerous measures affecting an improvement of transparency, openness and accountability of judicial system enable more efficient implementation of regulations and the Environmental Crime Directive.
- **Prosecutors and courts** have their own specialized statistical departments. Montenegrin prosecutor's offices regularly prepare and publish work reports, but only the Supreme state prosecutor's office makes reports available for previous years, while lower prosecutor's offices make available only the report from the previous year (D.Koprivica, B.Papovic, 2017, p.9).

- Statistical data on environmental crime is performed by the [Statistical Office of Montenegro](#)<sup>66</sup> and available for the period 2011-2017. MONSTAT is the institution competent for the collection and statistical processing of data on certain types and amount of waste, as well for EUROSTAT reporting.
- Local self-government units (LSGU) in 23 municipalities in Montenegro are competent for implementation of regulations in the field of waste management (establishment of necessary infrastructure and provision of services relating to municipal waste management; certain types of supervision on municipal waste management – municipal communal inspections and communal police and nature protection (establishment and management of particular categories of protected natural areas – natural resources (e.g. regional parks, monuments of nature. In the majority of local self-government units, administrative capacities in the area of waste management are relatively low.

### 2.5.3 Conclusions

In accordance with EC 2016 Progress Report, the administrative capacities at national and local level have to be considerably strengthened throughout all sectors, particularly in the field of environmental inspections. However, significant efforts are needed on implementation and enforcement, in particular in nature protection and waste management sectors (EC 2016a, p. 75). With regard to state of play of existing institutional and organization framework for transposition and implementation of environmental legislation, the following key organizational and capacity gaps have been identified:

- The Ministry of Sustainable Development and Tourism does not have a sufficient number of qualified employees to work on transposition and implementation of waste management and nature protection legislation;
- NEPAs administrative capacities for administrative procedures regarding the issuance of permits in the field of waste management and nature protection is not sufficient, as well as waste management issues and establishment of Natura 2000 and protection of birds, habitats and CITES species;
- The administrative capacities in the Administration for Inspection, the Ministry of Agriculture and Rural Development is not adequate specially in forest, hunting sector, as well as wood processing industry (Strategy with AP, p.42).

The EC highlighted that further capacity building for the Inspection Directorate, prosecutors and judges and the expert witnesses is a matter of priority (Screening Report, 2013, p.4). Implementation of the new legal provisions should focus on strengthening cooperation between judicial and law enforcement authorities, and on the authorities' specialisation in the different forms of serious crime (p.66).

Montenegro should in particular: establish a track record of investigations, prosecutions, final convictions, seizures and confiscations in organised crime cases. Work on enhancing cooperation on border

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<sup>66</sup> Statistical Office of Montenegro. <https://www.monstat.org/eng/>

management issues; increase the human and material resources devoted to modernising border infrastructure and to surveillance of the green border (EC 2016a, p.67).

There is also a need for cooperation at the national level between various competent authorities to improve level of implementation of Criminal Code and establish website with all relevant information's to be available to institutions involved in each environmental crime case. In addition, there is need to cooperate efficiently at the regional level. Establishment of the regional network on environmental crime in the Balkan region could contribute our efforts to combat with environmental crime on effective way and organized manner (Interview 25).

Customs cooperate with World Customs Organisation (WCO). In 2017, the Customs participated in WCO operations, and was active in the Crime Prevention Group. Posters, notifications are at the border crossings (Interview 22). The customs administration applies risk analysis and continued to improve IT support for the risk management system. It has now investigative powers and cooperates with law-enforcement agencies under agreements and memoranda on mutual cooperation and exchange of information. International cooperation operates on the basis of 30 signed bilateral agreements in customs matters, including 12 with EU Member States (EC 2018f, p. 39).

Beside the general risk analysis (where there is a good database), there is a local analysis based on the experience of customs officials. The value of goods, origin, tariff markings and other markings that these goods contain under international and national regulations are checked. The paper's declaration of goods is still in use, if the goods on the green channel are checked obligatory. Tariff tags are specified for CITES types. The CITES Handbook has been in place since 2006, and a new/updated guide would be useful. Customs submit to all customs offices a notice of changes to the regulations. Information on customs control and protection of customs support is placed on the site. Wastes don't have tariff codes. It should be done and aligned with EU tariff codes (Interview 22).

Significant efforts are still needed on implementation and enforcement, in particular on nature protection and waste management. Montenegro should in particular: accelerate implementation of the national strategy for transposing, implementing and enforcing of the EU *acquis* on environment and climate change, especially in the waste sector; take measures to preserve and improve the ecological value of protected areas and potential Natura 2000 sites.

On horizontal legislation, further implementation of the national strategy and its action plan is required. The lack of administrative capacity and financial resources at national and local level is delaying the implementation of the strategy. Better coordination is also needed with the 'appropriate assessment' procedure under the Habitats Directive. The implementation of the Environmental Crime Directive is at an early stage due to insufficient inspection and prosecution capacities (EC 2018f, pp. 75-79). Forestry inspectors should be more present at border crossings. Cooperation is good with the police, customs and forest management. Market inspection should also be included (Interview 24).

#### 2.5.4 Preliminary findings in knowledge gaps and capacity building needs in the area of environmental crime

The EC 2018 Progress Report underlined the Montenegro should focus in particular on environment and climate change. Strengthening the administrative capacity for ensuring the application of the *acquis* remains a substantial challenge for Montenegro (EC 2018f, p. 75). In accordance with the Plan of Institutional Adjustment and Strengthening of Administrative Capacities for Environment and Climate Change Sectors in Montenegro for the period 2017-2020 (PIAC)<sup>67</sup> necessary steps should be taken in order to prepare for the effective implementation and enforcement of EU *acquis*, especially horizontal legislation, notably with respect to environmental crime, waste management and nature protection.

Generally, in Montenegro there is insufficient administrative capacity for management of all environmental aspects (number of employees in the ministry competent for environmental protection, as well as in other competent authorities at regional and local level). In addition, there is insufficient organisation, poor coordination and poor communication between institutions. In this regard there is need for further strengthening its capacity building and training of human resources at all levels of implementation and enforcement of legislation in line with National Strategy and its related Action Plan for the transposition and implementation and enforcement of the EU *acquis* on environment and climate change.

Three mechanisms of capacity building have identified: professional advanced training in accordance with the Programme of professional advanced training of state officials and employees (hereinafter: Program); TAIEX - technical assistance and IPA II. This Program particularly is based on the strengthening of administrative capacities of state administration focused on EU integration, improvement of practical knowledge and understanding of EU legal system through courses and trainings established in Program modules of Human Resources Administration. TAIEX is key instrument of technical assistance and information exchange, especially in the field of practical implementation and enforcement of EU related legislation which should be used in Montenegro in accordance with the obligations established in the Program of Accession of Montenegro (2017-2018) and in the Strategy with AP. Through TAIEX training maps activities are focused on additional training of administration for inspection affairs, predominantly on Environmental Inspection, which the weakest link in the overall system. It is envisaged to plan courses, trainings, study visits and mentorship financed from IPA II. Annual Training Program will be adopted for each of three mechanisms of capacity building (PIAC, pp. 63-64).

Training of police should be more frequent and planned, and especially border police. A guide is needed for the identification, control and undertaking of investigative actions containing information on the type of goods being controlled (waste, affected wild flora and fauna), practical experience of detection, determining what is a counterfeit, in particular identification of waste and wild species protected by international and

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<sup>67</sup> Plan of Institutional Adjustment and Strengthening of Administrative Capacities for Environment and Climate Change Sectors in Montenegro for the Period 2017-2020 has been adopted in June 2017. <http://www.mrt.gov.me/en/library/document>



national regulations. In pre-criminal proceedings, it is very important to obtain evidence in a lawful manner. Good fieldwork is needed (insight)(Interview 21).

In the field of *environmental crime*, it is of high importance to build capacity of the authorities in justice sector. According to PIAC in the criminal-law protection of the environment special attention should be paid to raise the level of knowledge (awareness) of all stakeholders. Judges should be trained in order to strengthen capacity of administrative judiciary through training and workshops of the representatives of all institutions responsible for these issues (justice, environmental protection, prosecution, courts (NPAA, pp.16-17). Judges and prosecutors are not specialized in environmental disputes. Proof of the crime is very difficult problem, and in particular the dimensioning of the being of the crime. It all comes down to the opinion of the expert. A specialised department with specific knowledge is needed (Interview 23).

Generally, the following areas are considered very important:

- Strengthening the implementation of Environmental Crime Directive through capacity building programmes as well as building mechanisms for coordination and communication between relevant institutions (Ministry, NEPA, inspection, prosecution and judges);
- Full Alignment with Waste Framework Directive and Shipment Regulation through capacity building programs for implementation on transboundary control of shipments and environmental sound management on the territory of Montenegro;
- Full alignment with Habitat, Birds and CITES units in NEPA in: establishment of Natura 2000 network (using planned technical assistance within IPA), in the monitoring of the status of NATURA network and the implementation of mechanisms of protection and preservation of integrity of ecological network (e.g. appropriate assessment); upgrade of capacities in the fight against the illegal trade of wild species;
- Full alignment with EUTR Regulation and development of institutional framework, especially for the prevention of illegal cross-border activities in the field of forestry and coordination of border services.

In the course of preparation of the Strategy with the AP in terms of institutional organization, competences and available capacities for an efficient transposition and implementation of the EU *acquis* in the area of horizontal legislation, waste management and nature protection the following priority training areas have been identified and will cover all relevant institutions on national and local level (PIAC, pp. 64-68).

In order to improve enforcement of *Environmental Crime Directive, Habitat and Bird Directive and EUTR Regulation* the following key activities have been planned for the period 2017-2020:

### Horizontal Legislation

- Development of Manual on the implementation of Criminal Code;
- Training of judges with the aim of capacity building of administrative justice in conducting environmental crime cases (the creation of a specific questionnaire on environmental crime to be addressed to judges was suggested – Interview 27);

- Building of capacities of competent inspection services in the field of environmental crime;
- Building of capacities of Ecological Inspection and other competent state bodies, as well as police, customs and prosecutors in prevention, identification, investigation and processing in cases of environmental crime through organizing separate and joint trainings, especially on border control (Interview 23).

### Waste Management

- Development of Manual for implementation of EU Shipment Regulation, as well as the guidance on distinction between what is waste and non-waste and guidelines how to determine and calculate financial guaranties, insurance and bonds for transboundary movement of hazardous wastes (Interview 28).
- Building of capacities of the Ministry, NEPA and Environmental inspection through training programs for the implementation of transboundary movement of hazardous waste and their disposal, as well as prevention and supervision of illegal acts in the field of waste management;
- Building of capacities of Ecological Inspection for the supervision of waste management on the territory of Montenegro.

### Nature Protection

- Development of Handbook on CITES for inspection, customs, police prosecutors and judges;
- Strengthening the capacity of all bodies to implement the CITES Convention, transferring the practical experience of EU countries in the implementation of CITES, examples of the EU countries on the adoption of national relevant legislation, issuing permits, introducing with the work of the centres in the region for the accommodation and rehabilitation of confiscated endangered species of animals.
- Building of capacities of Ecological Inspection in implementation of inspection supervision in the area of protected natural resources, and areas of NATURA 2000;
- Building of capacities of Ecological Inspection in execution of inspection supervision of trade in protected and unprotected wild plant and animal species and fungi;
- Development of handbook on protected species is needed, especially on wood trade (pay attention to the country from which it comes), which would be intended for all customs authorities, inspections, police and prosecutors (Interview 24);
- Building of capacities of Inspection for Forestry, Hunting and Plant Protection in execution of supervision of use and trade in protected wild hunting game specie PAC.

Finally, full alignment of EU legislation depends on continuously building of administrative capacities of employees in all relevant institutions and levels i.e. in good quality transposition of EU requirements and in implementation of legislation related to Ecological crime, waste and nature protection.

