

2011

FINAL REPORT- Review of legal framework relevant to Skadar - Shkodra Lake ecosystem management, protection and sustainable development

Submitted to:

Republic of Albania

Ministry of Environment, Forestry and Water
Administration

Republic of Montenegro

Ministry of Spatial Planning and Environment

LAKE SHKODRA INTEGRATED ECOSYSTEM
MANAGEMENT PROJECT (LSIEMP)

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Abbreviations

CFP	Common Fishery Policy
CoM	Council of Ministers
EIA	Environmental Impact Assessment
EEC	European Economic Community
EC	European Community
ECS	Environmental Crosscutting Strategy
EU	European Union
MoU	Memorandum of Understanding
NSDI	National Strategy for Development and Integration
NSSDM	National Strategy of Sustainable Development of Montenegro
NCSA	National Capacity Self-Assessment
RENA	Regional Environment Network for Accession
SEA	Strategic Environmental Assessment
UNECE	United Nations Economic Commission for Europe

SUMMARY

The scope of this assessment comprises an overview of the national legislations in force in Albania and Montenegro to identify and analyze any inconsistencies or differences in the current legislation regarding transboundary water management and protection of Skadar - Shkodra Lake. It also includes the available regulatory tools used by the environment related legislation and whether these operate effectively, and examine the capacity of the current enacted legislation to meet EU and international standards and practices as regards transboundary water management and protection.

The report represents the broad framework for the review of legislation relevant to Skadar - Shkodra Lake ecosystem management, protection and sustainable development and also represents the findings and legal opinions. Another aspect is the identification of the missing or the inconsistent rules to be adopted.

The review involves the laws in force in both countries starting from the constitutions, the international conventions and ratified international agreements, environmental related laws as well as secondary legislation where a significant regulation is implicated.

Some of the weaknesses of the environmental management system in general and for Skadar - Shkodra Lake also, are as follows:

- incomplete and/or inadequate legal framework;
- poor enforcement of the existing regulations;
- lack of capacities of relevant institutions for effective environmental and nature resource management;
- inadequate level of co-ordination among involved institutions and units;
- insufficient funding for environmental protection, both from public and private sources.

The analysis is structured in a way that serves to a better orientation by grouping the different laws according to their coverage and scope.

1. INTRODUCTION

Being geographically positioned in Albania and Montenegro, regardless the size of extension in each country, the Skadar - Shkodra Lake management and protection should be consequential in both countries and coordinated between them. The appropriate legal framework is of high importance for the sake of coordination as well as for the due protection and management of lake ecosystem for both countries.

The management as a main element has an impact not only from the environment point of view, but also in the economic and social life. Thus, bringing the related legislations of Albania and Montenegro in the same line with each-other by adopting either legislations, or where missing drafting the best and most dynamic rules with regard to lake protection and management is of high significance and will have a major impact.

There are many challenges for both countries and lot of laws and strategies to put in place. The process of legislation review will also include the approximation with EU standards and with *acquis communautaire* in the frame of accession of both countries to the EU.

1.1. *Project background*

One of the requirements for accession to the European Union is that the applicant countries approximate their legislation to that of the *acquis communautaire*. Thus Albania and Montenegro while working to join EU must adopt the EU rules and directives to better facilitate their intention and aspiration.

In order to implement *acquis* and international legal obligations, it is necessary for Albania and Montenegro to take action within their domestic contexts. To implement international and regional legal obligations within their national contexts, states should put in place adequate national environmental legislation, policies and institutions.

The *acquis* contain the laws and regulations of the EU. One section of the *acquis* restrains EU laws and regulations concerning the environment. Approximation of this section of the *acquis* by the applicant countries, from the previous experience is not an easy task. Successful approximation, however, is necessary in order for accession to be reality. It is expected that these countries will face difficulties that relate with the lack of the necessary financial resources as well as with the

administrative structure that is not prepared to implement and enforce the EU legislation. Sustainable financing mechanisms should be established for environmental oriented projects and especially for transboundary water management in the case of Skadar – Shkodra Lake.

The legal aspects involved in the management of transboundary Lake of Skadar – Shkodra are of vital importance. Being regarded as a common resource for satisfying the basic human as well as ecosystem needs of the basin populations for the Skadar – Shkodra Lake the arrangements should be made in order to build the capacity of states’ bilateral and national administrations to implement the provisions of the agreements entered into and to enhance sustainable socio-economic development.

1.2. Objective of the Assignment

This comparative review will serve as a basis for the legal framework harmonization in both countries.

The objective of the assignment is to:

- i. **Review of national environment related legislation enacted in both countries** (Albania and Montenegro) while taking into account the countries progress towards approximation of their legislation to environmental *acquis*;
- ii. **Identify differences existing in national legislation, relevant to trans-boundary water management and protection;** and
- iii. **Provide recommendations for the improvement of the current legislation or redrafting of new ones.**

2. METHODOLOGY OF THE LEGAL FRAMEWORK REVIEW

To better serve to the objectives of this study, the adoption of a well oriented methodology is the starting point. Therefore, an inventory was developed of the existing laws, conventions and strategies as well as institutional arrangements relating to Skadar - Shkodra Lake ecosystem management, protection and sustainable development.

Main instruments for the legal review were: a) desktop review; b) description and analysis; c) drafted proposals for improvement/recommendations.

- A. The desktop review considered the following phases of the methodology:
- Collected and listed national legislations of Albania and Montenegro that in a way or another affect Skadar - Shkodra Lake.
 - Consulted all of available legislation with the focus to discern the indicators to be taken into analyzes.
- B. Provided description and analysis of the legal framework: to identify indicators that affects the lake ecosystem management, protection and sustainable development, as well as the relevant regulations in respective countries legislation.
- Compared current legal framework in order to distinguish the differences;
 - Provided gap analysis to sort out some detail comparisons with similar laws in Albania and Montenegro. This was done in an attempt to assess the development of our regulation in comparison to Montenegrin jurisdictions.
 - Revision of the current legislation that affect Skadar - Shkodra Lake in the light of EU standards in order to provide an assessment of the Albanian and Montenegrin environmental laws that affect Skadar - Shkodra Lake towards the approximation with the *acquis communautaire*.
- C. Articulation of recommendations for the improvement of the current legislation in terms of approximation with the EU best practices, as well as standardize legislative measures between Albania and Montenegro to efficiently manage Skadar-Shkodra Lake ecosystem management, protection and sustainable development.

3. CONSTITUTIONAL REGULATIONS ON ENVIRONMENTAL PROTECTION

Being the fundamental law of each country, the Constitution is the first to be analyzed and compared.

