



**Economic and Social
Council**

Distr.
GENERAL

CEP/2002/7
29 August 2002

Original: ENGLISH

ECONOMIC COMMISSION FOR EUROPE

COMMITTEE ON ENVIRONMENTAL POLICY

(Ninth session, 4-6 November 2002)
(Item 6 of the provisional agenda)

**REPORT ON MAJOR POLICY ISSUES EMERGING FROM THE CURRENT
ENVIRONMENTAL PERFORMANCE REVIEWS**

I. SUMMARY

1. At its ninth session, the Committee on Environmental Policy will review the environmental performance of Albania, the former Yugoslav Republic of Macedonia and Yugoslavia. This review will include a round-table discussion on 5 November, when the Committee will discuss two of the most significant cross-cutting policy issues emerging from these three environmental performance reviews. These are: (a) the impact of decentralization on environmental management; and (b) enforcement of legislation and regulations. This paper is intended to provide a basis for the round-table discussion.

II. INTRODUCTION

2. The Committee on Environmental Policy will review the environmental performance of three countries at its ninth session: Albania, the former Yugoslav Republic of Macedonia and Yugoslavia.

3. During the meeting of the Ad Hoc Expert Group of the Environmental Performance Review Programme (EPR), scheduled for 7–11 October, in Geneva, experts will conduct a detailed review of environmental performance of these three countries. A list of topics to be covered for each country is shown in the annex.

4. The Expert Group will present its findings to the Committee on Environmental Policy during its morning session on 5 November. The Committee will have the opportunity to address any of the issues raised in the context of the environmental performance reviews at that time.

5. All three countries under review are from the same subregion and have shared a number of experiences. Prominent among environmental concerns facing these countries today are waste management, including hazardous waste; water management, including transboundary waterways;

moribund industries and clean-up of toxic chemicals; transport and urban air pollution; internal migration and the degradation of human settlements. In addition, for each country there are specific issues of particular importance. Each of these issues (see annex), and others, will be discussed in depth during the expert review. The full reports, with recommendations, are also before the Committee.

6. During its afternoon session on 5 November, the Committee will discuss some of the broader policy issues emerging from the environmental performance reviews. This paper is intended to provide a basis for that discussion.

7. The paper examines two of the cross-cutting issues that are common to all three countries as well as to many other countries in the region: these include: (a) the impact of decentralization on environmental management and the need for capacity-building at local levels, and (b) enforcement of legislation and regulations (environmental impact assessment, permits, inspections) and the impact of the EU pre-accession process.

III. THE IMPACT OF DECENTRALIZATION ON ENVIRONMENTAL MANAGEMENT

8. Decentralization of environmental management in South Eastern Europe has formed part of the institutional restructuring and reform. It offers an opportunity to strengthen environmental management by bringing it closer to the public and to local concerns, thereby enabling greater accountability, transparency and participation.

9. However, while the overall devolution of competences may be reflected in laws and policies in Albania, the former Yugoslav Republic of Macedonia and Yugoslavia, decentralization of environmental management has not been supported by the resources necessary for implementation. This includes not only a failure by the central government to provide funding to the local governments, but also constraints imposed by the government on the ability of municipalities to generate income, for example, by establishing price ceilings on public utility user fees.

10. There are other obstacles. The respective responsibilities of central and local administrations are not always clearly defined. Devolution of responsibilities may also be uneven; for example, municipalities may be accountable for air and water pollution, but inspection of industrial facilities remains with the centre. As a result, local administrations find it difficult to fully implement measures laid down at national level.

11. Implementation is also hindered by an insufficient number of staff in the local administrations and by a lack of knowledge. Local authorities generally lack experience in environmental matters to manage their new responsibilities. It is crucial not only to expand the staff but also to provide them with the necessary training. This should include training in how to manage public utilities for instance, for water and waste management, including establishing criteria for monitoring performance.

12. In **Albania**, the Law on the Organization and Functioning of Local Government (No. 8652/2000) has devolved new responsibilities and revenue-collection authority to the local level. Beginning in 2001, the municipalities have been responsible for the management of water supplies, municipal waste, transport infrastructure and urban green areas.

13. A significant new local responsibility is the management of closed and abandoned industrial facilities that are within the municipal boundaries. Dormant industrial facilities make up a major part of Albania's industrial sector. A number of these facilities are hazardous and require urgent attention. In some cases, the Government has allocated emergency assistance and is preparing to begin

industrial waste clean-up efforts. Funds for local environmental management may be provided by the central Government or raised through local charges and taxes.