## Types of environmental offences and sanctions in the Criminal Code of Montenegro

Table 12 - Offences on waste and nature crime relevant to the Article 3. Environmental Crime Directive

| Criminal Code MNE  | Environmental Crime Directive | Premeditation  | Negligence   | Suspended Sentence                |
|--|-------------------------------|--|--|-----------------------------------|
| <b>Environmental Pollution</b><br>(Article 303)  | Article 3 (a)(h)              | Imprisonment up to three years<br><br><u>Weight qualification:</u><br>Imprisonment of:<br>-one to eight years and a fine<br>-two to ten years<br>-3 to twelve years  | Fine or imprisonment up to one years<br><u>Weight qualification:</u><br>Imprisonment of three to five years and a fine | Environmental protection measures |
| <b>Illegal Construction and Operation of Facilities and Installations Polluting the Environment</b><br>(Article 305) | Article 3 (a)(d)              | Imprisonment of six months to five years<br><u>Weight qualification:</u><br>Imprisonment of one to eight years<br>Imprisonment of one to ten years<br>Imprisonment of two to twelve years  |  | Environmental protection measures |
| <b>Waste environmental pollution</b> (Art 303a)  | Article 3 (b) and 3 (c)       | Imprisonment up to three years<br>Imprisonment from three months to three years<br><u>Weight qualification:</u><br>Imprisonment of one to eight years<br>Imprisonment of two to ten years<br>Imprisonment of three to twelve years | Fine or imprisonment up to one year<br><br>Imprisonment from three to five years                                       |                                   |

|   |                                   |   |  |  |
|---|-----------------------------------|---|--|--|
| <p><b>Exposure and introduction of hazardous substances</b><br/>(Article 313)</p> | <p>Article 3 (e)</p>              | <p>Contrary to regulations, exports or exports abroad or imports into Montenegro a nuclear or radioactive material or other hazardous substance or hazardous waste or who transports such substances through the territory of Montenegro:<br/>Imprisonment for a term not exceeding three years.<br/>Whoever, through the abuse of his official position or authority, permits or permits the export, export or import of goods or material i.e. waste:<br/>Imprisonment sentence of six months to five years .<br/><u>Weight qualification:</u><br/>Imprisonment for one to eight years<br/>Imprisonment of two to ten years.<br/>Imprisonment of three to twelve years.<br/>(<u>Attempt</u> shall be punished).</p> |  |  |
| <p><b>Unlawful Handling with Hazardous Substances</b><br/>(Article 314)</p>       | <p>Article 3 (e), (a) and (d)</p> | <p>Imprisonment up to three years<br/>Imprisonment of six months to five years<br/><u>Weight qualification:</u><br/>Imprisonment of one to eight years and a fine.<br/>Imprisonment of two to ten years<br/>Imprisonment of three to twelve years<br/>(<u>Attempt</u> shall be punished).</p>   |  | <p>Environmental protection measures</p> |
| <p><b>Desotying plants</b><br/>(Article 308)</p>                                  | <p>Article 3 (a) (f)</p>          | <p><u>Destroying or damaging the plants</u> to a greater extent:</p>  | <p>Fine or imprisonment up to six months.<br/>Imprisonment up to three years</p> |  |

|  |                   |  |  |         |
|--|-------------------|--|--|---------|
|  |                   | <p>Fine or imprisonment for up to one year<br/> <u>specially protected species:</u><br/> imprisonment from six months to five years)</p> <p><u>Unauthorized possession of plant belonging to a specially protected animal species or takes samples of that kind:</u><br/> Fine or Imprisonment not exceeding one year</p>                                    |  |         |
| <b>Killing and torturing animals and destroying their habitat</b><br>(Article 309) | Article 3 (h) (f) | <p><u>Killing, hurting or torture:</u><br/> Fines or imprisonment for up to a year<br/> (<u>specially protected species:</u><br/> imprisonment from six months to five years)</p> <p><u>Unauthorized possession of animals belonging to a specially protected animal species or takes samples of that kind:</u><br/> Fine or Imprisonment up to one year</p> |  |         |
| <b>Poaching game</b><br>(Article 325)  | Article 3 (f)     | <p><u>Closed season and where is forbidden:</u><br/> Fine or imprisonment up to six months</p> <p><u>Kills or wounds game or catches it alive:</u><br/> Fine or imprisonment up to one year (big game: fine or imprisonment up to two years)</p> <p><u>Destroy game in large numbers:</u><br/> Imprisonment up to three years</p>                            |  | Seizure |
| <b>Poaching fish</b><br>(Article 326)  | Article 3 (f)     | <p><u>Closed season and where is forbidden:</u><br/> Fine or imprisonment up to six months</p> <p><u>Unlawful Assets:</u><br/> Imprisonment up to three years</p>  |  | Seizure |

|  |                   |   |   |                     |
|--|-------------------|---|---|---------------------|
| <b>Damaging the Environment</b><br>(Article 307)   | Article 3 (a)     | Imprisonment up to three years<br><u>Weight qualification:</u><br>Imprisonment of one to eight years and a fine   | Fine or imprisonment up to one year<br><u>Weight qualification:</u><br>Imprisonment of six months to five years | Protection measures |
| <b>Exporting and importing protected natural assets and specially protected plants and animals and trading them</b><br>(Article 312) | Article 3 (g) (h) | Contrary to regulations exported abroad or imported into Montenegro a protected natural good or a specially protected plant or animal<br>Unauthorized in trade in specially protected plants or animals or parts thereof or products thereof<br>Imprisonment of three months to three years. ( <u>Attempt</u> shall be punished). |   |                     |
| <b>Destruction and Damage Protected Natural Asset</b><br>(Article 310)   | Article 3 (f) (h) | <u>Destruction and damages:</u><br>Imprisonment of three to five years  | Fine or imprisonment up to six months   |                     |

Table 13 - Offences regarding the forestry crime relevant to the EUTR Regulation

| Criminal Code RS                              | Environmental Crime Directive | Premeditation   | Negligence | Suspended Sentence |
|---|-------------------------------|---|------------|--------------------|
| <b>Devastation of Forest</b><br>(Article 323) | Article 3 (f)                 | <u>Cutting and devastation of forest:</u><br>Fine or imprisonment up to one year<br><u>Weight qualification:</u><br>Cutting trees in protected forest, national park or other forest intended for special purpose:<br>Imprisonment of three months to three years |            |                    |

|                                       |                     |   |  |  |
|---------------------------------------|---------------------|---|--|--|
| <b>Forrest Theft</b><br>(Article 324) | Article (f) and (g) | <u>Fells one or more trees in a forest, park or avenue of trees and the quantity of timber exceeds cubic metres:</u><br>Fine or imprisonment up to one year<br><u>Weight qualification:</u><br><u>Sell the felled tree, or if the quantity of felled timber exceeds five cubic metres or the offence is committed in a national park, protected forest or other forest intended for special purpose:</u><br>Fine or imprisonment of three months to three years<br><u>Attempt</u> shall be punished |  |  |
|---------------------------------------|---------------------|---|--|--|

Table 14 - Reported, accused, and convicted adult persons in Montenegro 2011-2017

| CRIME AGAINST ENVIRONMENT | Reported persons - known perpetrators |       |     | Accused persons |       |     | Convicted persons |       |     |
|---------------------------|---------------------------------------|-------|-----|-----------------|-------|-----|-------------------|-------|-----|
|                           | Total                                 | Women | Men | Total           | Women | Men | Total             | Women | Men |
| 2011                      | 307                                   | 30    | 277 | 239             | 12    | 227 | 210               | 10    | 200 |
| 2012                      | 542                                   | 55    | 487 | 241             | 19    | 222 | 217               | 18    | 199 |
| 2013                      | 240                                   | 23    | 217 | 187             | 21    | 166 | 180               | 20    | 160 |
| 2014                      | 363                                   | 40    | 323 | 219             | 27    | 192 | 214               | 26    | 188 |
| 2015                      | 289                                   | 34    | 255 | 194             | 20    | 174 | 173               | 17    | 156 |
| 2016                      | 289                                   | 27    | 262 | 134             | 16    | 118 | 128               | 16    | 112 |
| 2017                      | 251                                   | 24    | 227 | 166             | 19    | 147 | 159               | 18    | 141 |

Source: Statistical Office Montenegro. <http://www.monstat.org/eng/page.php?id=516&pageid=83>

Table 15 - Summary of Basic Environmental Legislation with Reference on Supervision and Penalties Montenegro

| Piece of legislation  | Relevant provisions   |
|---|---|
| <b>Ecological Protection</b>  |   |
| The Constitution of Montenegro („Official Gazette of MNE, No.1/07)  | Promulgates that Montenegro is a democratic, social and ecological state. Constitution treat the right to a healthy environment as a human right and is positioned in common provisions on human rights and freedoms. |
| Criminal Code (Official Gazette of RMNE No. 70/03, 13/04, 47/06, Official Gazette of MNE No. 40/08, 25/10, 32/11, 64/11, 40/13, 56/13, 42/15, 58/15, 44/17 and 49/18)                           | Chapter XXV Criminal Offences Against Environment, Art 303-326c   |
| <b>Waste</b>  |   |
| Law on the Ratification of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (“Official Gazette of FRY”, International Treaties, No. 2/99). | Law on ratification is integral part of the legal system and applies directly   |
| Law on Waste Management (Official Gazette of MNE, No. 64/11 and 039/16)   | Waste management permits (Art.31-45)<br>Transboundary movement of wastes (Art. 79-83 )<br>Supervision (Art 86-89)<br>Penalties (Art. 90-91a)  |
| <b>Nature</b>   |   |
| Law on Nature Protection(“Official Gazette of MNE”, No. 54/16)  | Protection of species and habitats (Art.73-96)<br>Protected areas (Art. 20-40)<br>Appropriate assessment (Art.46-51)<br>Environmental Network (Art. 41-45)<br>Supervision (Art. 107-110)<br>Penalties (Art. 111)      |
| Law on Wildlife and Hunting (“Official Gazette of MNE”, No. 52/08, 40/11, 48/15)  | Protection of Wildlife (Art.34-49)-prohibitions, measures<br>Hunting (Art.56-72)<br>Supervision (Art.82-83)<br>Penalties (Art.84-87)  |
| Law on the Ratification of the Convention on International Trade of Endangered Species of Wild Flora and Fauna (“Official Gazette of FRY, International Agreements, No. 11/01)                  | Law on ratification is integral part of the legal system and applies directly   |
| Law on Forest (“Official Gazette of MNE No. 74/10, 40/11 and 47/15)   | Protection of forest (Art.33-49)<br>Supervision (Art. 86-87)<br>Penalties (Art. 88-90)  |
| Law on Inspection (“Official Gazette of RMNE” No. 39/03 and (“Official Gazette of MNE” No. 76/09, 57/11, 18/14, 11/15 and 52/16)  | Inspection Council (Art.16 and 16a); Status of inspectors (Art.18-22c); Rights, obligations and authorizations (Art. 13-24); Procedures and measures (Art.25-562), Inspectors (69-72); Penalties (Art.73)             |



## 2.6 Serbia

### 2.6.1 Policy, legal framework for the detection, investigation and prosecution of environmental crime

Serbia has ratified the most important multilateral environmental agreements, especially those related to waste management and nature protection in which the EU is Party as regional organisation. Serbia signed the Stabilisation and Association Agreement with the EU on 29 April 2008 which entered into force on 1 September 2013. It was granted EU candidate status on 1 March 2012. However, after the screening for Chapter 27, Serbia continued developing documents presenting state of play when it comes to implementation of the environmental and climate change *acquis*.<sup>68</sup> General policy orientation on European integration and EU accession is given in the Environmental Approximation Strategy (EAS) 2011-2019 with the [National Plan for Adoption of the Acquis \(NPAA\) 2018-2021](#) which cover legislative, institutional and financial components represents the key document for the harmonisation of legislation with the EU *acquis* in the field of environmental protection in Serbia. The objectives of the EAS are to address the complexity of the challenge to apply EU environmental legislation in Serbia and to provide a sound basis for the accession negotiations on Chapter 27. In that sense, the [Post-screening Document "Transposition and Implementation of Environmental and Climate Change Acquis – Chapter 27: Status and Plans"](#) was adopted by the Government in September 2015 and defines the status and plans for the transposition and implementation of the EU *Acquis* in Chapter 27. The Republic of Serbia has prepared the second draft of Negotiation position for Chapter 27 in December 2018 and submitted for the technical consultations with EC.<sup>69</sup> It is expected that Negotiation position for Chapter 27 will be prepared until the end of 2019.<sup>70</sup>

The legal framework for the environmental protection is based on the [Constitution of the Republic of Serbia](#) ("Official Gazette of RS", No.98/06), which defines the rights of all citizens to a healthy environment, as well as the duty of all citizens to protect and develop the environment in compliance with law. It comprises laws and subsidiary regulations (more than 300 legal acts) in the field of environmental protection in the period 2004-2018.<sup>71</sup>

The criminal liability of environmental protection is based on the [Criminal Code of the Republic of Serbia](#). *Environmental Crime Directive* 2008/99/EC has been partly transposed into domestic legislation through provisions of the Criminal Code ("Official Gazette of RS", No. 85/05, 88/05-correction, 107/05-correction, 72/09, 111/09, 121/12, 104/13, 108/14 and 94/16), the [Law on the Liability of Legal Persons for Criminal Offenses](#) ("Official Gazette of RS", No. 97/08) and the [Law on Nature Protection](#) ("Official Gazette of RS", No. 36/09, 88/10, 91/10). Thus, the Serbian Criminal Code contains provisions on a number of environmental

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<sup>68</sup> All relevant agreements with EU, national and EU documents concerning the accession of the Republic of Serbia to the European Union. <http://www.mei.gov.rs/eng/documents/negotiations-with-the-eu/>.