Thus the Constitution of the Republic of Albania¹ lists within the goals of the State to ensure, within the constitutional competences and available instruments, a healthy and appropriate environment from the ecological point of view. This guarantee aims to serve to the actual and future generations.

The environment protection is one of the social objectives of the State according to the article 59 of the Constitution of the Republic of Albania, while the right to be informed on the environment condition and its protection is under the chapter of freedom and economic, social and cultural rights. Consequently the constitutional arrangements engage the state to create and protect an ecological and healthy environment as well as promote the citizens role and involvement in environment protection issues.

The Constitution of the Republic of Montenegro² significantly takes into account environment protection matters. It comprises the ecological aspect within the basic provisions stating at the Article 1 that “Montenegro is a civil, democratic, ecological and the state of social justice...”. Article 23 of this Constitution attends to regulate the particular responsibility of the state and the role and responsibility of everyone to preserve and promote the environment.

The Montenegro’s citizen’s rights and role in environment matters consists of their right to have a healthy environment, to receive timely and complete information on the status of environment, to influence in the decision-making process of environmental issues and to have legal protection on these rights.

¹ <http://www.eicee.org/pix/pdf/albania.pdf>.

² http://www.comparativeconstitutionsproject.org/files/Montenegro_2007.pdf.

4. STATUS OF THE SKADAR - SHKODRA LAKE IN ALBANIA AND MONTENEGRO

Taking into consideration that, into protected zones, are included those zones that acquire special protection and have to be managed by legal manners and with scientific methods, the legal coverage of the Skadar - Shkodra Lake should be uniform in both countries.

As in Montenegro, since 1983, the Skadar Lake is declared National Park, the Shkodra Lake has to be protected under the same level of protection in Albania. With reference to the national laws as well as *acquis*, ascertain as National Park involves a higher level of protection.

According to the Albanian legislation through Decision of the Council of Ministers No. 684, dated 02.11.2005 the Shkodra Lake is asserted as Natural Managed Reservation which under the Law No. 8906 dated 06.06.2002³ as amended with the Law No. 9868, dated 04.02.2008 "For Protected Areas" falls under Category 4 of the protected areas. Based on the Decision of the Council of Ministers of Albania No. 683, dated on 02.11.2005 the legatine complex of Shkodra Lake is declared as specially protected natural zone.

Under Albanian law, for the Category 4 it is applied the third level of protection while under the same law the National Parks fall under Category 2 that implies the second level of protection. The level of category and the level of protection relate directly to the importance of a given zone, the list of prohibited activities, the list of activities that require the advanced issuance of an environmental permit and other delineations. Under Montenegrin Law for the Skadar Lake, as it is for other national parks, it is applied the level of protection IUCN2.

As per the current status in Albania the Shkodra Lake is considered as a zone of local or regional importance while in fact, it has national and international values being also part of Ramsar List and for this reason has to be asserted as National Park.

In order to better serve to the special protection of the natural ecosystem of the Shkodra Lake, even the list of prohibited activities has to be wider for Shkodra Lake, as it is for national parks, as well as the cases that require environmental permission has to be rigorously defined as it is for national parks.

³ <http://faolex.fao.org/docs/pdf/alb60472E.pdf>

The management of special protected zones is led by the responsible ministry of environment which takes protection measures in accordance with the ecological requirements of natural habitat types and in some cases collaborates with in line ministries on certain projects.

Beside this, the National Parks engage special protection administration that frequently monitors all activities that affect the national park and may limit or stop temporarily the circulations of vehicles, hunting and fishing, as well as other permitted activities.

Pursuant to the above mentioned reasons and differences it is recommended that in both countries the Skadar - Shkodra Lake should have the same status, the same level of protection in order to be applied the same measures related to regulations and respective structures for the lake itself and the buffer zone.

5. LAWS ON ENVIRONMENTAL CONSERVATION

An important part of environmental conservation for the Skadar- Shkodra Lake is the fishery section. Tourism and protection of cultural property as well as land use and urban planning are also of high interest.

5.1. Water management

Skadar - Shkodra Lake is a vital natural resource for Albania and Montenegro and represents a crucial habitat for many different types of wildlife with significance for the region as well. With regard to water protection and management, the Water Framework Directive 2000/60/EC establish a broad framework for action in the field of water policy. One of the purposes of the directive is to establish a framework for the protection of inland surface waters and other categories of waters. This directive is focused of the protection of aquatic ecosystems and wetlands and its transposition and implementation by Albania and Montenegro will contribute to the reduction of the emission of hazardous substances to the lake waters.

The existing water legal framework in Albania includes the law No. 8093, dated 21.03.1996 "On Water Reserves" as amended several times until 2009 and the Law No.9115 dated on 24.07.2003 "On Environmental Treatments of Waste Waters" which takes into protection the environment and the humans health from negative impacts of the waste waters as well set up rules on their environment treatment. The

law on environmental treatment of waste waters has transposed partly the Directive 91/271/EEC on Urban Waste Water Directive, as amended but lacks any management plan to control the quality of water in protected zones or the quality of discharges from industrial stations.

The water current legal framework is attempted to adopt some discontinuous regulations of Water Framework Directives but is not in full compliance with the water directives regulations. Thus the Directive 2000/60/EC on water quality framework is transposed in average level but is implemented in minimum level. It already designated the Water National Council as competent state authority for water policies, but are missing common environmental quality standards, emission limit values and the aspect of ground water is not regulated properly by the Albanian legislation which should be amended to transpose the Directive 2006/118/EC.

In Albania it is in the consultation process the draft law "On Integrated Water Management". This draft law transposes Directive 2000/60/EC as amended with Decision 2455/2001/EC, Directive 2008/32/EC and Directive 20008/105/EC as well as Directive 2006/118/EC "On the Protection of Groundwater against Pollution and Deterioration" and Directive 2007/60/EC "On the Assessment and Management of Flood Risks". Overall principles will be set for control on abstraction and impoundment in order to ensure the environmental sustainability of water systems.

In the base of this draft law are the principles of integrated water management and the main goal is the establishment of the framework on water reserves protection as well as determination of the authorities in charge for the management of water reserves. The draft law also provides the regulations on licensing authorization, permits and concessions on water reserves use and the competent authority to issue them. Shkodra Lake as well other natural lakes with sweet water are categorized as "sensitive zones".

It is expected that the approval of this draft law by the Albanian Parliament will abrogate the Law "On Water Reserves" and the Law "On Environmental Treatment of Waste Waters".

