



# FROM AIMING EU ACCESSION BACK TO ALBANIAN PARTICIPATIVE DECISION MAKING

**(Policy analyses and options to improve public participation  
practices in environmental decision making)**

**September, 2017**



ky projekt financohet  
nga Bashkimi Evropian



## EXECUTIVE SUMMARY

The policy paper “FROM AIMING EU ACCESSION BACK TO ALBANIAN PARTICIPATIVE DECISION MAKING - *Policy analyses and options to improve public participation practices in environmental decision making*”, represents the final and among the most important outputs of EDEN center within the project “Horizon to EU accession – engaging civil society and active citizenship in environmental policies”, in the frame of ACHIEVE program, which is implemented by Regional Environmental Center (REC) Albania with the financial support of European Union.

This policy will guide you through the Albanian current policies that ensure public information and participation in environmental decision making (backed up with a chronology of case studies), the gaps in the implementation of these current policies and at the final, a detailed analyses of three main alternative policy options and recommendations to overpass the gaps and ensure participative decision making in environmental sector.

The paper indicates that there are three main thematic threads in the current policies which need to be addressed for better enforcement and implementation. For each thread a policy alternative is suggested and is developed further in the text with detailed analyses of steps and actions to be undertaken (compared with neighbor countries experience and models) to achieve the policy alternative:

### **1. Lack of proper implementation or enforcement**

Alternative policy option: *Effective, proper and meaningful public participation in the decision making processes, as well as fair, timely and inexpensive access to justice when public participation provisions are breached*

### **2. Lack of proper participation mechanisms**

Alternative policy option: *Utilized modern e-tools as well as developed various mechanisms for public inclusion and consultation in partnership with the CSOs*

### **3. Lack of capacity of the relevant stakeholders**

Alternative policy option: *High-quality participation in the environmental decision-making and policy-making processes.*

In conclusion, the policy analyses assesses that improving participation practices in decision making requires a lot of political will and not considerable budget implications. It is crucial the investment in education and capacity building of all interested parties, and at the same time networking with environmental CSOs ensures overpass of lack of resources and communication mechanisms.

We invite you to go carefully through the lines of this policy. It represents the **first comprehensive analyses** of public information and participation policies in Albania, with detailed, concrete and up to date information and realistic policy alternatives.

Should you have interest in the topic, developing or discussion further a policy alternative option, or motivated to take concrete action following these recommendations or other, we are open and eager to provide the cooperation and support needed.

*Thank you for your feedbacks!*

## INTRODUCTION AND BACKGROUND OF THE ISSUE

In June 2014, the European Council granted Albania EU accession candidate status, meaning the long process of crucial technical and legal reforms towards EU integration was officially open. The alignment of the national legislation with the EU *acquis* is one of the preconditions of accession to the EU and compliance with the *acquis* requires significant investment. A strong and well-equipped administration at national and local level is imperative for its application and enforcement.

In the EU *acquis*, the Environmental legal package is the second largest after Agriculture. It comprises over 200 major legal acts covering water and air quality, waste management, nature protection, industrial pollution control and risk management, chemicals and genetically modified organisms (GMOs), noise and horizontal legislation. Horizontal Legislation is connected with many other legal packages and especially with the Environmental one on various matters. It ensures public participation in the decision making processes including central and local policies, legislation, investments etc., which leads the way to transparent and democratic governance. At the same time it enhances citizenship accountability and ownership. Additionally to the horizontal package, the Albanian government has constantly undertaken concrete initiatives and commitments in national and international level such as Human Rights Universal Declaration, European Convention of Human Rights, Aarhus Convention, the Transparency program for Council of Ministers etc., all in order to enforce citizens' voice.

The Horizontal legislation package is composed, so far, of 7 main legal packages. Out of the 7 only 4 have been started to be incorporated into the Albanian National Legislation which is to ensure public participation in decision making: *Access to public information, Public participation in decision making, Environmental Impact Assessment (EIA) and Strategic Impact Assessment (SEA)*. However, the transposition is still in its early phase as confirmed also by the EU Progress report for Albania: “As regards horizontal legislation, the 2015-2020 cross-cutting environmental strategy has not been approved yet. Albania is at an early stage of building administrative capacity to enforce legislation. Alignment to the Directive on environmental impact assessments (EIA) is at an early stage. Quality and implementation of EIAs need to be improved, especially in the hydropower and mining sectors. Strategic environmental assessment requirements are not applied in the energy sector and shall be expanded to cover all relevant plans and programmes. Alignment and implementation of the Directive on Environmental Liability are at an early stage. The INSPIRE Directive and the Directive on Environmental Crime are not transposed yet.”. Meanwhile, the part of legislation related to public information and participation is reported by Albanian institutions as being in full compliance with the EU *acquis* in this field.