<sup>69</sup> See: website of Negotiation Group for Chapter 27 <http://www.pregovarackagrupa27.gov.rs/dokumenti/>.

<sup>70</sup> See: website of the Ministry of Environmental Protection, 19<sup>th</sup> March 2019. [www.ekologija.gov.rs](http://www.ekologija.gov.rs).

<sup>71</sup> All relevant policies, laws and regulations is attached on the website of the Ministry of Environmental Protection. [www.ekologija.gov.rs](http://www.ekologija.gov.rs).

criminal offences which were practically entered into the national legislation on the basis of the undertaken obligations, after signing and ratifying some international agreements, treaties or conventions.<sup>72</sup>

The system of environmental criminal offences in the Serbia is primarily contained in Chapter XXIV of the Criminal Code of 2005, under the heading "*Criminal Offences Against the Environment*". Given the fact that environment protection is an area of special interest for the Republic of Serbia, it is apparent that a series of national legal acts so-called „Green Package Laws“ adopted from 2004-2016 in many ways provide for a comprehensive and efficient protection of this social value (Jovasevic.D (2011), pp.118-123). Criminal Code has brought some substantial changes in the protection of the environment incorporating environmental matters previously provided by numerous specific laws in a single chapter of the Criminal code. All 18 offences under this chapter can be grouped into four categories:

- 1) general offences against the environment;
- 2) offences relating to hazardous materials;
- 3) offences against the flora and fauna;
- 4) offenses relating to illegal hunting and fisheries (Cemalovic. U, EP 2016, p. 900).

General offences against the environment include: 1) environment pollution (Art. 260); 2) omission to take preventive environment protection measures (Art. 261); 3) unlawful construction and operation of facilities and installations which pollute the environment (Art. 262); 4) damage to the facilities and apparatus aimed at environment protection (Art. 263); 5) damage to the environment (Art. 264); 6) destroying, damaging, exporting or importing the protected natural assets (Art. 265); 7) violation of the right to be informed about the current state of the environment (Art.268).

Offences relating to hazardous materials include: 8) importing dangerous substances and unlawful reproduction, disposal and storage of hazardous substances (Art. 266); 9) illicit construction of nuclear power plants (Art.267).

Offences against the flora and fauna include: 10) animal abuse and killing (Art. 269); 11) transmission of contagious animal and plant diseases (Art. 270); 12) malpractice in veterinary services (Art. 271); 13) producing harmful products for treating animals (Art. 272); 14) contamination of livestock food and water (Art. 273); 15) devastation of forests (Art. 274); 16) forest theft by falling timber (Art. 275).

Finally, offenses relating to illegal hunting and fisheries include: 17) poaching game (Art. 276); and 18) poaching fish (Art. 277).

The Criminal Code also provides the legal definitions of the notions used to describe the offences to be criminalised, such as substantial damage, negligible quantity, negligible impact, dangerous activity. In order to achieve the full transposition of relevant provisions of Directive, some of existing offences listed in Criminal Code (Art. 265, 266, 269, 276, 277) should be amended, since they don't fully

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<sup>72</sup> List of multilateral international agreements is given in Table 1 of this document.

correspond to the Directive's requirements (E. Keene 2015, p.17). In addition to the criminal code, the effectiveness of criminal laws depends on a number of factors, including enforcement, independent judiciary and compliance with legal rules (G.Petkovic, Ekocide (2012), pp. 593-398). The offences on waste and nature crime relevant to the Article 3. of Environmental Crime Directive are provided in Table 16 and Table 17.

Most of the provisions of the Environmental Crime Directive 2008/99/EC have been transposed in national legislation (Screening Report 2016c, p. 4). With regards to the relevant implementation, improvements have been achieved with the Manual "Legal instruments for environmental protection - civil-legal and criminal-legal protection" in 2016.

Statistical data on environmental crimes collected for this study is provided in the Table 18, which summarises the Review on sanctions imposed on environmental offences in the Republic of Serbia for the period 2010-2017. (P. Calina, M. Milosevic, I. Rebraca (2018), pp. 17-18). Compared to the penalties imposed for crimes against the environment, the fines are predominant as expected, as fines are foreseen in most of the crimes in Chapter XXIV of the Criminal Code - as an alternative and often as a cumulative punishment. The low level of convictions is evident. This is also linked to environmental interpretation, challenges in collecting proper evidence, and lack of adequate implementation of Criminal Code (Interview 35).

In any case, a fine is a criminal sanction which, after a number of pronouncements and enforcement, is ordered after a suspended sentence. In 2010, a total of 70 monetary fines were imposed, while in 2014, 119. Imprisonment is the least frequently applied sanction in practice. This is not surprising despite the fact that the sentence of imprisonment is the main punishment prescribed for all crimes in Chapter XXIV of the Criminal Code. In 2010, 33 offenders were sentenced to imprisonment, while in 2016 this number increased to 73. The highest number of unconditional prison sentences was reached in 2014 with 103 sentences in total. Hence, in the period from 2011 to 2016, suspended sentencing has been absolutely prevalent with regards to criminal offenses against the environment, while less than one fifth of the total sanctions imposed are fines. In the Progress Report for Serbia 2018 states that efforts to implement the Environmental Crime Directive are ongoing (EC 2018g, p. 79). Full transposition of Environmental Crime Directive will be completed in the course of 2019 through amendments to the Criminal Code.<sup>73</sup>

**Waste management** remains a major challenge despite the fact that a national strategy is in place, and existing legislation partially transposes the EU requirements. The Progress Report for Serbia 2018 notes a good level of alignment with EU requirements. The **National Waste Management Strategy for the period 2010-2019** ("Official Gazette of RS" No. 29/10) and municipal waste management plans need to be updated. Efforts are ongoing to improve the implementation in this sector, which is at an early stage. The national waste management strategy and municipal waste management plans need to be updated to reflect legal provisions on waste minimisation and waste separation at source, and to include quantitative targets for waste recovery and recycling. Increased efforts are needed to close Serbia's non-compliant landfills more

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<sup>73</sup> In the end of the fourth quarter of 2015 the Working group for the Drafting the Amendments of the Criminal Code started to work on amendments which are going to be in line with Istanbul convention, Directive 2008/99/EC and PLAC Expert Report. See: (NPAA) 2018-2021. <http://www.mei.gov.rs/eng/documents/negotiations-with-the-eu/>.

rapidly and invest in waste separation and recycling. Extended Producer Responsibility (EPR) is only existing for packaging waste (six legal entities as collective operators for packaging waste). EPR on batteries and WEEE will be further estimated and after that introduced in national legal system. EPR on batteries and accumulators and WEEE (there are only licensed operators) will be further estimated and after that introduced in national legal system.<sup>74</sup>

A national integrated waste management plan and additional economic instruments for special waste streams need to be developed (EC 2018g, p.79).

In the Progress report for Serbia 2015, it was stressed out that significant additional efforts are needed to further align with EU policies in areas such as waste management, nature protection and climate change (EC 2015, p. 66). Most of the provisions of the Waste Framework Directive 2008/98/EC have been introduced into the Law on Waste Management and its amendments in 2010 and 2016. Serbia intends to adopt implementation plan (DSIP will be prepared from IPA 2014) for these regulations. Regarding *waste management*, full alignment with the Waste Framework Directive remains to be achieved and enforcement of waste legislation needs to be improved (EC 2015, p. 66). Compliance with the Framework Directive on Waste and the directives on special waste streams requires the adoption of a new Waste Management Strategy and Revision of Law on Waste Management, which, among other things, should include provisions on EPR for waste streams, more precisely defined inspection powers and a review of penalties (Interview 29).

Transboundary movements of waste in the Republic of Serbia (import, export and transit) are carried out in compliance with the Basel Convention based on the [Law on the Ratification of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal](#) ("Official Gazette of FRY", International Treaties, No. 2/99). The conditions necessary to include the Republic of Serbia, as a Party to the Basel Convention, in the control system of transboundary movements of hazardous and other wastes, have been created through adoption of waste management regulations, transposition and implementation of requirements stemming from relevant EU legislation, particularly Regulation (EC) No 1013/2006 on shipments of waste, considering that the EU is a Party to the Basel Convention.

The legal framework for waste management in Serbia consists of the following laws and executive regulations in this field which govern environmental protection and waste management, including transboundary movements of waste: [Law on Environmental Protection](#) ("Official Gazette of RS", No. 135/04, 36/09- other law and 72/09-other law and 14/16); [Law on Waste Management](#) ("Official Gazette of RS", No. 36/09, 88/10 and 14/16), and subsidiary regulations.<sup>75</sup>

Waste for which there are no environmentally sound and efficient treatment facilities and technical possibilities in the Republic of Serbia is exported. Non-hazardous waste can be imported for the purpose of

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<sup>74</sup> Data basis of Serbian Environmental Protection Agency (2017), [www.sepa.gov.rs](http://www.sepa.gov.rs).

<sup>75</sup> Regulation on the waste lists for transboundary shipments, on the content and layout of documentation that accompanies transboundary movement of waste with instructions for their completion ("Official Gazette of RS", No. 60/09); Rulebook on the content of documentation submitted in support of the application for permit for import, export and transit of waste ("Official Gazette of RS", No. 60/09, 101/10, 48/17, 80/17 and 98/17) and other regulations.

treatment. The import of waste for disposal and energy recovery purposes is prohibited. The import of hazardous waste is prohibited. Exceptionally, certain types of hazardous waste that are required as secondary raw materials for the processing industry, can be imported based on a permit issued by the Ministry of Environmental Protection. Permits for import, export and transit of such waste are issued by the Ministry.

With regards to the penalty policy, experts interviewed in the context of this study underlined that the chapter XIV *Penalty provisions* of the Law on Waste Management underlined that commercial offence between 1,500,000 and 3,000,000 RSD is usually applied against commercial entity, company or other legal entity if they import, export or transit waste contrary to prescribed conditions and manners (Interview 29). Currently, the Ministry reports the implementation of the Basel Convention to the Secretariat in the form of annual report. There was no case of illegal traffic to be reported to the Secretariat of BC.<sup>76</sup>

In the field of nature protection [National Strategy for Biodiversity](#) (2011-2018) ("Official Gazette RS", No.13/11) is key strategic document which describes the state of biological diversity, provides an analysis of direct and indirect factors endangering biodiversity, and suggests strategic areas for intervention, with defined objectives and activities for each area. The Strategy is accompanied by an Action Plan adopted for a period of seven years (2011 – 2018). The new Strategy on Nature Protection for the period 2019-2025 has been prepared in 2018 and needs to be adopted.<sup>77</sup> The concept of the ecological network in the Serbia complies with Natura 2000 and includes a broader list of species and habitats, i.e. ecologically important areas of international and national importance. Therefore, full implementation of the Birds and Habitats Directives is expected from the date of accession onwards. No transitional periods are granted for these directives.