The Montenegro water legislation was upgraded with approval of the Water Law dated on 17.05.2007⁴ which transposes significantly Water Framework Directive. It

⁴ Official Gazette of the Republic of Montenegro No27/2007.

regulates the legal status of different water classifications and the way of management. From the interpretation of the regulations of the law in terms of importance, having cross border impact, the Skadar Lake is classified with importance for the Republic and is registered in the register kept and maintained by the governmental authority responsible for water management.

This law provides clear principles on which water management actions will be based, including continuous water management, sustainable development and long term protection of the quality in addition to sustainable use of water resources.

Practical implementation of the EU Water Framework Directive by Montenegro and Albania is a complex process that engages many institutional and technical elements to be put in place and coordinated.

5.2. *Fishery*

Skadar - Shkodra Lake provides an important fishery for Albania and Montenegro. Two thirds of the Lake Skadar falls under the jurisdiction of the National Park. The remaining part of the lake falls under Albanian jurisdiction of protected zones.

The use of living species resources should be in harmony with sustainable economic, environmental and social development to have a sustainable management of aquatic environment and its sources of living species. Thus it is also vital to be taken measures for protection of specific protected fishery species, fingerlings and for biodiversity and environmental conditions.

In Albania, inland fishery, including lake fishery is regulated by Law No 7908 dated on 05.04.1995, "On Fishery and aquaculture"⁵ as amended by Law 8763, dated on 2.04.2001, Law No. 8870 dated on 21.03.2002 and Law 10001, dated on 6.10.2008 "On amendments to Law No 7908 dated on 05.04.1995, for Fishery and Aquaculture"⁶. Albanian Fishery current law lacks the classification of subjects to whom it is addressed to. Also the definitions are not clear and the law including amendments that have changed it in years lacks the specific regulation of some important aspects of fishery sector.

The Albanian Ministry of Environment, Forestry and Water Administration, which is the ministry in charge for fishery sector, is drafting a new law "On Fishery" in compliance with *acquis* which is in the phase of public consultation. When

⁵ <http://www.dfishery.gov.al/EN/pdf/LIGJ-AN.pdf>

⁶ <http://www.dfishery.gov.al/EN/pdf/Law%208870.pdf>

approved, this law will abrogate the existing laws only for the fishery and the part that relates to the regulation of aquaculture will remain into force.

The new draft law aims to ensure a rational and responsible exploitation of inland waters biological resources and determines the rules of management in the fishery sector involving as well co-management of fishery resources which is very adequate for the case of Skadar – Shkodra Lake. The types of fishes allowed being catch based on the name or group of species and fishing areas within the lake will be under the discretion of the responsible minister, who will issue specific regulations.

There is a need for institutional strengthening in respect to organization and implementation of an adequate risk assessment system of the fishery. Also implementing of a regulatory framework is considered necessary to ensure compliance with EU requirements covering organization, monitoring plan and implementation measures.

In Albania there is issued a ministerial order that prohibits fishing in Shkodra Lake from 15 April to 15 May. Fishing is also prohibited in all Channels, where fish congregate in the winter and in the deepest parts of the Lake.

In order to protect these specific fishery species it is important to define protected aquatic area for fishing purpose. With the intention to have not only formal structural policy, it is indispensable to define and implement the policies on fishery.

As a result should have a National Strategic Fishery Plan, a Fishery Management Plan and the most important a Fishery Implementation Plan. Emergency measures are essential to be taken into respective legislations when from the fishing activity derives a serious danger that threatens aquatic living resources.

Even the persons who do fishing for entertaining are supposed to have an authorization for a specified time. Authorization is granted after is paid the proper fee and the fishery asset management ought to be performed according to the cases and forms defined by the law.

To facilitate the assessment and monitoring of the fishery activity is needed to collect and manage the relevant data and to define a national program that includes information essentially for scientific evaluation. The data collected need to be kept in a system and to be available to exchange directly with other countries, particularly with neighbors countries like Montenegro. The data that will be included in the

national system should be subject to professional commercial confidentiality and don't affect the right of individuals regards their personal data.

The most significant Regulation with regard to data collection is that No. 6 dated 13.02.2009 "On laying down detailed rules for recording information on catches of fish" which in full compliance with EEC No. 2807/83 that provides the rules for recording information on member states' catches of fish CELEX No. 31983R2807.

The fishery legislation reflects the establishment and functions of advisory bodies in central and local level. The supervisor's authorities such as fishery inspectors would be required to control all the fishery chain. The control of fishery activity includes also the capacity of fishery and the control of areas with limited fishery regime. In specific cases competent authority could decide the fishery closure for a certain time and this has to be coordinated with the neighbor country.

The inspection of fishery had an upgraded regulation with the recent approved law No. 10433 dated on 16.06.2011 "On the Inspection in the Republic of Albania". This new law set up sustainable principles of inspection and set up rules on planning and authorization of inspection.

While the current law on fishery as amended prohibits fishing in excess of set quantities of fish, fishery management plans determine individual quotas. The Council of Ministers Decision No. 1062 dated 16.07.2008 "On Regulating Closing Fishing Activities" rules the process for setting and evaluating capture quotas.

The person who violates the provisions of fishery held personal civil liability for fines and administrative offenses. Except of additional penalties it is required to apply as additional sanctions as well as the points system for serious offenses.

Among the specific types of aquatic organisms that are prohibited to fish or carry on board, transit on boats in any period should be also the Alcoran of the Shkodra Lake.

In Montenegro, where the marine fishery is regulated separately from the fresh water fishery, the basic law that regulates the fishing in the Skadar Lake is the Law on Freshwater Fishery⁷. This law lays down conditions for issuing licenses to trout farms and also prescribes the monitoring of water on and around the farms. The fishing sector is under the Ministry of Agriculture, Forestry and Water Management.

⁷ Official Gazette of Montenegro 11/07

The Law on Freshwater Fishery is in line with National Fishery Development Strategy and particularly comprises conditions and methods for use of all activities in the field of freshwater fishery as well as measures for protection and conservation of fish stocks. Sport oriented fishing activities are allowed in the lake as for the commercial fishing may be done only in designated fishing area.

In this respect, the most significant by-law is the Order “On Zones Where Fishing is Prohibited, Restriction and Measures for Protection of Fish Stocks”⁸, which defines in details the areas where fishing activities are prohibited in a specific period of time in the lake, minimum size under which the caught of certain fish species is prohibited and as well as restrictions on the fishing tools and manners.

The controlling of fishing activities in Skadar Lake is handled by one inspector of agriculture that supports 26 national park guards who control the fishing in the lake during the prohibition period which is from 15 March to 1 June.