14. There are no specialized environmental units in the municipalities, except in the municipality of Tirana. There are twelve Regional Environmental Agencies, whose responsibilities include enforcing legislation, carrying out site inspections, controlling operating facilities, taking part in environmental permitting for new activities, and supporting environmental monitoring and assessments. However, these Regional Environmental Agencies belong to the Ministry, not to the local administrations.

15. The **former Yugoslav Republic of Macedonia** adopted a new Law on Local Self-Government at the beginning of 2002, which defines the functions of local self-government in the country and gives municipalities competence in the field of environmental protection. The local government system includes the city of Skopje and 123 municipalities.

16. Article 22 of the new Law holds municipalities accountable for taking measures to protect water, the atmosphere and land from pollution, to protect nature and to ensure protection against noise and ionizing radiation. It also includes another group of measures linked to environmental protection and communal activities for which they are responsible, such as water supply and wastewater drainage, public hygiene, the disposal of municipal waste, public transport and the maintenance of green areas.

17. The Law, however, does not give the municipalities either enough funds or financing instruments to accomplish these functions. According to the transitional provisions of the Law on Local Self-Government, all relevant legislation, including environmental acts, should be revised before the end of December 2003 so as to delegate more rights to local government and to clarify the financing of local government tasks. The new Law on Local Self-Government will be complemented by a new law on local revenues and finances, which is being discussed.

18. There are no specialized units for environmental protection in the municipalities, but a number of local environmental action plans have been developed. Although many of these have been donor-driven, it is the local population, with broad stakeholder participation, that has prepared, and will implement, the plans.

19. In **Yugoslavia**, most of the environmental responsibilities that do not have international or transboundary implications lie with the individual constituent republics Serbia and Montenegro, not the Federal Government. Consequently, it is the relationship between the republics' governments and the local authorities that define the decentralization of environmental management.

20. In addition, with the passing of the Law on the Transmission of Competences from the Republic to the autonomous Provinces-Vojvodina in 2002, a number of environmental competencies were given to Vojvodina. These include, for example, the authority to develop environmental protection programmes, to establish an institute for nature protection and public enterprises and to approve certain environmental impact assessments.

21. There are 161 municipalities in Serbia (excluding Kosovo) and 21 in Montenegro; most, but not all, have environmental secretariats. These municipalities, through their secretariats for environmental protection, are responsible for local air protection, noise protection, urban planning and municipal waste management (collection, landfill site selection and operation). Water and waste management are generally carried out by a municipal enterprise.

22. Environmental competencies in the municipalities in Montenegro include nature protection, water, parks and forests with a local importance.

23. Municipalities in Serbia may issue construction permits for small facilities, but this is very limited. In both republics, all environmental impact assessments (EIA) and almost all permitting are still carried out under the purview of the republics' governments.

24. Inspection responsibilities also remain at the republics' level. Local environmental inspectorates have been forbidden in some cases from entering industrial facilities that have a direct negative impact on the environment of the municipality.

25. There is no legal obligation for municipalities to develop local environmental action plans (LEAPs), but several are under way in Serbia. Two have been completed: one in Nis and the other in Subotica.

Issues for discussion

Countries are invited to share their experiences of the impact of decentralization on environmental management. Particular attention may be given to the following issues:

1. Central governments have decentralized a number of managerial functions for environmental protection to the municipalities, but they retain control of some of the most significant tools for both decision-making and compliance, including, e.g., EIA, permitting and inspection. Is this an appropriate distribution of responsibilities? What is the experience in other countries concerning these functions?
2. Central governments have decentralized a number of environmental responsibilities to municipalities without providing the means necessary for implementation. These include, among other things, financial resources. What is the responsibility of the central government to provide direct funding to the municipalities for environmental protection? What financial instruments might be available to municipalities to raise their own resources for environmental protection?
3. An equally important means of implementation is technical capacity. What kind of training could be provided to local authorities and other local stakeholders to upgrade their capacity to design and implement programmes of environmental protection?
4. Local environmental action plans may provide an efficient means for institutional strengthening of local environmental authorities and for fostering stakeholder dialogues and public participation. How can these be more fully and universally supported? Are there other tools available for achieving these same purposes?
5. In all of these areas, what has been the role of different levels of government in traditional market economies, and which experiences would they like to share with other member States?

IV. ENFORCEMENT OF LEGISLATION AND REGULATIONS

26. Over the past decade, most of the Balkan countries have initiated reforms of their environmental legislation and environmental institutional structures in line with the new political era. Experience has revealed that much of the environmental legislation was drafted quickly and with little regard for enforcement capacities. This has been particularly evident in the area of environmental legislation. Today, many of the environmental laws in the Balkan countries have become ineffective due to a lack of viable enforcement mechanisms.