For years the procedures of public information and consultation in environmental decision making have been contested by the civil society sector as a fictive process which does not fulfill the legal requirements and does not gather and consider the public opinion in decision making. Even though reported as fully transposed legislation, the public participation lacks institutional commitment and remains far away from fulfilling its purpose. This is confirmed in the successive progress reports of EU for Albania (2009 - 2017) in which the main communication is strengthening public participation and public information. At the same time “many environmental battles” of civil society organizations over the years support the argument about the lack of public access to information and participation in

decision making. The CSOs consequently were organized in many campaigns, legal battles and lately even initiated three court cases, one of which was won, one lost and the third is still pending. The table below indicates the summary facts of these case studies “environmental battles” which at the same time serve as a mirror of implementation of public participation rights in Albania.

**Tab. 1:** Public participation in environmental projects<sup>1</sup>, case studies from the work of environmental CSOs and environment

Environmental Projects	CSOs and issues raised	Results achieved/not achieved
Construction of a Thermopowerplant in Vlora Bay (2003 - 2007)	One “Alley” of environmental organizations, local community, students’ organization. Position: against implementation of such project. Public Information and Participation not realized	Letter to Aarhus Compliance Committee Protests The thermopowerplant was constructed anyway ☐ <i>*It has never worked because it generates energy with higher price than exported. An argument rose at that time by the public during protests.</i>
TEC Porto - Romano (2007 - 2008)	Two ENGO <sup>2</sup> s reacted against the construction, claiming that the consultation process of EIA was not done	The Ministry of Environment backed off the process. The public consultations were realized and public comments taken into account. An independent EIA <sup>3</sup> was presented. The construction did not happen.
Transmission Line 400 kW Albania – Kosovo ( October- November 2010)	1 NGO, local community, independent experts. The project was very sensitive because it impacted the high biodiversity area of Albanian Alps	EIA report went through public consultations and hearings. Many arguments from the public contested the EIA report. The financial bank (KFW) considering public opinion pulled out the idea to finance it.
Tirana Outer Ring Road (February 2011)	The project was destroying 25% of the Botanical Garden. Constructions started without EIA report made public and no public consultations. 33 ENGOs signed a petition for the Prime Minister to stop works and to preserve the Botanical Garden	The works stopped and the Road Public Authority (the investor) developed EIA report. Public consultations were held and the project was changed to damage only 10% of the Botanical garden. Tirana Outer Ring Road was built.
Arbri Road (August 2011)	Constructions of Arbri Road were done with no public information and consultation. They destroyed the Brari Canyons Natural Monument. 2 ENGOs raised the issue, but not coordinated and in different time periods.	Letters sent to decision makers but no reaction. The Brari Canyons Natural Monument was destroyed.
Elbasan Road (June 2012)	5 NGOs, Tirana citizens, independent experts. The extension of Elbasan road was going to destroy the Wall of “Pallati i Brigadave”, a cultural Monument. The construction started with no EIA report and no public information and participation.	No public consultation was held, only an invitation of NGOs for a meeting at the Municipal Council. The road segment was extended.

<sup>1</sup> If you are interested in more detailed information on these cases EDEN center can provide it upon request  
<sup>2</sup> Environmental Non Governmental Organizations  
<sup>3</sup> Environmental Impact Assessment

No Dams in Vjosa River (2012 – on going)	Out of 31 HPP-s planned in Vjosa river catchment the most urgent dam case is the Poçëm HPP. According to official information a public hearing was held in Fier, but the local community and local government affected unit is not even informed about this projects. One ENGO leaded the process of opposing the constructions. Local communities, public authorities and other NGOs supported.	Protests, Complaints, Fact sheets, Research studies, Documentaries and the case was brought to the court by The lead ENGO and the local community. Main argument lack of public information and consultations. The case was won and the Ministry of Energy has appealed the decision.
Waste Import in Albania (2014; October 2016)	There is back and forth of the amendment of the Law on Integrated Waste Management in Albania in order to allow urban waste import. Public and NGOs are against. AKIP is an alley that is formed to lead the protest. In 2016 the Amendment was presented in the parliament without following the public information and consultation procedures of Law 146/2014 and Law 119/2014.	A referendum and many protests. The last amendment of the law is still pending in the parliament.
Hydropower construction in Valbona National Park (January 2016 - following)	11 HPP <sup>4</sup> projects have environmental permission to be constructed in Valbona NP <sup>5</sup> . No public information and participation was undertaken. Fake public consultations are reported to NEA <sup>6</sup> . One ENGOs alley "Let's protect the rivers", local communities, Albanian citizens and tourists.	Protests, Compliances, Fact sheets, Policy roundtables, and a court case to stop construction is opened against Dragobia Sh.p.k with main argument the lack of public consultations. The court case decision is pending.
Children Playground at Tirana Grand Lake Park (February 2016)	A children Playground started construction in Tirana Grand lake park with no public information and consultation. Tirana citizens supported by NGOs protested against the destructions of trees.	Long protests, violence with Municipal police forces, and 13 citizens opened a court case to stop the playground with the main argument the lack of public information and participation. The case was lost. The playground is a simple investment n the park.
Deepening of the Bruka River, construction of a wooden promenade along the Divjake-Karavasta National Park (August 2016)	This project in Divjake – Karavasta National park started as an activity by the Municipality without public information of the project and no public consultations. According to experts this activity threatens the biodiversity of the lagoon and the curly pelican nest. ENGOs opposed the project.	Divjake Municipality held a public meeting where the project was presented. The consultant company announced soon that an EIA draft report will be open to public consultations. So far, no EIA report was made public and no project implemented.