According the law on Marine Fishery it is expected soon to be established an administration authority in charge of fishery that will manage mostly the marine fishery but will also have an effect on the freshwater fishery.

The protection and sustainable use of freshwater fishery as well as increasing of the efficiency of aquaculture sector in Montenegro needs to be enhanced and to be supported together with the trout farmers as well as sport-fishing clubs.

The procedures and restrictions on fishery relate mostly to the marine fishery since this element engages the most important and biggest part of fishery sector. As per the lake fishers the conditions and criteria that have to be met as well as eligibility criteria for different forms of support will be determined by the Law on Agriculture and Rural Development⁹. With regard to use and trading conditions of the caught fish are the Law on Food Safety¹⁰ and the Law on Consumer Protection¹¹ that provide special regulations.

Because the fishing in freshwaters occupies a small part of fishing sector in Montenegro, some procedures of controlling and monitoring of fishing activities laid down in the marine fishery are applicable for the fishery in fresh waters. The agricultural inspectors are in charge to control and monitor the freshwater fishery, out of whom, one is committed to control fishing activities, including commercial

⁸ Official Gazette of the Republic of Montenegro 19/08, 35/09

⁹ Official Gazette of Montenegro 56/09

¹⁰ Official Gazette of the Republic of Montenegro 14/07

¹¹ Official Gazette of the Republic of Montenegro 26/07

fishing on Skadar Lake. The fishery administration can be reorganized depending on the fishery future needs.

Powers and competences of the inspector that monitors fishery in the Skadar Lake are given in the Law on Inspection Supervision¹², Law on Marine Fisheries and Mariculture and the Law on Freshwater Fishery as well as the respective by-laws.

Fishing recording data is kept and maintained by the MONSTAT because of the lack of administrative capacities of the ministry in charge for fishing and is recommended to be kept by trained staff to fill the logbooks and who will propose adaptive strategies on the control as well as set up catch quotas based on the data collected.

In 2006 the Government of Montenegro prepared and adopted the "Strategy of Fishery Development in Montenegro and Strengthening of Capacities for Implementation of the EU CFP". In the focus of the strategy is the protection and sustainable use of freshwater fishery which should be supported by an improved legislation with European standards. This document together with the National Program of Fishery Development (NFP) from 2009 to 2013" requires changes in the respective legislation and restructuring of the administration in charge for fishing.

The fish products trade between Albania and Montenegro is ruled by the Most Favored Nation tax rates.

The fisheries laws of Albania and Montenegro should necessary regulate the management of fishery activity through the promotion of sustainable development. For this purpose it is required to determine the rules of management in the fishery sector and to design and provide a structural fishery policy management in accordance with the requirement of Council Regulations (EEC) No.2847/93 of October 1993. In compliance with this regulation, Albania has approved CoM Decision No.1062, dated on 16.07.2008 on defining the competencies of the fisheries inspectorate and establishment of a control system for fishery policy management.

A bilateral agreement between Albania and Montenegro is of importance to regulate the exploitation of fish resources, to determine the recreational fishing activities allowed or prohibited in the demarcation zone of the lake, to rule the recognition of the fishing licenses issued by each state as well as to unify the prohibited period of time for fishing particular species in the Skadar - Shkodra Lake. This agreement

¹² Official Gazette of the Republic of Montenegro 39/03

should also define the obligations of each party to guarantee the compliance with the national laws related to fishery sector and related international agreements.

While there are joint structures in place and legislation provides this possibility, a fishery co-management area has to be designated within Skadar – Shkodra Lake. In such an area one or more fisheries management organizations may be involved in compiling conservation, management, licensing and controlling plans.

5.3. Tourism and Protection of Cultural Property

The Montenegro's Law "On Tourism" No. 01-324/7 dated October 12, 2010¹³ comprises the principles of optimal use of natural resources, protection of ecological processes and conservation of natural heritage and biodiversity within the scope of sustainable tourism development. The law gives the definition of touristic "locality" and "place" thus encouraging the possibility of tourism development in areas that contain natural values, and promotes the "ecotourism" in natural localities for reason of enjoyment of nature.

With the focus to the environmental impact and promotion of the highest ecological standards, the law provides special regulations and terms for planning, designing and developing tourism in a national park zone, such as Skadar Lake is, and its neighbourhood in an environmentally sustainable and acceptable way. The long term protection of cultural and historical heritage is also taken into account by the Montenegro's tourism law.

The Albanian law "On Tourism"¹⁴ No. 9734, dated 14.05.2007, also takes into consideration tourism planning and management with regard to protection of environment and natural resources. Places with natural tourist resources are defined as touristic spots. The principle of sustainable tourism is closely related to the protection of essential ecological processes and biological diversity. Beside the environmental competent authorities, the responsible institutions for sustainable tourism development are in charge to guarantee the protection and the preservation of environment.

The Shkodra Lake as a protected area under the provision of related law is classified as natural touristic resource and is part of National Registry of Touristic Resource. Being a natural touristic resource, the Shkodra Lake is part of the "touristic heritage". But, what is missing at the Albanian Tourism Law from the environmental

¹³ <http://www.mipa.co.me/userfiles/old/pdf/zakoni/Tourism%20Law.pdf>

¹⁴ <http://www.qpz.gov.al/doc.jsp?doc=docs/Ligj%20Nr%209734%20Dat%C3%AB%202014-05-007.htm>

perspective is the fact that tourism development plans do not provide a special protection for protected areas. Even the content of tourism development plans does not explicitly have as a feature the environmental protection.

5.4. Land Use Protection and Forestry

The importance of the allocation of land to the environment legal system should not be underestimated. Especially in cases when an area is asserted as national park (as the Skadar Lake is in Montenegro) or other tenure such as protected area (as Shkodra Lake is in Albania), it will have an immense effect on the use of the land.

According to Albanian Law “On the Land” No. 7501¹⁵ dated on 19 July 1991 as amended by Law No.7715 dated on 02.06.1993, Law No. 7855 dated on 29.07.1994, Law No.7971 dated on 26.07.1995, Law No.8752 dated on 26.03.2001 and Law No.9244 dated on 17.06.2004, land in Albania was divided into three categories: (1) agricultural land occupied by field crops, fruit plantations, vineyards, and olives trees, wherever they may be, in the countryside, cities, or other residential centers, and irrespective of size; (2) land occupied by forests, pastures, and meadows; and (3) nonagricultural land occupied for, inter alia, urban centers, governmental uses, rocky areas, coastal sandy areas, and all water areas.