The Habitat Directive is partly complied with national legislation and by the following basic regulations: the [Law on Nature Protection](#) ("Official Gazette of RS", 36/09, 88/10, 91/10- corrigendum, 14/16)<sup>78</sup> and accompanying by-laws; The [Law on Wildlife and Hunting](#) ("Official Gazette of RS", 18/10) and the accompanying bylaws,<sup>79</sup> [The Law on Protection and Sustainable Use of Fish Fund](#) ("Official Gazette of RS", No. 128/14), [Law on Forests](#) ("Official Gazette of RS", No. 30/10, 93/12 and 89/15) and other sectorial laws which regulate strategic impact assessment and environmental impact assessment. With regard to the legislative activities initiated in order to ensure full compliance with the Directive's requirements, and to provide for full and proper implementation, the following legislative actions are foreseen in upcoming period: Amendments to the Law on Nature Protection, SEA and EIA Law (under the procedure) and Law on Water,

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<sup>76</sup>See: National Reporting [www.basel.int](http://www.basel.int).

<sup>77</sup> See: <http://www.ekologija.gov.rs/predlog-strategije-zastite-prirode-za-period-od-2019-do-2025-godine/?lang=lat>

<sup>78</sup> Rulebook on proclamation and protection strictly protected and protected wild species of plants, animals and fungi ("Official Gazette of RS", No 5/10, 47/11 and 98/16); Rulebook on habitat types, the criteria for the selection of habitat types, sensitive, endangered, rare and priority for protection habitat types ("Official Gazette of RS", No. 35/10); Rulebook on Compensatory measures ("Official Gazette of RS", No. 20/10); Rulebook on special technical-technological solutions which enable unobstructed and safe communication of wild animals ("Official Gazette of RS", No. 72/10); Rulebook on conditions of keeping, method of marking and registration of wild animals in the captivity ("Official Gazette of RS", No 86/11); Rulebook on transboundary traffic and trade of protected species ("Official Gazette of RS", No 99/09, 6/14).

<sup>79</sup> Rulebook on proclamation of closed hunt season of protected wild animals ("Official Gazette of RS", No. 9/12, 97/13, 55/15, 67/15).

Amendments to the Regulation on Ecological Network and adoption of the Regulation on Appropriate Assessment.<sup>80</sup> [Directive Specific Implementation Plan for EU Birds and Habitats Directives](#) has been developed through the UNDP project "Development of a detailed implementation plan (Directive Specific Implementation Plan for EU Birds and Habitats Directives) (January - June 2015)". It includes measures with specific deadlines, monitoring plan and financial needs. which is the roadmap for the full implementation of the EU Habitats Directive and the EU Birds Directive.<sup>81</sup>

Serbia is the Party to the CITES Convention in accordance with the [Law on the Ratification of the Convention on International Trade of Endangered Species of Wild Flora and Fauna](#) ("Official Gazette of FRY, International Agreements, No.11/01). Legislative compliance of the national framework with the CITES Regulation (EC) No 338/97 on trade in wild plant and animal species is still partial. The [Law on Nature Protection](#) gives the legal basis for the detailed procedures regarding import and export which are defined in detail in the provisions of the Rulebook on transboundary movement and trade in protected species ("Official Gazette of RS", No. 99/09 and 6/14), which are partially harmonized with the relevant provisions of the EU wildlife trade regulations. According to the legislation in force, failing to observe national regulations related to CITES and EUTR is sanctioned as an infringement or a commercial offence, while more serious violations are sanctioned as criminal offences.

During the implementation of the IPA 2012 twinning project SR/12/IB/EN/01 "*Strengthening the capacity of CITES authorities and implementing regulations on wildlife trade in Serbia*", the focus of the activity was on strengthening the capacities of the competent authorities for control and supervising, development of awareness and information on CITES and prevention of illegal trafficking to representatives of the judiciary, prosecutors, and other bodies and institutions relevant to the application of CITES. Also, through the Policy and Legal Advice Centre (PLAC II) project, at the end of 2016 and at the beginning of 2017, an analysis of existing regulations was carried out by experts from governing bodies from CITES from the EU (Portugal and Spain), and as a result, proposals for improvement of national regulations in this area were developed, as well as proposals for certain measures for their implementation.<sup>82</sup>

The Memorandum of Understanding between Ministry of Environment Protection and Customs has developed, but not yet been concluded, nor with the police and the prosecutor's office. A Memorandum of Cooperation on preventing the illegal killing, trapping and trade of wild animals between Ministry, customs, police, prosecutor's office has been prepared, but not yet signed (Interview 30). Currently, the CITES Management Authority of the Republic of Serbia reports the trade, implementation and enforcement data to the CITES Secretariat in the form of annual and biannual reports. Cases on illegal traffic of CITES species were reported to the CITES Secretariat. The last one is submitted for the period 2015-2017.<sup>83</sup>

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<sup>80</sup> NPAA (2018), p. 1175.

<sup>81</sup> Posts Screening document (2015), p. 119. [http://www.pregovarackagrupa27.gov.rs/?wpfb\\_dl=71](http://www.pregovarackagrupa27.gov.rs/?wpfb_dl=71)

<sup>82</sup> NPAA (2018), p. 1179.

<sup>83</sup> [www.cites.org](http://www.cites.org)

The Bird Directive 92/43/EEC is partially transposed by the Law on Nature Protection and subsidiary regulations<sup>84</sup> and the Law on Wildlife and Hunting, and the supporting regulation on hunting<sup>85</sup>. The Law on Amendments to the Law on Nature Protection ("Official Gazette of RS", No. 14/16) has more precisely transposed the provisions regarding the conservation measures and protection measures, but it is still necessary to fully transpose provisions regarding the hunting of Annex II species which does not jeopardize conservation efforts in their distribution. Based on the analysis carried out through the project "*Monitoring the Transposition and Implementation of EU Regulations in the Field of Environmental Protection*", it was established that provisions would be completely transposed by 2021.<sup>86</sup> The Birds Directive is being implemented, among other things, through the support of the project "Establishment of an Ecological Network in the RS, Identification and Mapping of Habitat Types in Serbia - Collection and evaluation of existing data, research and establishment of GIS" (2015-2020).<sup>87</sup>

Protection of species is carried out through the Law on Nature Protection, the Law on Forests and the Law on Wildlife and Hunting. The number of prevented or significantly reduced probable occurrences of harmful consequences of legally protected goods is reflected primarily through preventive inspections (environmental, forestry and hunting).

The Law on Nature Protection prohibits the following misdemeanours: use, destruction, capture, holding and killing of strictly protected wildlife species as well as their habitats. The penalties foreseen for this are for legal entities from 500,000 to 2 million dinars, and for individuals from 50,000 to 150,000 dinars, or a prison sentence of up to 30 days. According to the data from the republic inspection in the period 2017-2018, based on misdemeanour procedures, natural persons are punished have been for illegal possession and keeping of protected species (mainly birds) in captivity. Fines ranged from 10,000 to 25,000 dinars.

The Forestry Development Strategy of the Republic of Serbia was created in 2006 ("Official Gazette of RS", No. 59/06). Forestry in Serbia is regulated by the Law on Forests, which envisages the development of the Forestry Development Program and the Action Plan, as well as the plans for the development of six forest areas. None of these documents has been created, nor adopted yet. During an interview, it has been underlined that the national plan for combating illegal activities in forestry prepared in 2007-2008 has so far not been adopted (Interview 31).

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<sup>84</sup> Regulation on proclamation and protection strictly protected and protected wild species of plants, animals and fungi ("Official Gazette of RS," No. 5/10, 47/11 and 98/16), Regulation on Ecological Network ("Official Gazette of RS," No.102/10); Rulebook on transboundary traffic and trade of protected species ("Official Gazette of RS," No 99/09 and 6/14).

<sup>85</sup> Regulation on proclamation of protected game species by closed hunt season ("Official Gazette of RS," No. 9/12, 97/13, 55/15, 67/15).

<sup>86</sup> NPAA (2018), p. 1177.

<sup>87</sup> An analysis of existing data on the status of migratory hunting bird species and data on the number of hunting units is planned, which will be analysed in the following period in order to provide a scientific basis for changes in hunting legislation. During the implementation of the IPA 2007 Twinning Project Strengthening Administrative Capacity for Protected Areas in Serbia (NATURA 2000), a preliminary list for Annex 1 (88) and migratory species was prepared (46); a preliminary list of areas of special protection (SPA) was prepared based on the available data and 43 areas were determined based on the criteria for determining important bird areas (IBA areas). The first phase of the project "Development of the Red Book of Plants, Animals and Mushrooms in the RS" was completed (2015-2020). The Red Book of Birds was created. The second phase of the project is in progress. NPAA (2018), p.1178.

The provisions of the EUTR Regulation (995/2010) are partially incorporated into the following national regulations: the [Law on Forest](#) ("Official Gazette of RS", No. 30/10, 93/12 and 89/15), the [Law on Trade](#) ("Official Gazette of RS" 53/10 and 10/13), the [Law on Foreign Trade Operations](#) ("Official Gazette of RS" No. 36/09, 36/11 88/11 and 89/15), [Customs Law](#) ("Official Gazette of RS", No. 95/18) and the [Law on Customs Tariffs](#) ("Official Gazette of RS", No. 62/05, 61/07 and 5/09).

The most common offenses in forestry are wood cuttings, so the largest amount of unregistered logging occurs to meet the needs of the local population, part of which ends on the market. 10-12 million are the estimated annual damages. The penalties for a crime are low, so some offenders are repeat offenders. The Memorandum of Cooperation should be concluded between the competent bodies for forestry, economy, trade, customs and police (Interview 31).

In order to fully comply with the Timber (EUTR) Regulation the main priorities are related to: 1) Defining and prescribing penalties for violation of the provisions of the Regulation, which can be compared with other regulations (e.g. CITES). The penal policy of domestic legislation should include the seizure or confiscation of timber shipments, as well as the disposal of confiscated timber; 2) Identification of competent national authorities; 3) Creation of specific provisions for physical check of shipments and relevant procedures.<sup>88</sup>

Table 19 includes a summary of environmental legislation.

### 2.6.2. Relevant institutions, and compliance and enforcement mechanisms

This paragraph provides an overview of the main institutions relevant in the field of environmental crime and nature protection.

- [The Ministry of Environmental Protection](#) is the competent authority for nature, waste and environmental crime issues (Focal point of the Basel Convention and CITES Convention).
- [Division for Nature Protection and Climate change](#) is responsible for the implementation of MEAS in the field of nature protection (CITES, Bonn and Bern Convention), as well as Habitat and Bird Directive and CITES Regulation. [Unit for Ecological Network and Appropriate Assessment](#) (two employees) is responsible for preparation of national policy and strategic frame for nature protection system, biological, geological and landscape diversity as a part of the environment, ecological network, Natura 2000 and appropriate assessment.
- [Unit for Protection and Conservation of Wild Species](#) and [Unit for Protection and Sustainable Use of Fish Fund](#) are responsible for protection of biodiversity, trade strictly protected and protected wild species of plants, animals and fungi and protection and use of Fish Fund. The structures for the implementation of the *Birds Directive* have been established at the national, provincial and local levels. [Ministry of Environmental Protection](#), [Provincial Secretariat for Urban Planning and Environmental Protection](#), Managers in protected areas and the civil sector (NGOs that cooperate with national nature protection institutes and other scientific institutions). One person in the

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<sup>88</sup> NPAA (2018), pp. 1184-1185.



Ministry is responsible for monitoring the Birds Directive. The general system of protection of all wild birds (all wild species of plants, animals and mushrooms) was established through appropriate regulations in the field of nature and hunting protection. The system of exemption (deviation) authorisation is regulated and fully compliant with the requirements of the Directive. In accordance with the above, permits for permitted activities are issued by the Ministry, according to the previously obtained opinion of the institute for nature protection and the Ministry of Agriculture, Forestry and Water Management. Competences for the implementation of Habitat Directive, including inspection control are divided between republican, regional level and local-self-government level. In line with applicable legislation, all relevant stakeholders and managers of protected areas and NGO's are included in implementation process.