During the year 2017 different CSOs, like EDEN center, Albanian Helsinki Comity and BIRN Albania, independently from each other monitored the implementation of the Public Participation Law 146/2014. Publicly disclosed results of the monitoring show that, after being 3 years in force, the implementation of the Law is still at an early stage and public participation is still not fully ensured.

---

<sup>4</sup> Hydro Power Plant  
<sup>5</sup> National Park  
<sup>6</sup> National Environmental Agency

## CURRENT POLICIES ON PUBLIC PARTICIPATION IN ENVIRONMENTAL ISSUES

The public participative approach, as crucial element in state governance in achieving high democracy and sustainable development goals, is included in the Albanian national policies starting from the Albanian Constitution down to specific legislation on public information and participation.

In most general terms the right to a healthy environment is recognized in the 1998 Constitution of the Republic of Albania<sup>7</sup>. It lays down the general citizens' rights and principles and sets out the preconditions for the constitutional guarantees for the implementation of the Aarhus Convention. According to Article 56<sup>8</sup>, everyone has the right to be informed about the status of the environment and its protection.

In addition to the Constitution, there is the independent institution of People's Advocate elected by the Assembly. The Ombudsman institution is regulated by the "Law On people's advocate"<sup>9</sup>. In chapter III "Complaints, investigative procedures and powers of the people's advocate" it provides the right for every individual, group of individuals or NGOs to complain to or notify the People's Advocate, when their rights, freedoms or lawful interests have been violated by the unlawful, improper actions or failures to act by the public authorities.

Major elements of right to information, public participation and access to justice in environmental matters were passed in year 2000 as part of the Law on the ratification of the Aarhus Convention<sup>10</sup>. In a nutshell, Aarhus convention mandates that citizens be given right to access environmental information (the so called first pillar of the Convention), based on which they can take active part in decision making procedures (second pillar) and, if necessary, enforce those rights via independent judicial authorities, e.g. courts of law (third pillar.). Public participation is developed in Article 6, and its provisions apply with respect to decisions to be taken to permit or not a proposed activity. This article states that participation procedures should provide the public with the necessary information and timelines. Public participation must be ensured at early stages of the proposal, when all alternatives are open to discussion so it ensures effective participation.

On 02.07.2008 a decision by the Council of Minister (hereinafter: DCM) "On Public Participation in Decision-Making"<sup>11</sup> was adopted. It addresses in details public participation in drafting and adopting policies, normative draft acts, strategies and action plans that are related to the environment; as well as public participation in designing and implementing environmental control programs undertaken by the State Environmental Inspectorate.

Working in the path towards EU accession, approximation process and fulfilling commitments within the international initiative on open government partnership, the Albanian assembly adopted in 2014, two

---

<sup>7</sup> Approved in 22 November 1998, last amended on 21 April 2008 and in 2016

<sup>8</sup> Chapter IV "Economic, Social and Cultural Rights and Freedoms"

<sup>9</sup> Law no. 8454, dated 4 February 1999

<sup>10</sup> Law no. 8672, dated 26.10.2000 on the ratification of the "Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters", the so called Aarhus Convention

<sup>11</sup> DCM no. 994

new laws concerning the right to information and public participation:

1) "Law on the right of the public to be informed on official documents"<sup>12</sup>. It enables public to get access to information held by public authorities and stimulates information integrity, transparency and accountability. *This law paves crucially the way to active and qualitative public participation in decision making;*

2) "The Law on Public notification and Consultation"<sup>13</sup> institutionalizes public consultation during design and adaptation of draft laws, national and local strategies as well as policies with high public interest. So, in a wider range than environmental sector this law ensures participation principles, but leaves out the normative bylaws, which on their side represent the major part of legal frame that directly impacts the citizens and stakeholders rights. But at the same time, with its article 21 the law gives opportunities for complaint if the right to public consultation is denied.

The strong point which helps law implementation is the creation of the e-register - "Electronic register for public notifications and consultations" - designed in the frame of initiatives to increase virtual participation (e-participation). In this function, the Council of Ministers in 2015 adopted the decision "On rules and adoption of design and administration of the e-register for public notifications and consultations"<sup>14</sup>.

The "Law on the environmental protection"<sup>15</sup>, which transposes the environmental protection principles, provides for the principal elements on the collection and dissemination of environmental information according to article 5 of the Aarhus Convention. In its article 13 it defines that every person has the right to timely get information on the state of environment based on "On the right of information to official documents"<sup>16</sup>, and that public institution must ensure real public participation on environmental matters. In the article 45 it provides the scope and functioning of the environmental system, which aims to serve to the integrated protection and management of environment and/or its individual components, monitoring of implementation of environmental policies, national and international reporting and providing information to the public by appointing National Environmental Agency as responsible body. The article 46 and 47 refer to access to information on environmental matters as a citizens' right, and article 49 refers to participation in environmental decision making as a citizens' right. Generally the Law only refers to the respective legal basis that needs to be elaborated by the decisions of the Council of Ministers.