In some instances existing laws and decisions in Albania are adequate to protect land and water from some types of degradation, while in other instances new laws must be written and adopted and new decisions issued.

Some laws can be so stringent in an attempt to attain the goal of a perfect environmental setting that they are not enforceable. All sovereign governments have the authority and responsibility under inherent police powers to protect the general welfare, health, and safety of their citizens; and the protection of the environment clearly protects this welfare. After environmental laws are adopted, administrative agencies must be established to perform the responsibilities set forth and to enforce the regulations of the laws.

The prevention of land and water degradation on those lands distributed in ownership or in use is the responsibility of the owners or users, while the preservation of all land under state ownership, including undistributed former

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http://www.ecolex.org/ecolex/ledge/view/RecordDetails;document_Land%20Law%20No.%207501..html?DIDPFDSIjsessionid=1F7806C919ABD4DB805DD9C417F22C5D?id=LEX-FAOC019350&index=documents

cooperative and state farmland, forestland, pastureland, and wasteland, is the responsibility of the state. In adopting environmental protection laws the state must ensure that it does not place a higher responsibility upon individual farmers in preventing land and water degradation than it does upon itself.

Owners and users of agricultural land, under Article 12 of above mentioned law, are obligated to protect irrigation projects, installations, and equipment and are denied the right to prohibit other owners and users from using such equipment. Article 17 provides that industrial and mineral refuse and water with chemical content harmful to agriculture must be channeled and gathered in appropriate places to protect the land and plants and to prevent water pollution, thus not endangering the life of people, animals, and birds. The specific sitting of such a project and the area where it is to be built needs an approval before beginning its construction or functioning.

According to the Albanian Law "On Forest and Forest Service" No. 9385, dated 04.05.2005 as amended later by the Law No. 9533, dated 15.05.2006, Law No. 9791, dated 23.07.2007 and Law No. 9989, dated 15.09.2008, the protection, administration, management and use of forest resources should be on the basis of sustainable breeding principles. Several articles in the law prohibit activities deemed harmful to forest resources.

Taking into consideration the ecological function of forest, the Albanian Law on Forestry and Forest Service contains adequate legal provisions to protect against deforestation, soil erosion, and overgrazing and to require aforestation and implementation of soil erosion control measures and practices and restrictions on grazing.

5.5. Spatial Planning

Urban and rural land use planning and regulations must be initiated to minimize loss of valuable agricultural land close to urban areas and to avoid haphazard urban growth and land speculation. Changes in present land use rules and regulations may be necessary to meet the need for more housing, new businesses, and accompanying infrastructure such as roads, streets, and water and sewage facilities; to avoid degradation and contamination of land, water, and air; and to minimize loss of prime agricultural land. An assessment must be made to determine land use planning activities, planning authority, and rules and regulations to implement the plans with regard to urban, agricultural, housing, construction, business, industrial, and public uses.

Planning is necessary for the orderly development and use of land. While economic and social effects are taken into consideration in land use planning, the planning itself is primarily concerned with the physical environment. It deals with the location of land uses, activities, and structures, such as agriculture, industry, manufacturing, commerce, business, residential, public facilities, and buildings, in reference to other uses, activities, and structures. The process of land use planning by a planning commission or other administrative body produces a “master plan” or long-range guide for the development or use of the land area being analyzed.

The Law No. 10119, dated on 23.04.2009 “On territory planning” has abrogated since September 2010 the Law No. 8405, dated on 16.09.1998 “ On urban planning ” with its amendments. This Law provides sufficient ground for SEA in land use plans. For the implementation of this law in 2011 the Council of Ministers has approved the Uniform Regulations of Planning in accordance with EU standards. The article 23 of the new law “On environmental protection” includes the instruments on national planning, regional and sub regional as well as integrated planning as foreseen in the law “On territory planning”.

The Skadar – Shkodra Lake as a touristic area requires that development of constructions in buffer zones around the lake shall be determined in regional and master plans of tourism development. These constructions shall develop as a rule in territories that damage greenery the least. Construction sites for tourism lacustrine shall be approved in conformity with approved urban planning studies by the Territory Adjustment Council. Procedure of complementation and submission of the documentation is done in the section of urban planning of the relevant district upon prior receipt of decision of Committee of Tourism and the National Environmental Agency.

Montenegro regulates the spatial aspect with the law of 2008 “On Spatial Development and Construction of Structures”¹⁶. Its regulations are based on the general European normative and standards of planning and particularly on environmental related protection principles such as ecologic and cultural territorial development, sustainable development, protection of space and natural resources, protection of integral values of space, protection and enhancement of the status of environment, protection of cultural heritage.

Based on the law provisions each spatial project should meet the requirements of special regulations in the area of environmental protection, protection of cultural and natural heritage, protection of air, forests and water. Environmental protection

¹⁶ Official Gazette of Montenegro, number 51/08

inspector has the power to verify the existence of building permit and may apply sanctions including the demolition of the built structure.

Pursuant to the Law, the Ministry of Economic Development has compiled a long-term Spatial Plan of the Republic of Montenegro, until 2020 year. The previous Spatial Plan of 1986, even though not efficient for the protection of natural areas planned for protection, has been functioning only for the National Park Skadar Lake.

A dedicated attention is given in this plan to the environmental protection and its components including land management while considering the land as a spatial category. In this plan are considered of importance not only the flora and fauna protection but their development as well.

Skadar Lake is the eighth of twenty one typical landscapes units with special regime. From the other side the Skadar Lake is distinguished for flood risks in the surrounding area. The soil types of Skadar Lake are considered important for the purposes of soil potentials.

6. LAWS ON ENVIRONMENTAL IMPACT ASSESSMENT AND ENVIRONMENTAL PROTECTION

The pressures in the area of Skadar - Shkodra Lake is a reality that needs to be adequately addressed through a more efficient protection of protected areas such as the lake is in both countries. Significant challenges are related to the protection of biodiversity, nature and landscape of the lake and the buffer zone. In response to these challenges should be sought through the protection of especially valuable habitats and through an integrated management of the whole area.

The effectiveness of environmental legal systems is important for social and economic reasons because they are often an area for intense political and social conflict, and a significant constraint on business activity.

A right environmental legal system means the legal basis for achieving sustainable development of the environment. There are many laws that affect the Skadar - Shkodra Lake and this assessment is an attempt to identify the inconsistencies with the European and international standards at the content of the relevant laws while the effectiveness of these laws is another important issue.