- *CITES Implementation Group* is responsible for all the activities of the CITES governing body, which include, in addition to issuing licenses, drafting regulations, capacity building, reporting, coordination with other bodies on the implementation of regulations governing trade in wild species (3 employees).<sup>89</sup> *The CITES Implementation Group and the Environmental Monitoring and Prevention Department*, in cooperation with authorised scientific and professional organisations (e.g. the Institute for Nature Conservation of Serbia, the Natural History Museum) provide expert assistance and logistical support to the control bodies and control at border crossings.<sup>90</sup> During the implementation of the IPA 2012 twinning project SR/12/IB/EN/01 "Strengthening the capacity of CITES authorities and implementing regulations on wildlife trade in Serbia", the focus of the activity was on strengthening the capacities of the competent authorities for control and supervising, development of awareness and information on CITES and prevention of illegal trafficking to representatives of the judiciary, prosecutors, and other bodies and institutions relevant to the application of CITES. The current capacities of the governing body for CITES as well as the supervisory authorities are inadequate because there is a non-proportionality of human resources in relation to the scope of work, both from the aspect of administrative capacities and from the aspect of supervision and control of enforcement of regulations in the field.<sup>91</sup>
- *Division for Waste and Wastewaters – Unit for Transboundary Movement of Wastes* within the Ministry of Environmental Protection is competent for issuing permits for import, export and transit of wastes and waste management. Most of the obligations prescribed by the *Regulation 1013/2006/EC* on transboundary shipments of waste are being implemented due to the fact that the RS is a Party to the Basel Convention. National Waste Disposal procedures are additionally aligned with Regulation 1013/2006/EC and other relevant EU *acquis*.<sup>92</sup> In the field of issuing permits for waste management competences are divided between Ministry, autonomous province and local-self-government. Testing of waste is performing by the authorised laboratories for waste testing.
- *Division for Environmental Monitoring and Precautionary within the Ministry of Environmental Protection* is responsible for the control and supervising activities the implementation of the laws in the field of nature protection, waste management and fishery. The environmental inspection

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<sup>89</sup> NPAA (2018), pp. 1178 – 1179.

<sup>90</sup> Serbia is sharing the information's on wildlife seizures in the EU within the EU-TWIX database. EFFACE (2016), p.16.

<sup>91</sup> NPAA (2018), p. 1179.

supervises the implementation of environmental requirements in accordance with environmental laws and regulations and Law on Inspections ("Official Gazette of RS, No. 36/15, 44/18-other law and 95/18). The Government has adopted the *Decision on the establishment of the Coordination Body* ("Official Gazette of RS", No. 66/15 of 27 July 2015) which coordinate the inspection control in RS from the scope of the republic inspection delegated to the autonomous province and local governments. The highest number of regular controls was in accordance with the Annual Plans and operational (semi-annual, quarterly and monthly) inspection plans and operational check lists. Environmental Inspection Department keeps the register of submitted requests to initiate misdemeanour proceedings before misdemeanour courts and of requests to initiate economic offence proceedings before prosecution. The practice is in such way so that courts inform of the manner to resolve misdemeanour cases, and the Prosecution informs in case the request has been rejected.<sup>93</sup> National Coordinator from this division participate at the IMPEL meetings (RS is a member of IMPEL from 2017).<sup>94</sup> The structure for the implementation *CITES Regulation* exists at the national and provincial levels. **Department for Biodiversity** is in charge of controlling and monitoring, the legality of possession, breeding and internal trade of specimens of protected species, including birds as well as for providing support to other border control and supervising agencies when controlling the transboundary movements when needed (8 officers - to whom the CITES Convention supervision is a part of the competence), (fisheries 8 officers). **Unit for Fishery** is responsible for the supervision of the Law on Protection of Fishery and Sustainable Use of Fishery Fund (8 officials). **Department for Waste** and transboundary movement of wastes (7 officers). At the provincial level the inspection has jurisdiction over the control of possession, cultivation and internal trade (5 officers to whom CITES Convention supervision is part of the competence). In the period March 2017 - March 2018, the environmental inspection submitted 3 criminal reports in the field of nature protection. For the period 1 June 31 December 2018 the environmental inspection reported in the field of waste management the following: number of files (352); inspections (310); decisions (27); reports (139); files for minor offenders (10); files for commercial offences (2); files for criminal offences (1), no decisions (6). For the same period the environmental inspection reported in the field of nature protection the following: number of files (773); inspections (995); decisions (50); reports (114); files for minor offenders (43); files for commercial offences (3); files for criminal offences (0), no decisions (12).

- **Serbian Agency for Environmental protection** is a governmental institution in the scope of the Ministry of Environmental Protection, responsible for monitoring and effective environmental information system, reporting on the state of the environment (maintain and update the records on the quality of air, water, soil and biodiversity, keep issued permits on transboundary movement of waste and waste management (collection, treatment and disposal, keeping of data on available and needed quantities of waste, including secondary raw materials, exchange and making those data accessible electronically; reporting on waste management, in compliance with the assumed international obligations.

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<sup>93</sup> Post screening document (2015), p. 42.

<sup>94</sup> See: the European Union Network for the Implementation and Enforcement of Environmental Law. [www.impel.org](http://www.impel.org).

- *Institute for Nature Protection of Serbia* performs activities related to the protection of nature and natural goods situated on the territory of the Republic of Serbia such as: maintaining the register of protected natural goods and monitoring i.e. information system on nature protection (databases on protected natural goods, habitats, protected species, including birds ecological network area) for the territory of the Republic of Serbia; developing medium-term programme of natural goods protection, developing professional bases for the Strategy of Nature Protection and Report on Nature Status. *The Institute for Nature Protection of Serbia and the Provincial Institute for Nature Protection* are the two main authorised scientific and professional organisations that perform the tasks of the scientific CITES body. In addition to these two institutions, consultations are also conducted with the Natural History Museum in Belgrade, the Faculty of Biology of the University of Belgrade and the Institute for Biological Research. *The Institute for Nature Conservation of Serbia and Institute for Nature Conservation of Vojvodina Province* are performing monitoring activities in this area and provides support to the Environmental Protection Agency in the field of monitoring.
- *Ministry of Agriculture, Forestry and Waters* is responsible for transposition and implementation of Habitat and Bird Directive and EUTR Regulation, as well as: development and implementation of policies on plant protection, agricultural land management, forestry (including use and management of forests, forestation, reforestation and forest protection), hunting and supervising the implementation of the Law on Forestry and the Law on Wildlife and Hunting. The achievement of an optimal number of species populations in accordance with the development programme for hunting grounds is prescribed by the Ministry responsible for hunting, breeding and special purpose. Forestry and Hunting Inspectorate controls implementation of laws on forestry, reproductive material from forests and hunting according to the Law on the Forestry and Hunting Inspection. The highest number of regular controls was in accordance with Law on Forests (Turned Wood, Forests and Forest Use) in accordance with the Law on Inspection Control and Inspection Lists. In 2018, the forestry inspection filed 45 criminal reports in 2018, out of which 7 fines were imposed, while hunting in the same period filed 2 criminal charges.<sup>95</sup>
- *Ministry of Internal Affairs* is responsible for preventing illegal activities that represent a criminal offense in accordance with the Criminal Code, which at this time include: illegal cross-border movement and trafficking, smuggling, injuries and killing of protected species and illegal traffic on hazardous wastes. Within the *Ministry of Internal Affairs* in the Criminal *Police Directorate - the Department for the Prevention of Environmental Crime* was established from 1 January 2019. There is close cooperation with *Customs Administration* which controls transboundary movement of wastes and wild flora and fauna. Pre-investigative actions are carried out by the police and have all the powers determined by the Law on Police (stopping, testing, surveillance, conducting searches of goods, persons, property, means of transport, collecting information about people, places, means of transport, conducting arrests, seizure of property). There is lack of staff specialised for detecting environmental goods. At the border only 2-5% of goods are controlled by the total quantity of goods in circulation. The validity of documents is checked, and cross-checking of documents with actual

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<sup>95</sup> Report of Hunting Inspection for 2018.

content is also carried out. Customs officers have so far undergone training, but it is estimated that this is still insufficient and that training should be carried out continuously (Interview 33).

- **Border Police Directorate** within the Ministry of Internal Affairs is responsible for controlling people and vehicles with environmental goods such as hazardous and other wastes. CITES Convention monitoring is only part of the competence - 182 police officers passed the 2014 training). In 2014, 250 customs officers at border crossings were trained, while 800 customs officers were trained in 2018, and in 2019, training of 1,000 customs officers is planned. On March 11, 2019. the first CITES training of prosecutors was held in RS (Interview 33).
- The **Customs Administration, environmental inspection and border police** are responsible for controlling the import, export and transit of hazardous waste, as well as for controlling cross-border movement and trade of specimens of protected species at the border (CITES-related supervision is only part of the competence - 275 customs officers passed the 2014 training) (Interview 32);
- **Ministry of Justice** is the competent authority for implementation of the *Environmental Crime Directive*. Criminal charges for criminal offenses may be filed by any person or inspection service to the competent prosecutor's office. The competent prosecutor is authorized to initiate prosecution of criminal offenses, *ex officio* (*prosecutor of the Basic Prosecutor's Office and Prosecutor of the Higher Prosecutor's Office*). The courts of general jurisdiction (*primary and higher courts of first instance and Appeal court in the second instance*) conduct criminal proceedings. In the Ministry of Justice one person is in charge of the regulation, employed in the Group for the Coordination of the Implementation of the National Anti-Corruption Strategy. Institutional strengthening measures are foreseen in the National Judicial Reform Strategy for the period from 2013-2018.<sup>96</sup> The Government of the Republic of Serbia adopted the National Judicial Reform Strategy 2013-2018 aimed at providing that the judicial system, with effective management and use of judicial resources, manage the trial and cases within reasonable time, applying legally prescribed procedure. The National Judicial Reform Strategy is supported by the Action Plan. One of the main goals of this strategy is to increase the quality of work of courts and public prosecutor offices and strengthen the independence and accountability of judiciary, aimed at strengthening of the rule of law, democracy, legal certainty, bringing the justice closer to citizens and regaining the public trust in the judicial system. The abovementioned changes will enable more efficient implementation of regulations and the *Directive 2008/99EC* in the cases involving environmental protection.
- Collection and analysis of statistical data is performed by the **Statistical Office of the Republic of Serbia**. There are statistics for the period from 2009 to 2018<sup>97</sup> in respect of number of reported accused and convicted adults for crimes against the environmental protection, as well as related sanctions. Besides the Statistical Office of the Republic of Serbia, prosecutors and courts have their own specialised statistical departments. In practice, the most common offenses are illegal hunting, logging and fishing (S.Jankovic, 2006, p. 719).

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<sup>96</sup>Ministry of Justice of the Republic of Serbia. [www.mpravde.gov.rs](http://www.mpravde.gov.rs).

<sup>97</sup> Republican Institute for Statistics: Statistical Yearbooks 2009-2018. <http://www.stat.gov.rs>

### 2.6.3 Conclusions

Further alignment with the environmental *acquis* is necessary but this is not the only requirement to meet the obligations of the EU membership. Ensuring adequate mechanisms and arrangements for its effective implementation in practice is of equal importance. Implementation of the requirements of the Environmental Crime Directive is related to the further transposition of the provisions of the Directive and the efficiency of the work of the courts, the public prosecutor's office and competent inspection services.