The 2012 DCM "On public access to environmental information"<sup>17</sup> provisions the collection and dissemination of environmental information. The DCM is to guarantee the right of access to environmental information held by public authorities and to set out the basic terms and conditions of practical arrangements for its exercise; and to ensure that environmental information is progressively made available and disseminated to the public.

---

<sup>12</sup> Law no. 119/2014 which invalidated the law No. 8503, dated 30.06.1999 "On the right of information to official documents"

<sup>13</sup> Law no. 146/2014

<sup>14</sup> DCM no. 828, dated 07.10.2015

<sup>15</sup> Law no. 10431, dated 9.6.2011

<sup>16</sup> Law 8503/1999

<sup>17</sup> DCM no. 16 dated 04 January 2012



In June 2011 the Albanian parliament has adopted the "Law on Environmental Impact Assessment (EIA)" which, according to the Albanian experts in the Ministry of Environment, has fully transposed the Environmental Impact Assessment Directive<sup>18</sup>. It sets forth the requirements, responsibilities, rules and procedures for the assessment of negative impacts on the environment of public or private proposed projects. These projects can run through a preliminary or a profound EIA procedure as specified in the Annex 1 and 2 of the law. The coordinator and decision making authority of EIA process is National Environmental Agency (NEA). Article 17 obliges NEA, local authorities and project developers to provide public consultations for every project in order to include public opinion in the final decision-making. *Only the procedure of profound EIA requires development of public hearings under EIA law. It clearly establishes (Article 17 (4)) that opinions and comments expressed by the public and NGOs during the hearing are an obligatory criteria in EIA decision making.* Detailed rules and procedures for public consultation are defined in a DCM (see below) which was approved only in July 2015. So, since 2011 until July 2015, the rules followed during EIA procedures were not properly implemented due to the lack of the secondary legislation, but also to the knowledge and expertise in the field, especially in the process of public information and consultation. The main law of EIA has been complemented with relevant by laws only in 2015. This means that for 4 years the implementation of the EIA law has been questionable.

On 2014 the "DCM on the definition of the rules, requirements and procedures for the information and involvement of the public in the environmental decision-making"<sup>19</sup> was passed. The first Chapter describes the rules and procedures on public information and consultation during preliminary EIA process. The second chapter relates to the public information in all steps including monitoring of environmental impacts, frequent public consultation and obligatory public hearing during profound EIA process. Also it describes roles and functions of all the actors like NEA/REA, local governmental units and developer in the above processes. In article 3.2 and 4.1.dh the law specifies that public opinion should be considered and reflected into the final EIA report, if not, reasoning why must be delivered to the public. The Environmental Declaration is the final decision of NEA for the profound EIA report, and the law specifies that any public reaction towards the projects plays important role during the decision making. This is a specific decision to ensure public participation into environmental decision-making for all activities listed or not, in Annex 1 of "Law on Environmental Permits"<sup>20</sup>.

"Law on Strategic Environmental Assessment"<sup>21</sup> of which the main objective is to ensure high environmental protection and sustainable development through including environmental issues even during design of policies programs, plans, strategies; for modification of existing plans and programmes; for plans and programs which have high negative impact on a protected area etc. It defines the institutions, their rights, responsibilities and the procedures to be followed during SEA process. It stipulates that SEA has to be carried out during the preparation of the planning document and must be

---

<sup>18</sup> Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (85/337/EEC) as amended by the directives 97/11/EC and 2003/35 EC.

<sup>19</sup> DCM no. 247, dated 30 April 2014

<sup>20</sup> Law no. 10 448/2011

<sup>21</sup> Law no 91 of 2013



completed before its adoption. SEA is therefore an integral part of the planning process. For reasons of transparency, the outcomes of the SEA are reported in a consolidated SEA Report. The process goes through two phases of consultations, the first one refers to the content of the SEA report and is consulted only with stakeholders, and the second refers to first draft of SEA report consulted with stakeholders and the wide public which is a strong pre condition for the Ministry of Environment to issue the declaration. In the final SEA report it is elaborated how the comments of the public are taken into consideration according to the articles of this law.

In 2015 a “DCM on the definition of rules and procedures for the stakeholder and public consultation and on the public hearing during the SEA process”<sup>22</sup> was adopted. This DCM is adopted pursuant to the article 100 of the Constitution and point 9 of Article 10 of "Law on Strategic Environmental Assessment". It is applied to all cases such as: notification and consultation with stakeholders for design, change, review of a plan or a program; consultation with stakeholders on the issues that will be included in the SEA report; consultation of the previous SEA report with general public and stakeholders and public hearing during the discussion of the declaration and information during monitoring and final provisions.