From the other side, an environmental legal system is the combination of environmental law with the public authorities or other bodies that administer it within a particular jurisdiction or geographic area. It also includes the decision-making processes, policies, practices and constitutional constraints that affect the administration of the laws as well as the courts.

6.1. Specific Regulations on Trans-boundary Lake Protection

The most dedicated law on the environmental protection of Skadar - Shkodra Lake, as a trans-boundary lake in Albania is the Law No. 9103 dated 10.7.2003 "On Trans-boundary Lakes Protection"¹⁷. This law stipulates that applies specifically to the Skadar - Shkodra Lake as regards Albanian part. Within the scope of this law is the environmental protection of the natural state of the trans-boundary lakes, ensuring appropriate conditions for development of life and ecosystems in compliance with sustainable development principle and stopping of activities that threaten these lakes.

The law is addressed to all categories of subjects such as natural, legal, public, private persons, Albanian or foreigners who use water, natural and biological assets of the lake and its watershed, exercise different activities, whose activities are undertaken in the watershed and can cause damages to the lake.

To guarantee protection is needed that the relevant state authorities such as Ministry of Environment in collaboration with central, local government bodies, and water authorities should carry out trans-boundary lake management plans, special monitoring programs to keep under control the quality and biological diversity, establish local plans for the rehabilitation of the contaminated and damaged parts of the trans- border lake and undertake continuous and permanent environmental controlling to ensure the natural state, the flora and fauna of the lake. This law provides establishment of the lake administration that in under the Shkodra District in the case of Skadar - Shkodra Lake. This administration is responsible for management and protection of watershed, which will develop specific regulations required for this purpose.

The law clearly defines which of activities are allowed to be exercised and activities and actions that are prohibited or need permission in advance. Activities can be exercised only after issuing environmental licenses, meeting the set conditions, and preparation of the environmental profound impact report. Necessary condition is

¹⁷ <http://faolex.fao.org/docs/pdf/alb60527E.pdf>

that these activities should be conducted in accordance with the status of the watershed protection and not endangers biodiversity. The actions that are prohibited in trans-boundary lake are defined specifically, such as dumping or storing of substances that damage water quality, disrupt communications between water and land, damage the image around the area; exploit the water of the lake without permission and without applying biological and ecological balances; fishing, hunting or collecting plants of species in prohibited periods. It is prohibited also introduction into the lake of species of non-native populations.

In order to ensure protection and rehabilitation of the lake, it is needed that persons who perform activities in the trans-border lake or in its shores should pay a fee for the use of the lake. For the sake of diversity protection of species and habitats it is needed to be done their inventory in trans-boundary lake area. It is also necessary to be held a regional file for animals and plants of the trans-border lake. This file must be open to the public. In cases of water pollution of lake to be notified the public of the dangers that might cause this pollution to their health.

For an effective protection of the trans-border lake, all activities exercised in it should be subject of a permanent and continuous environmental control exercised by relevant state organs. Relevant sanctions are provided in cases of violations.

Albanian law provides the inventory of biological diversity and habitats in the trans-border area of the lake and the creation of a regional file for them. While Montenegro's law provides a register of pollutants integral with data obtained from the monitoring of qualitative and quantitative changes in the environment.

Albanian legislation has regulated principally the protection of transboundary lakes including and in particular Shkodra Lake, while Montenegro has no such arrangement.

The Republic of Albania has signed the Helsinki Convention "On the Protection and Use of Transboundary Watercourses and International Lakes"¹⁸ on March, 18 1992 which is further entered into force on January 5, 1994 while the Montenegro is not yet a member of that convention.

¹⁸ <http://www.unece.org/env/water/pdf/watercon.pdf>

6.2. *Environmental Protection and Liability*

From the environmental general protection perspective, the main basic laws to be analyzed in Albania and Montenegro are the laws on environmental protection. In Albania it is regulated by Law No.8934 dated 5.9.2002 “On Environment Protection”¹⁹ and in Montenegro by Environment Law “Official Gazette of the Republic of Montenegro, No 12/199820”²¹.

Albanian Law is more detailed than Montenegro’s Law with regard to the respective institutions in charge to cover and monitor certain aspects of environmental protection.

Both laws cover the majority of the sides of environmental protection based on clear and accurate goals as well as based on fundamental principles of environmental protection such as the principle of natural sources preservation, principle of sustainable development, principle of high level protection, principle of “polluter pays”, principle of public accessibility and involvement.

Recently, on June 9, 2011 the Albanian Parliament with the Law No. 10431 has approved the new law “On Environment Protection”. This new law is approximated with the Directive 2004/35/CE of the European Parliament and of the Council, dated on April 21, 2004 “On environmental liability with regard to the prevention and remedying of environmental damage” as amended. The law intends the protection of environment at a high level, its maintenance and improvement as well as provides conditions for the sustainable development of the environment but this law will enter into force after 18 months from the publication date.

With regard to Skadar - Shkodra Lake, the Albanian Law “On Environment Protection” regulates specifically the trans-boundary environmental impact as well as the environmental impact assessment in trans-boundary context which in Montenegro respective law is missing. Albania, in accordance with Espoo Convention of which is part from February 26, 1991, provides the environmental impact assessment on trans-boundary context. Montenegro has also ratified Espoo Convention on July 9, 2009, but doesn’t provide in Environment Law the meaning of environmental impact assessment in trans-boundary context.

¹⁹ <http://faolex.fao.org/docs/pdf/alb60655E.pdf>

²⁰ <http://www.mipa.co.me/userfiles/old/pdf/zakoni/Environment%20law.pdf>

²¹ <http://faolex.fao.org/docs/pdf/yug21081E.pdf>

Albanian Environment current Law lacks the explanation of the basic principles of the environment protection, while on the other hand Montenegro's Law not only mentions them, but also explains the content of these principles.

Montenegro as the ecological state, defined so in constitution, institutes the logo "Ecological State of Montenegro" which shall be stipulated by its Government. Albania should also look for an eco-management scheme and adopt the needed instruments and tools on environmental protection.

In Albanian Law "On Environment Protection" it is given importance to the environment licenses, while Montenegro doesn't provide this. It is recommended that in accordance with EU Directive 2004/35/EC "For Environmental Liability"²² it is necessary to create a categorization of environment licenses and to approve a law that defines these licenses and the cases in which a certain category of license has to be issued.

It is to be emphasized that the start of operation of the Albanian National Licensing Center has confused the issue of giving the environmental licenses which is a situation to be managed effectively. From the other side it is in the process of consultation a draft law on environment permits and is expected that when approved this law will abrogate provisions to different environmental law with regard to permit procedures and competent authorities. The draft law undertakes to adopt several EU directives on concerning integrated pollution control and prevention, environment permit system requirements, landfills and incineration of wastes, urban wasted water treatment etc.