In the field of waste management, it is necessary to improve the waste management control system with particular emphasis on the movement and disposal of waste, as well as establishment of more rigorous control of system operators and greater transparency of their work. Special attention should be focus on the development of institutional capacity at all levels for monitoring and controlling the implementation of regulations. It includes the development of an efficient judicial system, capable of monitoring and efficiently implementing regulations in the field of waste management.<sup>98</sup>

As regards *nature protection*, "to overcome the current standstill in Natura 2000, the institutional framework for designating and managing future Natura 2000 sites needs to be streamlined and adequately resourced. The legal base and administrative capacity for enforcement of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) needs to be improved" (EC 2015, p. 66). According to the EC Report for 2015, it is noted the need for further assistance to prepare for the NATURA 2000 network, in the first instance in terms of collecting and processing sound scientific data required to designate future NATURA 2000 sites but also in terms of capacity building for implementation. It is noted that there is need for strengthening institutional framework for designating and managing future Natura 2000 sites and for the capacities of CITES unit and enforcement agencies to keep up with the challenges of illegal wildlife trade.<sup>99</sup>

Implementation of Habitat Directive requires establishing of necessary institutional infrastructure at all levels, professionally trained employees and enforcement system in collaboration with other sectoral ministries and institutions in the field of agriculture, forestry, hunting and fishing. It is noted that the progress has been achieved in the process of organising and networking the relevant authorities in charge of responding to cases of destruction of nature, through the development of a Draft Protocol on proceedings and cooperation of institutions and organisations in combating illegal killing, trapping and trade of wild animals. However, necessary steps would be taken in order to prevent illegal acts through the following activities such as: strengthening of cooperation between all actors to prevent illegal use of forests, water resources and hunting; improve cooperation and capacity building by increasing the number and qualifications of staff, as well as technical capacities in national institutions; regular and adequate

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<sup>98</sup> Coalition Report 27. p. 36-37.

<sup>99</sup> The first phase of the project "Establishing an Ecological Network in the RS" was completed identification and mapping of habitat types and data collection (2015-2020, financed from the RS Budget). The second phase of the project is in progress. See: NPAA (2018), p.1176.

implementation of the activities on the establishment of the Ecological Network and Natura 2000 in Serbia.<sup>100</sup>

According to applicable laws, non-compliance with national regulations enforced by the provisions of the CITES Convention and regulating trade in wild species is sanctioned as an offense or commercial offense, while more serious violations are sanctioned as criminal offenses. Control of cross-border traffic and trade in wild species, their parts and derivatives are a great challenge for the RS due to the considerable diversity of goods subject to controls in cross border traffic, as well as an extremely large number of protected species of wild species whose possession, exposure, reproduction and trade are necessary to control within the territory of the RS.

Cooperation among the enforcement authorities responsible for the transboundary movement of protected endangered species and hazardous waste (border police, customs and environmental inspectorate) has improved during the last few years. (UNECE, 2015b, p. 54). The success of prevention of these crimes proscribed by the Criminal Code depends largely on the efficiency of the control exercised by the inspection bodies. In this way, the imposition of criminal sanctions which usually cannot eliminate the damage caused to the environment can be prevented in cases of severe environmental pollution. (Subosic D., Cvetkovic D., Vukovic S. (2012), p. 804). In the fight against illegal logging, corruption in concealing the illegal origin of felled wood, it is necessary to apply all international and national instruments in combination with the inseparable operational and investigative activities of the police and prosecutors in certain countries. Key activities are the strengthening of inspection supervision in protected areas in order to prevent illegal activities causing habitat destruction (logging, grasslands ploughing, water habitats drainage); developing the implementation capacities of police, inspectors and judges regarding regulations on species and habitats protection (Bugarski T., Pisaric M. (2016), p.484).

Gaps in the suppression of environmental crime are as follows: delayed prevention, frequent lack of evidence, costly and complicated expertise, rarely implemented on the spot, insufficient expertise of those who carry out these procedures, as well as the need for radical institutional reforms. The key problem in prosecuting environmental crime case is to obtain evidence on the basis of which the public prosecutor raises an indictment. The success of prevention of these crimes proscribed by the Criminal Code depends largely on the efficiency of the control exercised by the inspection bodies and police investigation. When it comes to crimes related to plant and animal species, prosecutors should not apply the principle of opportunity. The penal policy should be harmonized with UN and EU documents that criminal offenses against the environment are serious criminal offenses (Interview 36).

Considering that environmental crime of legal entities belongs to the sphere of organised crime, it seems that due to the difficulty of finding out about the crimes committed, criminal investigation projections should be used primarily (Paunovic N. (2018), p.401). Finally, it is undisputed that the numerous characteristics of the criminal offenses from Chapter XXIV of the Criminal Code are specific to environmental crime, which inevitably imposes sub-specialisation and generally deepened education in

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<sup>100</sup> *Op.cit*, p. 52.

criminal and criminal-process proceedings of relevant subjects in the detection, proving and prosecution of criminal acts against the environment (Calina P., Milosevic M., Rebraca I. (2018), pp. 21-23).

#### 2.6.4 Preliminary findings in knowledge gaps and capacity building needs in the area of environmental crime

A lot of attention should still be paid on capacity building of the administrative bodies at all levels, including inspection services. Serbia still does not have a detailed assessment of the institutional and administrative capacity needed for implementation, monitoring, inspection, enforcement of transposed legal acts. What is critical is the establishment of the implementation capacity. For that purpose, the Action Plan for Administrative Capacities Development is under development within IPA 2014 project on Further Implementation of Environmental Approximation Strategy.<sup>101</sup>

However, it can still be said that the observed problems in criminal protection are different and range from: the problems in the criminal law protection observed are different and they range from: difficult arrival to the site; determining the characteristics of the crime scene; contacting the owner of the property or the responsible person in order to determine their knowledge of hazardous materials; the content of the evidence collection plan; taking and storing samples and laboratory analysis of these samples; complex determination of a person who would be responsible for gathering on-the-spot evidence in the event of an incident; the lack of experts of the relevant profession; determination or proving evidence of damage as a consequence of any of the criminal acts that are damaged, destroyed or polluted the environment; difficulties in interpreting such evidence (Interview 34).

In the implementation of efficient criminal environmental enforcement, Serbia has problems that relate to capacity within environmental inspectorates, the judicial authorities, and a lack of cooperation among authorities. The judges' lack of knowledge of environmental law and experience on environment cases leads to difficulties in defining and quantifying the health and social risks of certain activities and determining whether a particular offence falls under the circumstances of the criminal sanction. In specific cases, judges find challenging the identification of the link between the offence and its consequences. At the same time, environmental inspectors face difficulties in gathering evidence and providing information to support prosecution. Measurements carried out by environmental inspectors are not accepted as legally valid proof in court cases. The requirement to use certified organisations for this purpose has its limits, since there are no accredited laboratories for certain analytic areas. Generally, the organization of joint training seminars and other forms of capacity-building for inspection authorities, prosecutors and judges seems to be much needed. There is a relatively large proportion of court decisions to suspend actions, which may point to the insufficient capacity of the courts to treat environmental cases and/or to courts overload. Some challenges remain: in gathering evidence and building cases for prosecution, unclear and lengthy procedures, a lack of effective communication, and limited individual capacity. There is need to continuously provide: (a) joint

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<sup>101</sup> The purpose of the project is support for transposition, implementation and enforcement of *acquis* through further implementation of principles from Environmental Approximation Strategy. [http://eptisasee.com/wp-content/uploads/short\\_booklets/ehe-short-brochure-environment.pdf](http://eptisasee.com/wp-content/uploads/short_booklets/ehe-short-brochure-environment.pdf)

training and other forms of capacity-building for inspection and judicial authorities; (b) strengthening communication mechanisms between the executive and the judicial authorities, and improving feedback from the judiciary on all environmental cases brought before the courts, including those deemed inadmissible at a preliminary stage; (c) developing standard operating procedures and manuals on the enforcement of environmental laws (UNECE 2015b, pp. 56 - 58).

Specifically, the following areas are very important:

- Full alignment with Environmental Crime Directive through the transposition and implementation of the Criminal Code of RS;
- Effective cooperation and coordination between relevant environmental authorities and institutions on implementation of EU legislation in cases of criminal offences against environment (inspection services, customs, police, NGOs etc.)
- Full alignment with the Waste Framework Directive and Shipment Regulation through strengthening capacities of customs, inspection and police focus to control transboundary shipment of hazardous waste and environmental sound management on the territory of RS;
- The capacities of CITES unit and that of enforcement agencies needs to be enhanced to keep up with the challenges of illegal wildlife trade, especially birds;
- The institutional framework for designating and managing future Natura 2000 sites needs to be upgraded and adequately resourced, adoption of new Nature Protection Strategy and Plan for implementation of EU Habitat and Birds Directive, finalization of the List for Annex I of Bird Directive and migratory species of birds.
- Full alignment with the EUTR Regulation and development an institutional framework with clearly defined responsibilities for the implementation of the EUTR.

In order to improve implementation of Environmental Crime Directive and relevant EU *acquis* in the field of waste and nature the following activities have been planned for the period late 2018 - late 2020<sup>102</sup>:

- Capacity building for judicial authorities responsible for the implementation of environmental legislation (training programmes for representatives of the judicial system responsible for implementation of criminal law)
- Workshops on the experiences of member states regarding the establishment of special departments of courts dealing with environmental issues
- Joint capacity building programmes and training for environmental and judicial authorities and institutions (preparation of draft procedure for cooperation between environmental protection inspectors and other relevant stakeholders in cases of criminal offences against environment taking into consideration provisions of the Criminal Code, training programmes and workshops)

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<sup>102</sup> NPAA (2018), p. 1146 and 1182, Posts Screening document (2015), p. 43.



The foreseen activities will be carried out by the Ministry of Environmental Protection, supported by the Ministry of Justice, the OSCE and the Judicial Academy.

It is envisaged that the capacity building of the representatives of the judicial system will continue even after the implementation date.

## Types of criminal environmental offences and sanctions in the Criminal Code of the Republic of Serbia

Table 16 - Offences on waste and nature crime relevant to Article 3. Environmental Crime Directive

| Criminal Code RS  | Environmental Crime Directive | Premeditation   | Negligence  | Suspended Sentence  |
|---|-------------------------------|---|---|---|
| <b>Environmental Pollution</b><br>(Article 260)   | Article 3 (a)                 | Imprisonment of six months to five years and a fine<br><u>Weight qualification:</u><br>Imprisonment of one to eight years and a fine  | Fine or imprisonment up to two years<br><u>Weight qualification:</u><br>Imprisonment of six months to five years and a fine | Environmental protection measures                                   |
| <b>Illegal Construction and Operation of Facilities and Installations Polluting the Environment</b><br>(Article 262)                          | Article 3 (d)                 | Imprisonment of six months to five years<br><u>Weight qualification:</u><br>Imprisonment of one to eight years  |   | Environmental protection measures                                   |
| <b>Bringing Dangerous Substances into Serbia and Unlawful Processing, Depositing and Stockpiling of Dangerous Substances</b><br>(Article 266) | Article 3 (b), (c) and (e)    | Imprisonment of six months to five years and a fine<br><u>Weight qualification:</u><br>Imprisonment of one to eight years and a fine.<br>Imprisonment of two to ten years and a fine.<br><u>Organiser of offence:</u><br>Imprisonment of three to ten years and a fine. |   | Measures to correct the detrimental consequences to the environment |
| <b>Killing and Wanton Harming of Animals</b><br>(Article 269)   | Article 3 (f)                 | <u>Killing, injure, torture, or otherwise harm:</u>   |   |   |

|   |                      |   |  |                |
|---|----------------------|---|--|----------------|
|   |                      | <p>Fines or imprisonment for up to a year (<u>specially protected species</u>: fine or imprisonment up to three years)</p> <p><u>Organizing, financing, or hosting animal fights</u>:</p> <p>Imprisonment of three months to three years and a fine</p>   |  |                |
| <p><b>Poaching game</b><br/>(Article 276)</p> | <p>Article 3 (f)</p> | <p><u>Closed season and where is forbidden</u>:</p> <p>Fine or imprisonment up to six months</p> <p><u>Kills or wounds game or catches it alive</u>:</p> <p>Fine or imprisonment up to one year (big game: fine or imprisonment up to two years)</p> <p><u>Destroy game in large numbers</u>:</p> <p>Imprisonment up to three years</p> |  | <p>Seizure</p> |
| <p><b>Poaching fish</b><br/>(Article 277)</p> | <p>Article 3 (f)</p> | <p><u>Closed season and where is forbidden</u>:</p> <p>Fine or imprisonment up to six months</p> <p><u>Unlawfull Assets</u>:</p> <p>Imprisonment up to three years</p>  |  | <p>Seizure</p> |

|  |               |   |                                       |                     |
|--|---------------|---|---------------------------------------|---------------------|
| <b>Damaging the Environment</b><br>(Article 264)   | Article 3 (h) | Imprisonment up to three years  | Fine or imprisonment up to one year   | Corrective measures |
| <b>Destruction, Damage, Transfer Into a Foreign Country or Into Serbia of Protected Natural Asset</b><br>(Article 265) | Article 3 (g) | <u>Destruction and damages:</u><br>Imprisonment of six months to five years<br><u>Transfer Into a Foreign Country or Into Serbia:</u><br>Imprisonment of three months to three years and fined ( <u>Attempt</u> shall be punished). | Fine or imprisonment up to six months | Seizure             |