Additionally, it is worth mentioning that public participation in decision-making is considered widely in other sectors rather than environment. For example "Code of Administrative Procedures of the Republic of Albania"<sup>23</sup> addresses public participation in decision-making, not directly but through Articles 6, 45, and the right of information; "Law on Local Self-Government"<sup>24</sup>, which in Chapter VI deals with transparency, consultation and civic participation. In support of implementation of this law a practical manual on how an investment business notifies and organizes public hearings, and a manual that reflects the role of local government in the environmental decision-making process for activities that have an impact on the environment were completed.

---

<sup>22</sup> DCM no. 219, dated 11 March 2015

<sup>23</sup> Law no. 44/2015

<sup>24</sup> Law no. 139/2015

## EXISTING GAPS IN CURRENT POLICIES/ STATEMENT OF THE PROBLEM

Do all these policies meet their intended goals? The best resource for answering would be to refer to law monitoring reports issued by the respective responsible institutions, but there are no monitoring reports made public so far. In order to assess the level of implementation, the working team of this policy paper referred to the environmental case studies followed by Environmental Civil Society Organizations (ECSOs) for years, and to the findings of the first monitoring reports made public for the implementation of the “Law on public notification and participation”<sup>25</sup> which were undertaken by EDEN center and, targeting local government, by BIRN Albania. The main conclusion is that these policies have failed to fulfill their main objectives in many important elements, and the situation is as follows:

- To coordinate public participation in decision making, institutions at national, regional and local level have appointed a coordinator who at the same time has to ensure active and real participation. But, the coordinators carry this task alongside with many other tasks which they consider more important and a job priority. Additionally to fulfill the task they rely on internal and external institutional coordination which by itself does not function properly. In many cases they are not clear about their responsibilities and do not fully understand their role. Frequent changes in public administration make the focus even harder. *So, not enough and adequate human resources to commit for implementation of the laws aiming at public participation in decision making.*
- Each existing policy provides reasonable time to public to get the documents, consult and compile comments. Public institutions do not provide such time frame when they open documents for public consultations. Usually the public is not clear when the consultation period starts and ends; and it is not given the sufficient time as indicated by the specific law to develop and submit comments. Public consultation procedures are implemented pro-forma (the competent authorities pay attention only to the formal conformity to the letter of the law, disregarding the real needs of the public concerned). There have been cases where dead people sign the participation papers, or people which are not inhabitants of the affected area. This affects the public's real participation in decision-making. *So, clear lack of law implementation.*
- Review of comments and recommendations. Each specific law obliges public bodies to make real and justified reflection of public opinion in the final decision, by communicating back to public the reasons of why their comments have been taken or not into consideration. This part is the weakest point in the public consultations procedure, because the practice shows the opposite (it does not happen even formally) apart from some few cases of EIA. It indicates formal consultations and undermines all the importance of the process. *So, lack of commitment to full implementation of the law.*
- The ways to communicate and consult the public. E-mail is the most used form of notification and receiving public comments, very rarely publication in institution halls, and even less the media. But this form leads only to stakeholders' consultations and not with general public,

which in this way is excluded from the process. The public institutions also use their web pages as an e-tool to public consultations, but monitoring of these webpages finds that they are not user friendly and it is hard to find information, are not updated, miss important and frequent information about the consultation process, information is published after consultation is held etc. For example: *Information system on projects that are going under A/B IPPC permitting procedure is provided by the National Environmental Agency on their website (<http://www.akm.gov.al/publiku.html>) but there is no proper information on the consultation processes.* Specifically for the “Law on public notification and participation” this is regulated by the e-register in which institutions must publish every paper (legal act, strategic document etc.) that goes under public consultation including: time period of consultation, place of consultation meeting if organized, draft documents, received comments, accepted comments, rejected comments and reasons etc. But it still does not function properly, the institutions do not use it the right way, the public is not properly informed and educated for its existence and refers only to documents and not EIA/SEA needed projects, thus is very limited. *So, there is lack of creation of proper mechanisms to reach the public and communicate both ways in order to ensure real and active participation.*

- Transparency Reports of Public participation in the Decision Making Process. Ministry of Environment tries to prepare a report but it is just a summary of dates and places where consultation happened and not a full report of the procedure with the detailed content required by law. There is no annual plan of the Ministry which indicates the documents which will go under public consultation and when they are planned to happen. For projects of EIA/ESA this is more difficult to achieve, because it depends on requests for projects but it would be good to have something similar. *So, there is lack of transparency and accountability towards the public and their participation in decision making.*
- Public and CSOs are not active enough during public consultations. There is lack of proper information and real engagement of the public by the responsible institutions. The level of interest in a certain issue at this circumstances is difficult to assess. *So, there is lack of mechanisms to invite and engage public in the decision making process.*

## ALTERNATIVE POLICY OPTIONS AND RECOMMENDATIONS

The statement of the problem indicates three main thematic threads in the current policies which need to be addressed for better enforcement and implementation, in order to pave the way for better public participation practices.

### 1. Lack of proper implementation or enforcement

**Alternative policy option: *Effective, proper and meaningful public participation in the decision making processes, as well as fair, timely and inexpensive access to justice when public participation provisions are breached***

Reasons for lack of proper enforcement vary and include: not having adequate human and logistical resources, the issue is not deemed serious enough to address or not seen as political priority (the authorities do not see the positive outcome from the consultation process), enforcing them is seen as too costly, damaging to the economy, or too politically risky. Aside from the legal preconditions the political will for meaningful participation is also one very important pre-condition. Additionally, an important policy component to address lack of proper implementation is the access to justice and the adequate and effective remedies, including the injunctive relief as appropriate.