Table 1. Indicators with regard to Environmental Protection

Indicators with regard to Environmental Protection	Albania	Montenegro
The status of the Skadar - Shkodra Lake	Natural Managed Reserve	National Park
Clarity of the objectives	✓	✓
Definitions	incomplete	incomplete
Liability	-	✓
Stimulating measures	-	✓
Special trans-boundary Protection	✓	-

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http://eurlex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=Directive&an_doc=2004&nu_doc=35

Principles	Amended & elaborated/not yet in force	✓
The principle of mutual responsibility & cooperation	-	-
Special assessment in trans-boundary context	✓	-
Monitoring/ Supervision	✓	✓
Detailed aspects on environmental conditions monitoring	-	-
Duties of state organs	✓	-
Environmental protection in the light of climate change	-	-

Explanatory Note: In Table no.1 the symbol (-) identifies the lack of the given indicator, while (✓) means the indicator is in place.

From the perspective of environmental protection, the Skadar – Shkodra Lake environmental protection from transboundary effects is covered by the United Nations Convention “On environmental impact assessment in transboundary context”. This Convention is ratified by both countries and based on that Albania has approved the law No. 9700 dated on 26.03.2007 “On Environmental Protection from Transboundary Effects”.

The Convention gives the basis for the definition of the terms such as the transboundary environment, party of origin, affected/concerned parties, transboundary impact including direct and afar impact as well as the manner the parties involved in an environmental transboundary issue should handle and manage the given situation.

The management of environmental transboundary issues is a process that implies the continuous exchange of the project and/or activity information among states/parties, establishment of official and technical communication, formation of joint groups, undertaking of common assessment of environmental impact and common monitoring programs, set of the methods and terms, prevention of disputes and the solution options.

In this regard, Albania and Montenegro should have a bilateral consecrate official agreement to ensure the appropriate and full implementation of convention requirements.

The bilateral agreement shall cover but without limited to, important aspects such as the requirements and modalities how a party will be informed, the participation as a party of origin or affected party, opening requirements to initiate a procedure,

respective proposals with solution options for a given case, the investigation documents file and case report, facilitation of public participation, concerns related to a decision for a certain case, monitoring procedures coordination, the right to appeal a decision, relationship with the Convention Secretariat and its involvement in specific cases, standardization of the communication documents, the language of communication, terms and related expenses to be estimated by each party.

6.2.1. Environmental Liability

Another important issue to be analyzed is the environment liability. In Montenegro law it is provided liability for environment pollution. As mentioned above Montenegro attends to regulate the particular responsibility of the state and the role and responsibility of everyone to preserve and promote the environment in constitutional level. Albania also should update the environmental protection legislation and include the environment liability as a very significant aspect of protection and as a must in the light of approximation with EU Directives on environment protection.

It is to be mentioned that both laws the Albanian's and Montenegro's intend to protect the quantity and quality of natural resources such as the Skadar - Shkodra Lake by the various human activities while they do not take into account in their legislation the protection from increasing influence of global and climate changes.

Along with the protection and monitoring of the environment, the environmental liability aspect is very important too. This aspect is covered by the principle "Polluter pays", in line with the principle of sustainable development. In a wider way the liability is regulated by Directive 2004/35/EC of the European Parliament on environmental liability with regard to the prevention and remedying of environmental damage. In Albania, environmental liability component has been problematic from the perspective of transposition and implementation of Directive 2004/35/EC, but with the approval of the new law No. 10431, dates 09.06.2011 "On Environmental Protection" is made a significant progress and the new law is fully approximated with the directive.

Water damage, which is defined as any damage that significantly harmfully affects the ecological, chemical, quantitative status, or ecological potential, needs to be prevented. At this point the protection of water of Shkodra - Skadar Lake is to be in attention of the respective competent authorities of both states, Albania and Montenegro. This can be achieved when both states has the appropriate respective

legislation in force and coordinates with each-other in this area with common interest.

The translation of the fundamental principle of environmental liability is that an operator whose activity has caused the environmental damage or the imminent threat of such damage is to be financially liable. This serves from one side to punish the polluters or the environmental violators and from the other side to ensure financial recourses to cover the restoration/rehabilitation of the environmental damage.

Both legislations imply the sanctioning of the environmental violators but are needed to have consolidated structures to monitor and punish the damage of the environment. In the case of Shkodra – Skadar Lake where an environmental damage affects or is likely to affect the other state, Albania and Montenegro should cooperate with a view to ensuring proper and effective preventive or remedial action in respect of any environmental damage.

In order to achieve effective protection of the environment, there is a need for more dissuasive penalties for environmentally harmful activities, which can typically cause substantial damage to the air, soil, water, plants and animals, including the conservation of species. It is very important for both countries to transpose the Directive 2008/99/EC of the European Parliament and of the Council “On the protection of the environment through criminal law”²³. This requires amendment to the Criminal Laws in both countries.

Table 2. Environmental liability

Indicators	Recommendations of Environmental Liability	
	Albania	Montenegro
Monitoring Authorities and Mechanisms	Strengthen of monitoring authorities & mechanisms	
Environmental liability provisions	Implementation of environmental liability provisions	
Cooperation between two countries	Enhance cooperation between two countries	

²³ <http://eurocrim.jura.uni-tuebingen.de/cms/en/vorgang/41/>

6.3. *Environmental Impact Assessment Component*

This component of environment impact assessment which is a very important element for the sake of environmental protection is regulated in Albania by Law No. 8990, dated 23.01.2003 "On the Environmental Impact Assessment"²⁴ changed by Law No. 10050 dated 24.12.2008 "For a change in the Law No. 8990, dated 23.01.2003 "On the Environmental Impact Assessment"²⁵ and in Montenegro by the Law on Environmental Impact Assessment²⁶.

Between these two laws there is a substantial difference that consists of the fact that in Albania each of the projects listed in the lists attached to the Albanian Law should be evaluated from the environmental impact perspective, whether through a profound or summary process. In Montenegro EIA covers projects that may have significant impact on the environment or human health while there is no definition for the "significant impact" as it is in the respective Albanian legislation.

In the Montenegro's legislation the scope of the project to go through EIA remains still ambiguous when is regulated that impact assessment shall also be undertaken for projects in industry, mining, energy, transport, tourism, agriculture, forestry, water management and utilities, as well as for all the projects that are planned on protected natural heritage sites and within the protected environment of immovable cultural heritage. It is the competence of the Government in Montenegro to establish the list of projects for which the EIA is mandatory and for those the EIA may be required.