27. The environmental enforcement institutions play an important role in ensuring compliance with environmental laws, regulations and the implementation of environmental policy. But the weak institutional framework and limited financial and human resources of the environmental enforcement institutions is a major cause of ineffectiveness in environmental compliance and enforcement.

28. In addition, the movement of information is top-down, only. There is no institutionalized feedback mechanism to ensure that information flows from inspectors on the ground back to policy makers on the results of environmental policy implementation. Policy instruments lack effectiveness, and policy design is very often driven by a regulatory process independent of enforcement efforts and compliance.

29. The environmental institutions responsible for enforcement in Albania, the former Yugoslav Republic of Macedonia and Yugoslavia currently face a number of common difficulties such as:

- Lack of human, technical and financial resources;
- Institutional reform and instability;
- Insufficient regulatory and compliance frameworks, compliance control procedures and enforcement tools;
- Ineffectiveness of enforcement activities;
- Weak environmental permitting system;
- Non-compliance with multilateral environmental agreements; and
- Lack of promoting public participation in enforcement.

30. The organization of environmental enforcement institutions in Albania, the former Yugoslav Republic of Macedonia and Yugoslavia is very similar. Inspections are carried out by inspectorates that are under the responsibility of the ministries of environment, primarily at central and regional levels.

31. Problems occur when permitting and control functions are within the same institution, and the institution issuing the permits is also involved in inspection. The credibility of the system may be affected, and there is a conflict of interest. This is the case in Albania and Montenegro (Yugoslavia). The ministries of environment both grant environmental permits and carry out inspection and enforcement.

32. At the same time, inspection authority is not restricted to the ministries of environment. There are also forestry inspectorates, health inspectorates, agriculture and water inspectorates. In general, the inspections of these different inspectorates are not properly coordinated, due to unclear demarcation of institutional competencies. This often results in overlapping inspections and confusing results. For example, in nature reserves with production forests, there are three competent authorities responsible for management and inspections, namely the environmental inspectorate, the forestry inspectorate and the public forest enterprise.

33. Duplication of inspection units and lack of coordination also exist between actions of the national and regional or local enforcement agencies. A basic issue in developing enforcement activities is to what extent responsibilities for enforcement should be centralized at the national level or decentralized at a more local level. Involvement of local governments in enforcement is important because they are closest to the actual environmental problems and generally the most affected.

34. In the former Yugoslav Republic of Macedonia, environmental inspections are based on standards contained in laws and regulations, including maximum allowable concentrations of emissions. All polluting enterprises are subject to inspection. The inspections are based on environmental-technological reports from enterprises through self-monitoring, and the inspectors rely on the sampling data from the enterprises themselves. Problems related to self-monitoring occur when the enterprise either lacks the technical capability to provide accurate data or deliberately falsifies the information. Self-monitoring requires that reliable and affordable monitoring equipment be available to the regulated facilities.

35. According to the environmental law in Albania, enterprises are required to provide information on their emissions and discharges to the Ministry of Environment and to the public every three months. So far, enterprises have not complied with this obligation, which complicates inspections. Inspectors are often even refused access to the enterprises that they want to inspect.

36. In Serbia (Yugoslavia), the inspectorate is mainly involved in inspecting the implementation of environmental protection measures as identified in the environmental impact assessment. Since EIAs were not carried out before 1992, inspectors are limited to new enterprises. In addition, the environmental inspectorate cannot access to a database on the registered environmental impact assessment-permits, including the norms and standards applied to them.

37. In Montenegro (Yugoslavia), the inspectors also inspect environmental protection and mitigation measures that are included in the environmental impact assessment. As the competences of the Ministry of Environment Protection and Spatial Planning only cover biodiversity and air, the content of EIA is also limited to these areas. No preventive or mitigation measures are given for the protection of water or soil.

38. The enforcement institutions in Albania, the former Yugoslav Republic of Macedonia and Yugoslavia have a variety of informal and formal enforcement tools at their disposal. However, the extent to which these are being applied in practice is rather limited. Non-compliance responses are more widely used, mostly in the form of non-compliance fees. Greater use of enforcement powers is constrained by the weak positions of inspectorates and insufficient levels of fines and penalties. In many cases, polluters choose to pay fines rather than invest in pollution control. The low collection of fees and fines also contributes to the problem. Formal enforcement, especially judicial actions, is constrained by general problems faced by the courts, and the lack of understanding of environmental cases in courts.

39. In Albania, only a small percentage of fines imposed for violating the law are actually paid, because the penalty for non-compliance, confiscation and closure, is a very slow and complicated procedure.