#### **Recommendations:**

1. *Active use and monitor of the implementation of the National Approximation Plan for EU environmental acquis transposition and ensuring regulation impact assessment process for legislative processes.*

EU Access to information and public participation legislation is reported to be fully transposed. However, it still needs considerable improvements, especially in the further approximation of the Horizontal Legislation in order to fully comply with the EU Acquis. Furthermore, a review of the main laws and secondary legislation should be elaborated in order to further identify problems and issues to be addressed, with respect to deadlines, proper implementation and institution coordination and collaboration. Each year EU candidate accession countries report progress as well as plans for transposition, implementation and enforcement of the EU legislation by preparing National Approximation Plan (NAP). The plan consists of short-term, mid-term and long-term activities and measures, and includes the table of laws and bylaws that are going to be adopted or revised by a specific deadline. Albania adopted the NAP in 2014 for the period 2014 – 2020. Close monitoring of this plan by third parties, especially CSOs, will help the parties plan their activities and prepare in high capacities for the consultation process of various environmental policies.

Another instrument that can be used is the Regulatory Impact Assessment (RIA). It is used to determine the consequences/or the need of introducing new regulations. RIA is carried out before a draft law is written. With the RIA the government does not only assess the proposed normative acts but it may indicate that non-legislative measures are the best solution to a particular social and economic problem. In particular, RIA may help to avoid the production of redundant laws and reduce the bureaucratic burden on enterprises.

## 2. *Efficient and available model for access to justice in cases when enforcement of the law is lacking or breach is noted*

Making the authorities responsible and liable contributes to better enforcement of the law and fair, timely and not too expensive access to justice for members of the public whose rights have been violated will help to achieve it.

### 2.1. *Free legal aid*

a) Establishing a legal aid center that will give, free of charge, legal advice or litigate cases, can help the citizens that cannot practice the access to justice. Most of the countries in Europe already have adopted a Law on free legal aid which establishes creation of the register of lawyers that will give free legal advice and litigate cases to the vulnerable individuals. Usually, the subjects that are covered are in the field of social, health, pension or disability insurance, labor relations, protection of children and minors, victims of domestic violence etc. The free legal aid law in Albania (Law no.10039) was adopted in 2008 and it should be extended to issues related to environmental democracy. This would require only removing barriers so that the public can use this free legal aid for environmental issues, which means amending its Article 13.

b) A CSO that will serve as a free legal aid center and litigate environmental cases. Such successful example is "Zelena Akcija" in Croatia and "EMLA" in Hungary. These are environmental CSOs with high focus in environmental law and environmental management on national, European and international levels. Their main activities are public interest environmental legal advice and litigation, environmental legal research, consulting and education, and carrying out of environmental management projects. The CSO is financed by various donors in order to carry out this specific work.

NGOs that carry out this role in Albania have been established and structured lately, and we can mention: ResPublica ([www.respublica.org.al](http://www.respublica.org.al)), LexFerenda ([www.lexferenda.al](http://www.lexferenda.al)), Open Society Foundation for Albania ([www.osfa.al](http://www.osfa.al)), Albanian Helsinki Comity ([www.ahc.org.al](http://www.ahc.org.al)). But these organizations do not work on environment specifically, thus a cooperation with Environmental CSOs is recommended to expand their field of expertise in environmental cases. Additionally, ECSOs can try to fundraise to have a staff of one or more employed lawyers so that they can provide themselves, among other things, free legal aid to needy citizens and citizens' initiatives.

### 2.2. *Environmental Ombudsman*

The Ombudsman office is another institutional instrument that can address this issue. Establishing separate department that will deal with cases of environmental rights infringement will ease and encourage the public to seek justice. Also, having in mind that the ombudsman has obligation to encourage public in seeking their rights this institution can be of great benefit. An example of Environmental Ombudsman is in Hungary. The *Ombudsman for the future generation* was established in 2007 with aim to protect the rights of the future generations, preventing people not yet born from harmful economic, social and environmental impacts of the current policies. Also, the green ombudsman was entitled to suspend permits and operating licenses, as well as to intervene in ongoing judicial procedures.

The Albanian Ombudsman, is already an established institution which lacks environmental focus. In order to enforce this sector, in the actual structure a new section dedicated to environment must be opened. This action must be followed by a program of education, training and coaching for the head of the section and the working team.