Table 17 - Offences regarding the forestry crime relevant to the EUTR Regulations

| Criminal Code RS                              | Environmental Crime Directive | Premeditation  | Negligence | Suspended Sentence |
|---|-------------------------------|--|------------|--------------------|
| <b>Devastation of Forest</b><br>(Article 274) | Article 3 (f)                 | <u>Cutting and devastation of forest:</u><br>Fine or imprisonment up to one year<br><u>Weight qualification:</u><br>Cutting trees in protected forest, national park or other forest intended for special purpose: Imprisonment of three months to three years |            |                    |
| <b>Forrest Theft</b><br>(Article 275)         | Article (f) and (g)           | <u>Fells one or more trees in a forest, park or avenue of trees and the quantity of timber exceeds cubic metres:</u><br>Fine or imprisonment up to one year<br><u>Weight qualification:</u>  |            |                    |

|  |  |  |  |  |
|--|--|--|--|--|
|  |  | <p><u>Sell the felled tree, or if the quantity of felled timber exceeds five cubic metres or the offence is committed in a national park, protected forest or other forest intended for special purpose:</u></p> <p>Fine or imprisonment up to three years</p> <p><u>Attempt</u> shall be punished</p> |  |  |
|--|--|--|--|--|

Table 18 - Review on sanctions imposed on environmental offences in the Republic of Serbia 2010-2017

| Year         | Prison sentence | Probation | Monetary Fine | Court Warning | Free from Punishment | Educational Measures | Work in public interest | Home imprisonment | Side line punishment | TOTAL |
|--------------|-----------------|-----------|---------------|---------------|----------------------|----------------------|-------------------------|-------------------|----------------------|-------|
| 2010         | 33              | 218       | 70            | 5             | 2                    | -                    | 5                       |                   |                      | 333   |
| 2011         | 46              | 254       | 114           | 7             | 16                   | -                    | 12                      |                   |                      | 449   |
| 2012         | 52              | 257       | 99            | 6             | -                    | 1                    | 15                      |                   |                      | 430   |
| 2013         | 74              | 297       | 103           | 11            | 2                    | -                    | 21                      |                   |                      | 508   |
| 2014         | 103             | 342       | 119           | 5             | 2                    | -                    | 18                      |                   |                      | 589   |
| 2015         | 64              | 362       | 99            | 6             |                      |                      | 15                      | 3                 | 3                    | 552   |
| 2016         | 73              | 287       | 94            | 1             |                      |                      | 10                      | 7                 | 472                  | 944   |
| 2017         | 52              | 316       | 114           | 8             |                      | -                    | 10                      | 12                | -                    | 512   |
| <b>TOTAL</b> | 497             | 2333      | 812           | 49            | 22                   | 1                    | 106                     | 22                | 475                  | 4317  |

Source: RZS Bulletins Adult perpetrators of Criminal Offences in the Republic of Serbia (2010/No.546; 2011/No.558; 2012/No.576; 2013/No.588; 2014/No.603, 2015/No. 189, 2016/No.194, 2017/No.193, <http://www.stat.gov.rs>

Table 19 - Summary of Basic Environmental Legislation with Reference on Supervision and Penalties

| Piece of legislation  | Relevant provisions  |
|---|--|
| <b>Environmental Protection</b>   |  |
| The Constitution ("Official Gazette of RS", No. 98/06)  | Proclaims the rights of all citizens to a healthy environment, as well as the duty of all citizens to protect and develop the environment in compliance with law |
| Criminal Code ("Official Gazette of RS", No. 85/05, 88/05-correction, 107/05-correction, 72/09, 111/09, 121/12, 104/13, 108/14 and 94/16)   | Chapter XXIV Criminal Offences Against Environment, Art. 260-277   |
| Law on Environmental Protection ("Official Gazette of RS", No. 135/04, 36/09- other law and 72/09-other law and 14/16)  | International Trade on Endangered Species (Article 28)<br>Import, Export and Transit of Waste (Art. 58)<br>Supervision (Art 109-115)<br>Penalties (Art.116-121)  |
| <b>Waste</b>  |  |
| Law on the Ratification of the Basel convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal ("Official Gazette of FRY", International Treaties, No. 2/99). | Law on ratification is integral part of the legal system and applies directly  |
| Law on Waste Management ("Official Gazette of RS", 36/09, 88/10 and 14/16)  | Waste management permits (Art.59-70)<br>Transboundary movement of wastes (Art. 72-73 )<br>Supervision (Art 83-87)<br>Penalties (Art. 88-92)                      |
| <b>Nature</b>   |  |
| Law on Nature Protection ("Official Gazette of RS", 36/09, 88/10, 91/10- corrigendum, 14/16)  | Protection of species and habitats (Art.15-20)<br>Protected areas (Art.28-35)<br>Endangered and protected species (Art. 36, 48, 71-96)                           |

|   |  |
|---|--|
|   | <p>Appropriate assessment (Art. 10)</p> <p>Ecological Network (Art. 38-40)</p> <p>Supervision (Art. 118-124)</p> <p>Penalties (Art. 125-129)</p>                           |
| Law on Wildlife and Hunting ("Official Gazette of RS", 18/10)   | <p>Protection of Wildlife (Art.20-30)-prohibitions, measures</p> <p>Hunting (Art.55-77)</p> <p>Supervision (Art.92-101)</p> <p>Penalties (Art.102-105)</p>                 |
| The Law on Protection and Sustainable Use of Fish Fund ("Official Gazette of RS", No. 128/14)   | <p>Protection and Sustainable Use of Fish (prohibitions, measures)- (Art.22-31)</p> <p>Trade (Art.50-51)</p> <p>Supervision (Art. 53-57)</p> <p>Penalties (Art. 58-63)</p> |
| Law on the Ratification of the Convention on International Trade of Endangered Species of Wild Flora and Fauna ("Official Gazette of FRY, International Agreements, No.11/01) | Law on ratification is integral part of the legal system and applies directly  |
| Law on Forest ("Official Gazette of RS", 30/2010, 93/2012, 89/2015),  | <p>Protection of forest (Art.39-66)</p> <p>Supervision (Art. 104-110)</p> <p>Penalties (Art. 111-113)</p>  |
| Law on Inspection Supervision ("Official Gazette of RS, No. 36/15, 44/18 –other law and 95/18)  | Inspection Coordination Commission (Art.12); Supervision (Art. 13-44); Inspectors (Art.45-55); Penalties (Art.56-61)   |

### 3. Conclusions

The research carried out in the short timeframe available allowed for achieving a bird's view of the current situation related to environmental crime, and in particular waste and nature crime in [Albania](#), [Bosnia and Herzegovina](#), [The Republic of North Macedonia](#), [Kosovo\\*](#), [Montenegro](#) and [Serbia](#). The analysis is based on the review of existing international reports and studies, complemented by a limited number of interviews of stakeholders and experts in all beneficiaries of the project. More research and fieldwork would be necessary to develop a thorough analysis of the specific context at national and regional level, as well as to assess the actual capacity and capability of existing institutions and gather more information on the dimensions of environmental crime.

In terms of the legal framework surrounding environmental crimes, [Albania](#), [Bosnia and Herzegovina](#), [The Republic of North Macedonia](#), [Montenegro](#) and [Serbia](#) have ratified all the main multilateral environmental agreements (MEAs).<sup>103</sup> All EU accession candidates and potential candidates part of the study are advancing with the approximation of the legislation to the EU environmental *acquis*, although there are differences regarding the level of approximation across the beneficiaries of the projects. For example, full transposition of the Environmental Crime Directive is still to be achieved in Albania, Bosnia and Herzegovina and Kosovo\* and Montenegro. In the Republic of North Macedonia and Serbia this directive has been mostly transposed into domestic legislation. One main obstacle that emerged from the study is the abundance of legislation at different levels (national/local but also penal/administrative, laws/bylaws/regulations/decrees), which sometimes results in a patchy, contradictory or overlapping framework, hindering its correct and prompt interpretation and application by the relevant authorities.

The type and level of sanctions envisaged for waste and nature crime appear to be generally little deterrent and not effective. In most cases, environmental crime is regarded as administrative offences, punished with low fines. Some of the experts interviewed also questioned the proportionality of some sanctions inflicted to offenders vis-à-vis the actual damages to the environment and human health.

Overall, deficiencies in the implementation and enforcement of the existing legislation on waste and nature crime seem to be a major challenge in the Western Balkan region. Lack of awareness surrounding environmental crime in general, and waste and wildlife related crimes specifically, and low priority granted to these crimes by government institutions, law enforcement agencies and prosecution and judiciary have been highlighted by different respondents interviewed in the context of this study, as well as in several reports analysed.

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<sup>103</sup> Kosovo\* is not part of the United Nations and thus is not Party to any MEAs.



Across the economies, enforcement of waste legislation remains weak and needs to be addressed (Hogg, Vergunst, 2017, p. 12). The effective enforcement of the legal structures surrounding waste management are essential for encouraging and maintaining the development of a sound waste management system. Poor enforcement, and the illegal dumping of waste adversely impact on human health and the environment in the region. Reflecting the weakness of enforcement, illegal dumping of waste remains prevalent across the region. Substandard landfill sites are very frequent, even if illegal. The sites do not meet the conditions set out in the landfill Directive but have been officially endorsed or licensed to receive waste (Hogg, Vergunst, 2017, p. 13). Although extended producer responsibility legislation has been drafted for the waste streams covered by EU Directives in many of the economies, implementation remains sporadic.

In the field of nature protection, main challenges are non-compliance with existing legislation (illegal fishing, illegal logging, etc.), slow procedures for proclamation of new protected areas and establishment of ecological network and little or no application of appropriate assessment or monitoring. In particular, the designation of protected areas of the Natura 2000 is at the initial stage overall the Balkan region. Implementation of the Habitat and Bird Directives requires strengthening of cooperation between all actors to prevent illegal use of forests, water resources and hunting, as well as professionally trained employees and enforcement system. The hunting sector needs to comply with the Bird Directive requirements. EU Timber Regulation has not yet transposed and implemented. High level of illegal logging activities has been a challenge and requires the adoption of further actions towards alignment with EU requirements.

As mentioned by a recent report of the United Nations, *“Staff capacity is the cornerstone of strong institutions necessary for environmental rule of law”* (UN Environment, 2019, p.63). All stakeholders in the compliance and enforcement chain appear to need further specialised training on environmental crime in general, and on nature and waste crime, specifically. Though efforts have been made in all EU accession candidates and potential candidates covered by the study to increase the capacity of actors in the field, and several projects and initiatives have been successfully carried out in the region, much more needs to be done. Training on operational steps to be taken by the relevant institution on how to inspect, detect, investigate and prosecute crimes against the environment are needed to support practitioners in their daily work. How to collect the evidence and assess the damage are among the topics most cited by respondents interviewed in the context of this study. Sofies Research Team will complement these preliminary findings in the next two months with the Training Needs Assessment. Multi-stakeholder trainings are also regarded as necessary to support and enhance inter-agency collaboration and exchange of information. Finally, prosecution offices and judiciary require the introduction of specific training on environmental crime in order to increase awareness and attention to such crimes.

In summary, the main findings of the baseline study on nature and waste crime in four EU accession candidates and two potential candidates covered by the study, in general, indicate the following weaknesses and gaps and strengths and opportunities.