40. In the former Yugoslav Republic of Macedonia, the fines and penalties for non-compliance vary from fines to imprisonment for up to ten years. But these penalties are rarely executed due to lack of cooperation between legal bodies and the police. Ninety per cent of the lawsuits instituted by the environment inspectorate will never be resolved because a statute of limitations imposes a two-year deadline. Only ten per cent will actually reach the court, of which an even smaller percentage is settled in favour of the Ministry of Environment and Physical Planning.

41. In Yugoslavia, the situation is almost the same. Fines and penalties are low, and only a minor share of the total lead to mandatory sentences.

42. The limited financial resources of the enforcement institutions are another source of poor enforcement. The low level of funding leads to an inability of the enforcement institutions to upgrade facilities or staff skills to meet new requirements. At best, inspectors have only limited access to computers, telephones lines, cars, monitoring equipment and laboratories.

Issues for discussion

Countries are invited to share their experiences concerning the effectiveness of environmental enforcement. In this regard, countries may wish to identify issues that need to be addressed.

1. Enforcement institutions are weak and largely ineffective. How could they best be strengthened? Is the problem primarily one of resources, or is it more structural? Should enforcement institutions remain within the structure of the environment ministries, or should they become more independent? In order to avoid conflict of interest, what is the most appropriate organization of permitting and control functions?
2. At present, the impact of non-compliance fees and penalties is low, largely because they are often less onerous than compliance. Is increasing the fines and penalties a solution to improved enforcement?
3. There are several different inspectorates (e.g. environment, health, water, forestry and agriculture) working in parallel, but seldom in tandem. How could cooperation and coordination among them be improved to avoid duplication and to improve both effectiveness and efficiency?
4. There is no real decision-making cycle that facilitates feedback from environmental inspectors to policy makers on the effectiveness of policy instruments. What mechanisms or tools could be adopted to improve this situation?
5. Self-monitoring by enterprises is often mentioned as a tool to improve the process of compliance and enforcement. What are the constraints of self-monitoring and how could they be overcome?
6. In all of these areas, what has been the experience of other countries, including traditional market economies, that could be shared with other member States?

Annex

ALBANIA

Part I: THE FRAMEWORK FOR ENVIRONMENTAL POLICY AND MANAGEMENT

- Chapter 1: Policy framework, legal instruments and institutional arrangements
- Chapter 2: Economic and regulatory instruments for environmental protection
- Chapter 3: International cooperation
- Chapter 4: Environmental monitoring and information

PART II: MANAGEMENT OF POLLUTION AND OF NATURAL RESOURCES

- Chapter 5: Air management
- Chapter 6: Water management
- Chapter 7: Waste management
- Chapter 8: Biodiversity conservation and forest protection

PART III: SECTORAL INTEGRATION

- Chapter 9: Environmental integration
- Chapter 10: Environmental concerns in agriculture and soil protection
- Chapter 11: Coastal zone management (including tourism)
- Chapter 12: Human health and the environment

THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

Part I: THE FRAMEWORK FOR ENVIRONMENTAL POLICY AND MANAGEMENT

- Chapter 1: Legal and regulatory instruments
- Chapter 2: Institutional arrangements
- Chapter 3: Economic instruments and privatization
- Chapter 4: Environmental information and public participation
- Chapter 5: International cooperation

PART II: MANAGEMENT OF POLLUTION AND OF NATURAL RESOURCES

- Chapter 6: Water management, including protection of lakes
- Chapter 7: Air management
- Chapter 8: Waste management
- Chapter 9: Agriculture and forest management
- Chapter 10: Nature and biodiversity management

PART III: ECONOMIC AND SECTORAL INTEGRATION

- Chapter 11: Industry, energy and the environment
- Chapter 12: Spatial planning
- Chapter 13: Transport and the environment
- Chapter 14: Human health and the environment

YUGOSLAVIA

Part I: THE FRAMEWORK FOR ENVIRONMENTAL POLICY AND MANAGEMENT

- Chapter 1: Decision-making framework for environmental protection
- Chapter 2: Economic instruments and financing
- Chapter 3: Information and public participation
- Chapter 4: International cooperation

PART II: MANAGEMENT OF POLLUTION AND OF NATURAL RESOURCES

- Chapter 5: Water management
- Chapter 6: Air management
- Chapter 7: Waste management
- Chapter 8: Mineral resources management
- Chapter 9: Nature protection and biodiversity

PART III: ECONOMIC AND SECTORAL INTEGRATION

- Chapter 10: Industry and environment
- Chapter 11: Energy and environment
- Chapter 12: Agriculture and environment
- Chapter 13: Transport and environment
- Chapter 14: Tourism and environment
- Chapter 15: Human health and the environment