*3. Using the Parliament as mechanism for political oversight and supervision over the government implementation and enforcement of laws*

The Committee of Productive Activity, Trade and Environment is an important permanent body in the Albanian Parliament entitled to: examine the draft laws, draft decisions and other issues represented in the Assembly; to undertake studies on the effectiveness of the laws, follows the implementation of laws and controls the activity of ministers and other central bodies by proposing the Assembly or the Council of Ministers the necessary measures; propose the adoption of draft laws, draft declarations and draft resolutions in the Assembly. *This means that the committee exercise political oversight and supervision over the implementation of the laws by the governmental authorities.* The committee organizes public oversight hearings in order to obtain information and experts' opinions from the area of competence of the relevant working bodies. *This oversight hearing is a great tool that can be used to tackle lack or poor legislation implementation and enforcement.* Such mechanism exists in the Macedonian parliamentary system. The Chairperson of the committee on transport, communications and environment is authorized to conduct public oversight over the implementation of the provisions on public participation under the Macedonian Law on Environment. Initiative for holding an oversight hearing can be instigated by one member of the relevant working body or by 15 signed MPs as well as citizen's associations. A report with conclusions and recommendations from the oversight hearing is prepared and distributed to the Government of the Republic of Macedonia. The Government must act upon the conclusions and recommendations. The finances for holding of the oversight hearing are secured from the Assembly's finances within the Budget of the Republic of Macedonia. The public is informed about the oversight hearings through the Macedonian Assembly's website and the Assembly TV Channel. *Following this example the Committee in Albania must work more to improve the quality, transparency and public disclosure on such meetings. Additionally it should work to ensure the action of relevant Governmental Bodies towards addressing properly the conclusions and recommendations of the oversight hearing.*

*4. Increase efforts for a more straightforward implementation of the legislation.*

Policy amendments might be advisable to introduce more efficient mechanisms for stricter monitoring and penalization of the most common mistakes and policy implementation failures.

*5. Develop practical guideline materials and implement awareness raising campaigns*

Guidelines on the procedures (infographics), manuals, samples and templates (on access to information request, complaint etc.) can help for effective, proper and meaningful public participation in the decision making process. It is very important at each stage of the process the public, as well as the competent authority, to be aware to which body it address, what type of issue, by what mean or form, and what should be the outcome of that process. Another material that can be very useful are toolkits with example cases. An example is the Toolkit on public participation in environmental decision making prepared by REC. The Toolkit is also prepared on Albanian language and can be found on the following

link: <http://www.rec.org/publication.php?id=411>. Another great example is the Standards for public participation – recommendation for good practice (including questioner for qualification and quantification of the process (link: [http://www.partizipation.at/standards\\_oeb.html](http://www.partizipation.at/standards_oeb.html)) Important precondition is easy access to such materials by the public and the public concern, and their update. Implementing raising awareness campaign regarding the access to information, public participation and access to justice in environmental decision – making processes is obligatory under the Aarhus convention. The government, thought the Ministry of Environment, and CSOs can establish partnership for implementing and financing such campaigns. *More elaboration on this component can be found in recommendation “Employment of electronic tools for better and faster access to information and data bases”.*

## **2. Lack of proper participation mechanisms**

**Alternative policy option:** *Utilized modern e-tools as well as developed various mechanisms for public inclusion and consultation in partnership with the CSOs*

### **Recommendations:**

#### *1. Employment of electronic tools for better and faster access to information and data bases*

The large amount of data held by public institutions should be disclosed as soon as possible in line with the principle of early public consultation process. Timely and easy accessible information is a precondition for the meaningful public participation, and it represents an easy non-costly way of quickly approving a current implementation record. Electronic information tools, such as user-friendly websites and online databases, are efficient means to assist this issue. Recognition of such websites and databases by the public is a crucial pre-conditions (public must be aware that certain information for example announcement is published on specific webpage). However, competent authorities should have in mind that not all members of the public may be able to access such tools, in particular the elderly, illiterate, poor, etc. thus it is very important the competent authority to be aware of the public concern that it addresses and modifying the tools to fit the purpose (public concern list, especially CSOs list, must be prepared for each consultation process). The standards and the practice for providing public access to environmental information tailored to meet requirements of users from diverse geographical areas. However, both kinds of tools require serious financial resources as well as trained staff.

One very successful example of proper use of the electronic tools is Estonia. Estonia was among the pioneers in the field of e-participation as it established e-participation tool, TOM (the acronym for “Today I Decide” in Estonian), in 2001. With the portals such as [e-estonia.com](http://e-estonia.com) this country is developing e-one stop shop for its citizens, ensuring an efficient, secure and transparent system that saves time and money. The crucial part for implementing this concept was the strong public-private partnerships backed by telecom and banking interests.

Another example is the Macedonian platform Ekosfera: <http://www.ekosfera.mk>. The platform was established by CSOs with financial help from GEF. The overall goal of the platform was to improve and develop the capacities of environmental associations to actively participate in the consultative processes, to adequately exchange information, monitor environmental impacts and environmental



trends at the local level. The platform is connected with the Macedonian Ministry of Environment, the media as a whole, as well as the expert public. The new information from the Ministry of environment are directly transferred and shared among the CSOs via email.

Similar action in Albania is the e-participate platform <http://mjedisi.crcd.org.al/portali-mjedisi-i-gytetareve/>, built by Center for Research Cooperation and Development (CRCDD) in Vlorë. It is a platform for citizens' information on environmental matters which is administered in cooperation with Vlora Municipality and Regional Environmental Agency. The government, the potential donors and CSOs in the country should work to replicate such models.