### Weaknesses and Gaps

- Overall, beneficiaries are at an early stage in their capacity to combat against environmental crime due to insufficient inspections and prosecution capabilities;
- Gaps in the suppression of environmental crime are as follows: delayed prevention, inadequate quality of criminal charges, determination or proving evidence, frequent lack of evidence, difficulties in interpreting such evidence, costly and complicated expertise, rarely implemented on the spot;
- Low awareness surrounding environmental crime in general, and waste and nature crime specifically;
- Weak/incomplete legislation although serious efforts are made in the approximation to the EU environmental *acquis*;
- Little coordination among relevant institutions and agencies;
- Low sanctions and little enforcement of applied sanctions (little collection rate of contamination fines and damages);
- Low priority assigned to this topic by institutions and agencies at policy level, as well as operational level (stakeholders in the compliance and enforcement chain);
- Weak enforcement due to low priority and little incentives for stakeholders in the compliance and enforcement chain;
- Little (financial, human and technical) resources available for stakeholders working on these issues, hindering their ability to efficiently prevent and combat waste and nature crime;
- Lack of mechanism to establish effective and efficient coordination between environmental protection inspectors and all other relevant stakeholders in cases of criminal offences against environment
- Lack of trained enforcement authorities for identification of wastes and endangered species;
- Insufficient protection of protected areas, areas of high natural value and potential Natura 2000 sites;
- Deficiencies in monitoring capacities on nature protection issues;
- Limited operational capacities of stakeholders in the compliance and enforcement chain (from inspectors, police, and customs, to prosecutors and judges).
- Inadequate system of statistical data processing.

### Strengths and opportunities

- All main multilateral environmental agreements (MEAs) have been signed by Albania, Bosnia and Herzegovina, The Republic of North Macedonia, Montenegro and Serbia, while Kosovo\* has enacted a number of legislations incorporating the main provisions and principles contained in such MEAs;
- Political attention and commitment to these topics seem to be raising at the national and regional level;

- Strengthening the implementation of Environmental Crime Directive is possible through capacity building, cooperation and coordination between competent authorities;
- Parties to relevant MEAs such as Basel Convention and CITES (Albania, Bosnia and Herzegovina, The Republic of North Macedonia, Montenegro and Serbia) have designated focal points and competent authorities for their implementation;
- At the national level competent authorities are dedicated for enforcement of existing laws and regulations in the field of waste management and nature protection;
- The institutional framework for designating and managing future *Natura 2000* sites and testing of waste exists, although it needs to be upgraded and adequately resourced;
- Serious efforts in the Balkan region in advancing their legislation to approximate to the EU environmental *acquis*, and in particular to the Environmental Crime Directive, the Waste Directives, the Habitat Directives and the Timber Regulations;
- Some training and capacity building initiatives on aspects related to environmental crime (in particular on CITES Convention) have been carried out and are planned in all EU accession candidates and potential candidates covered by the study;
- A possible establishment of the regional network on environmental crime in the Balkan region could contribute to efforts to combat with environmental crime;
- Civil society organisations and non-governmental organisations (NGOs) are active in each economy and territory and help raising public awareness and attention of relevant institutions.

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## Annex 1 – Tentative Research questions

The baseline study will address the below general research questions, and the sub questions clustered into three conceptual categories: 1. Policy, legal and regulatory framework for the investigation and prosecution of waste and nature crime, and related offences; 2. Relevant institutions, and compliance and enforcement mechanisms; and 3. Existing capacity building and technical assistance projects and initiatives on environmental crime.

### 1. POLICY, LEGAL AND REGULATORY FRAMEWORK FOR THE INVESTIGATION AND PROSECUTION OF WASTE AND NATURE CRIME, AND RELATED OFFENCES

#### QUESTIONS TO BE ADRESSED TO COMPETENT AUTHORITIES FOR LEGISLATIVE AND REGULATORY ISSUES

- (1) What are the **main problems** in fulfilling international obligations **to prevent and control of illegal trade and other illegal acts** with regard to waste and endangered species, according to Basel, CITES and other MEAs? Did you have national guides for the implementation of MEAs?
- (2) What are the **gaps and difficulties in transposition of EU legislation** in the field of **environmental crime, waste and nature protection and timer issues**? What are the deadlines and how you will overcome gaps?
- (3) When did the competent authority **last review legislative framework** and how much time will take to make amendments?
- (4) How is the **liability of legal persons** ensured? Criminal and/or administrative sanctions
- (5) Is there any **National action plan for combating environmental crime** which ensure cooperation between competent authorities?

### 2. RELEVANT INSTITUTIONS, AND COMPLIANCE AND ENFORCEMENT MECHANISMS

#### QUESTIONS TO BE ADRESSED TO PERMITTING AUTHORITY, INSPECTION, CUSTOMS AND POLICE

- (1) Which **national institutions and authorities** deal with the waste and nature crime? What are their respective roles?
- (2) Did you have **difficulties in issuing permits** and the problem during the transboundary shipment when such permit is issued?

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|---|
| (3) What is the <b>level (number) of staff resources</b> in national law enforcement institutions and authorities?  |
| (4) <b>How efficient are the inspections</b> (number of court cases, visits, written reports, portion of visits initiated by complaints, inspection days per year, etc)   |
| (5) Which are the <b>mechanisms in place to ensure/encourage cooperation</b> between stakeholders from the compliance and enforcement chain, in cases of environmental crime and what is their scope and frequency? Are there any mechanisms to encourage the general public to report illegal trade to appropriate authorities for further investigation been implemented in your country? |
| (6) What is available to <b>inspection and customs in compliance checking</b> ?   |
| (7) What are the major <b>enforcement tools</b> and to what extent are they applied (national monitoring- data management of scope and scale of waste and nature crime, the extent of criminal prosecutions, etc.)?   |
| (8) What are the <b>powers of inspection, customs and police</b> ?  |
| (9) Do you have <b>cases of illegal trade/improper management of waste, killing, destruction, possession and illegal trade of species</b> (including illegal logging/timber), especially those reported to the secretariats of the related conventions? Are there any good enforcement practices with regard to trade of waste and species of wild flora and fauna, including timber?       |
| (11) How do you <b>record data on transboundary shipments</b> of waste and endangered species?  |
| (12) Has your country implemented any measures to strengthen <b>border controls</b> to combat illegal trade?  |
| (13) Did you competent authorities <b>collaborate with other countries and/or participate in international operations</b> e.g. under INTERPOL, WCO, etc., aimed at combating illegal trade?   |
| (14) Which are in your view the <b>main challenges</b> for your institution, and in general in your country, in fighting against environmental crime (waste and nature crime)?  |
| (15) What do you think about the <b>sanctions imposed for environmental crime cases</b> (waste and nature offenses) in your country? Are they effective, proportionate and dissuasive? Please, explain.   |

#### QUESTIONS TO BE ADRESSED TO PROSECUTORS AND JUDGES

| PROSECTUTORS  | JUDGES  |
|---|---|
| (1) What are in <b>practice the prosecutions</b> of environmental offences                        | (1) What are in <b>practice the sanctions</b> for environmental offences?                                 |
| (2) Are there <b>specific problems</b> for the prosecution of environmental offences in practice? | (2) Are there <b>specific problems</b> you are aware of with regard to the existing sanctioning practice? |

|   |  |
|---|--|
| (3) Do you <b>observe trends</b> in the prosecution of environmental offences in practice?  | (3) Do you <b>observe trends</b> in the sanctioning of environmental offences in practice?   |
| (4) Did you notice <b>good practices</b> in the prosecution of environmental offences?  | (4) Did you notice <b>good practices</b> in the sanctioning of environmental offences?   |
| (4) Do you have <b>statistics</b> in the prosecution of environmental offences and what is covered? <b>How many prosecutions</b> have you had in the recent 3-5 years | (4) Do you have <b>statistics</b> in the sanctioning of environmental offences and what is covered? <b>How many cases have you had</b> the last 3-5 years? |

## Annex 2 – List of respondents

For anonymity, the names of the respondents have been taken out of the list. Only the Institutions (when the experts agreed on sharing this information) is mentioned here.

Table 20 - List of respondents

| Institution   | Country                |
|---|------------------------|
| State Inspectorate on Environment<br>Ministry of Environment<br>Environmental Inspector<br>(IMPEL and THEMIS Network)   | Albania                |
| Legal Expert on Criminal Justice  | Albania                |
| Prosecution Office of Elbasa<br>Public Prosecutor   | Albania                |
| Tirana District Prosecution Office<br>Public Prosecutor   | Albania                |
| OSCE  | Albania                |
| Environmental Inspector<br>(IMPEL and THEMIS Network)   | Bosnia and Herzegovina |
| Senior specialist at PI Centre for judicial and prosecutorial training of Federation B&H  | Bosnia and Herzegovina |
| Republic Institute for Protection of Cultural, Historical and Natural Heritage<br>Ministry Of Education And Culture<br>Republic of Srpska/Bosnia and Herzegovina<br>Wildlife expert | Bosnia and Herzegovina |
| Ekotim<br>NGO   | Bosnia and Herzegovina |
| Ministry of Environment and Spatial Planning<br>Environmental Inspector<br>(IMPEL and THEMIS Network)   | Kosovo*                |
| Ministry of Environment and Spatial Planning  | Kosovo*                |

|   |                                |
|---|--------------------------------|
| Environmental Inspector<br>(Themis Network)   |                                |
| Environmental Crimes Unit<br>Kosovo Police  | Kosovo*                        |
| Legal and administrative coordinator<br>KEPA  | Kosovo*                        |
|   |                                |
| Ministry of the Environment and Physical Planning<br>Department for Waste<br>(Basel Convention Focal point<br>ECRAN Network)                      | Republic of North<br>Macedonia |
| Ministry of the Environment and Physical Planning<br>Administration of Environment/<br>Head of Sector for Nature<br>Focal Point CITES             | Republic of North<br>Macedonia |
| Basel Convention Competent authority/POPs (CA)<br>Ministry of Environment and Physical Planning   | Republic of North<br>Macedonia |
| Inspection Administration<br>State Environmental Inspectorate (SEI)   | Republic of North<br>Macedonia |
| The Faculty of Security<br>University St Kliment Ohridski-Bitola<br>Faculty of Security/UKLO Bitola   | Republic of North<br>Macedonia |
|   |                                |
| Ministry of Sustainable Development and Tourism<br>(Contact point for Environmental Crime)  | Montenegro                     |
| Agency for Nature and Environmental Protection<br>PODGORICA<br>(CITES Management Authority)   | Montenegro                     |
| Customs Administration<br>Podgorica   | Montenegro                     |
| Ministry for Agriculture and Rural Development<br>Directorate for forestry, hunting and wood industry   | Montenegro                     |
| Basel Convention Focal point (FP)<br>Directorate for Waste Management and Communal Development<br>Ministry of Sustainable Development and Tourism | Montenegro                     |
| Ministry for Interior Affairs   | Montenegro                     |

|   |            |
|---|------------|
| Department for Crime Prevention   |            |
| The State Basic Prosecutor's Office   | Montenegro |
| The Supreme Court Montenegro  | Montenegro |
| Inspectorate Administration<br>Ecological inspection  | Montenegro |
| Inspectorate Administration<br>Forestry and Hunting Inspection  | Montenegro |
|   |            |
| Ministry of Environmental Protection<br>of the Republic of Serbia<br>(IMPEL and ECRAN Network)  | Serbia     |
| Environmental Inspectorate (nature)<br>Environmental Inspectorate (waste)   |            |
| Ministry of Environmental Protection<br>Department for Waste Management<br>Section for Transboundary Movement of Waste                          | Serbia     |
| CITES Management Authority<br>Ministry of Environmental Protection<br>(CITES Enforcement Authorities)   | Serbia     |
| Ministry of Environmental Protection<br>Division for Biodiversity and Climate Change  | Serbia     |
| Ministry of Agriculture, Forestry and Water Management<br>Directorate for Forest  | Serbia     |
| Ministry of Agriculture, Forestry and Water Management<br>Directorate for Forest<br>Unit for Hunting  | Serbia     |
| Ministry of Finance<br>Customs Administration<br>Sector on Enforcement of Customs Regulations<br>Customs Authority<br>Sector for Tariff Affairs | Serbia     |
| Ministry of Internal Affairs<br>Office for Crime Suppression  | Serbia     |

|   |        |
|---|--------|
| Directorate of Crime Prevention Police  |        |
| Ministry of Justice<br>Group for coordination of Implementation for Combat Against Corruption | Serbia |
| Basic Public Prosecutor Office Pančevo  | Serbia |
| First Basic Public Prosecutor Office Belgrade.  |        |