### *2. Cooperate and active use of CSOs and the established Aarhus Information Centers (AIC)*

Since 2002, OSCE, in close cooperation with the Aarhus Convention secretariat, has supported the creation of Aarhus and Public Environmental Information Centers. These centers already function as CSOs and in partnership with other local or national CSOs. The staff of the AIC and CSOs, even their volunteers, are very well trained and raised capacities on public information and participation especially in environmental decision making. By establishing the right means of cooperation and respective will of work, the responsible authorities can have support from these centers which can ease and facilitate their work. There are three Aarhus Information Centers in Albania. The first Aarhus Centre was inaugurated in 2006 in the capital city of Tirana within the Ministry of Environment. Nowadays this center is almost in existent, and needs close attention and investment for its functionality by both the government as well as from CSOs. The two other Aarhus Centers operate in the cities of Shkodër (since 2007) and Vlorë (since 2007), which has integrated very well into the CSO structures and partnership. They are among the most active CSOs operating in public information and participation and in environment field.

### **3. Lack of capacity of the relevant stakeholders**

**Alternative policy option: High-quality participation in the environmental decision-making and policy-making processes.**

#### **Recommendations:**

#### *1. Strengthening the access to information, public participation and access to justice trough networking and partnerships*

In order to enable high-quality participation in the environmental decision-making and policy-making processes, the capacity of the CSOs should be strengthened by networking e.g. building coalitions and other forms of alliance between CSOs and to have close cooperation with independent experts and higher education institutions in Albania. Partnership between the CSOs and the national authorities, in this case the public participation coordinators can, improve the communication and impose forms of cooperation in access to information and public participation matters that can result in joint projects-campaigns. For example, in Macedonia the environmental CSO sector signed agreement of cooperation with the Ministry of environment including the chapter access to information and public participation. Thought this system of cooperation the information regarding public participation are directly

distributed to the CSOs. Additionally, CSOs can help with the public participation procedures that are implemented by the Ministry. Similar agreement exists in Albania, but only among three CSOs and the National Agency of Environment. More should be done in order to have more involvement from CSO sector and more responsibilities from environmental institutions.

*2. Promotion of the principles of sustainable development amongst the decision-makers.*

Having in mind that EIA/SEA procedures are tools for improving public participation the understanding of the essence of the environmental impact assessment processes is a very important component. It is necessary to raise the level of understanding of the essence of EIA/SEA procedures and implement trainings and workshops for all stakeholders (competent authorities, private sector, media, higher education institutions, etc.). It would prove very useful as well, if the trainings, among other things, provide specific analyses and practical positive and negative examples of EIA/SEA procedures and their effects on the further environmental and economic development.

*3. Redesign the work systematization public participation coordinators at national, regional and local level.*

This way coordinators will be focused only on this matter and the public participation will be their only work priority. Implementation of this recommendation should result in clearly designed work positions and job descriptions with what the public participation coordinators will be capable of meeting the policies' intended goals. This recommendation might have financial implication if additional people have to be employed in order to meet the purpose of proper public participation.

*4. Education of both the authorities and the judicial staff on the importance and legal obligations of taking into account the public opinion*

This would send a strong political message from the executive branch to the administration on the importance of these policies. Also, a deeper understanding by the judiciary would both enhance the feeling of policy importance among the administration and general public and, over time, develop a more refined set of criteria and standards for public participation.

*5. Increased capacities to fundraise for increase of resources committed into the public participation procedures*

A lack of resources seems to be one of the big problems for a better policy implementation. Since most of these policies are adopted as part of the EU accession process there are EU related funds to ease the process. Capacities to pull these funds should be raised twofold. First, capacities of the competent authorities which should look to use these funds more frequently – alone, or even better, in partnership with interested CSOs. Second, since these EU funds always require an amount of co-financing Government should adopt an automatic co-financing for those CSOs aiming to enhance the implementation of these policies by way of winning EU funds competitive tenders.

*Ky projekt financohet  
nga Bashkimi Evropian*



**BASHKIMI EVROPIAN**  
DELEGACIONI NË SHQIPËRI



### **Prepared for publication**

EDEN Center

Adresa: Rr. Bogdanëve, Nd.13, H.1, Ap. 8  
Njësia administrative 10, Kodi postar 1001  
Tirana Albania  
[www.eden-al.org](http://www.eden-al.org)

### **Authors**

Ermelinda Mahmutaj  
Aleksandra Bujaroska  
Enes Cerimagic

### **Contributors**

Enio Haxhimihali  
Merita Mansaku Meksi  
Lira Hakani  
Herda Paço

This Policy paper is developed from EDEN center in the framework of the project “Horizon to EU accession – engaging active citizenship and civil society in environmental policy” . This project is implemented under ACHIEVE programme, implemented from Regional Environmental Center (REC) Albania and is financially supported by European Union, Delegation to Albania. The contents of this policy paper are the sole responsibility of EDEN center and can in no way be taken to reflect the views of the EU and/or of REC Albania.