The Albanian law on EIA gives definitions on the certain categories of environmental impact such as the acceptable average impact, significant impact, direct impact and indirect impact. The definitions for these categories of environmental impact are missing in the Montenegro's law even though they are mentioned in different parts of the content of the law.

According to Albanian law on EIA the list of the projects attached to the law have to undergo the EIA process that can be profound for the projects given in the appendix 1 and summary for the projects given in the appendix 2. There is an appendix 3 that gives the categorization criteria with regard to the projects characteristics, the location of the project as well as with the characteristics of the potential impact. The

²⁴ <http://faolex.fao.org/docs/pdf/alb60543E.pdf>

²⁵ http://faolex.fao.org/cgi-in/faolex.exe?rec_id=088520&database=FAOLEX&search_type=link&table=result&lang=eng&format_name=@ERALL

²⁶ <http://www.gov.me/files/1252660394.pdf>

transborder nature of the impact is mentioned explicitly that means that all project that affect the Skadar - Shkodra Lake even if part of Appendix 2 will undergo the profound process of EIA. Because of the fact that Skadar - Shkodra Lake is a protected area in the Republic of Albania, the projects or activities that affect the lake should undergo a profound process of EIA.

The Montenegro's law on EIA divides the projects in projects for which EIA is mandatory and projects for which EIA may be required. There is no specific regulation with regard to EIA on the trans-border nature of the project or on projects that affect national parks while the Skadar - Shkodra Lake in the Republic of Montenegro is protected as national park.

With regard to Skadar - Shkodra Lake, the Montenegro's legislation regulates the involvement of the neighbor state in EIA processes for projects that may have a significant impact to that state. Information and consultations about potential trans-boundary impact with the other state as the Republic of Albania shall be carried out based on the principle of reciprocity, in accordance with the international agreements concluded.

While the Albanian legislation on EIA regulates in details the terms, conditions and competent authorities to assess a given project and issue the environmental declarations or permit, there are no supervision instruments on the monitoring of the implementation of environmental permit. The Montenegro's legislation on EIA pays attention to the inspection of the projects implementation whether the project developer is undertaking measures envisaged by the study that has been approved for that project. This kind of inspection can identify ongoing projects for which an EIA process was needed and should go through.

In Albania, the consultative process for the EIA procedures is defined in the Council of Ministers Decision "On the participation of the public in the environmental decision making". The consultation arrangements with the neighbor state as in Skadar - Shkodra Lake is Montenegro, are not literally regulated in the EIA Albanian law. This aspect is covered by the Law "On Environmental Protection from Transboundary Impacts" and Council of Ministers Decision "For the approval of rules and procedures for the assessment of the activities with significant impacts on the environment of neighbor countries".

In accordance with national Albanian legislation, the interested parties in an EIA process can challenge the decision of the competent authority in court while the Montenegro's legislation on EIA cover only the administrative review up to the head

administrator and for the rest the reference is the implementation of the general administrative procedures law.

Table 3. Indicators with regard to Environmental Impact Assessment

Indicators with regard to Environmental Impact Assessment	Albania	Montenegro
EIA for projects that affect Skadar - Shkodra Lake	Through profound process	Not specified
Requirements for EIA	Mandatory for all projects given in the law	Mandatory or Optional
Approval of lists of projects to undergo EIA	In the Law	In the government regulation
Determination of competent authorities to manage the EIA process	Clear	Vague
Levels of review	Profound process Summarized process	-
Categorization of Impacts	✓	-
EIA process coverage on projects	Intended projects	Intended & ongoing projects
Right to appeal	Judicial review	Administrative review by head administrator
Involvement of other state in EIA process on projects with trans-boundary impact	-	✓
Public consultation and information	✓	✓
Inspection-Supervision on EIA implementation	✓	✓

Explanatory Note: In Table no.3 the symbol (-) identifies the lack of the given indicator, while (✓) means the indicator is in place.

There are under discussions at the Albanian Parliamentary Committees a new draft law "On Environmental Impact Assessment" and another draft law "On Environmental Permitting" that aims to establish an integrated system of environmental permit granting and inspection for economic activities with negative impact.

6.4. Nature protection

The nature protection as a whole including its ingredient components protection such as: biological diversity, ecosystem, forest ecosystem, legatine and water habitats, preservation of genetic diversity, landscape, habitat types, natural assets,

nature reserves, plants and animals species, wild species of plants and animals, geological objects etc, is of high importance for the Skadar - Shkodra Lake. The lake and the buffer zone comprise all these elements and as such the existence of nature protection requirements and measures and their implementation is vital.

The environmental legislation of Montenegro contains a significant law that affects in many aspects the Skadar - Shkodra Lake, the Law "On Nature Protection"²⁷. This law assembles regulations that cover a wide range of nature elements as well as provides the requirements to be taken, in order to protect the nature and even enhance it. Beside this legislation is the National Biodiversity Strategy with the Action Plan in Montenegro.

The care for natural elements from one side as well as the restoration and enhancement of damaged nature and restoration of natural balance and harmonized relations with human actions is expressed in the law in a way that obliges all legal and natural persons to undertake actions or perform activities that contribute to the protection and enhancement of nature, conservation of biological and landscape diversity and general beneficial functions of nature and natural balance. Likewise, the use of natural resources may be exercised solely up to the extent, which does not threaten biological diversity and functioning of basic natural systems and processes in order to protect nature before any harmful consequence arises.

Montenegro has focused protection for Skadar Lake based on the Law "On Nature Protection" because of the fact that the Montenegro's Parliament by a special act has proclaimed it as National Park. Especially in National Parks is forbidden to carry out actions and activities or perform operations that are dangerous to natural genuine features. For National Parks is required by the law a management plan with outstanding characteristics. In interpretation of the law, being a National Park, Skadar Lake is a protected natural asset. The law provides that a protected natural asset may be linked to protected natural assets of other state by an international agreement but doesn't provide any detailed regulation in this context.

Albanian legislation regulates the nature protection in a different way by covering particular aspects of nature protection by special laws among which the most related law is the Law No. 9587 dated on 20.07.2006 "On Biodiversity Protection". This law elaborates the definitions for different nature protection aspects such as: biodiversity, habitats, ecosystem, sustainable use, genetic sources, legatine, sorts and species, foreign species as well as for other biological diversity components.

²⁷ "Official Gazette of Montenegro", No. 51/08 from the 22nd of August 2008.

The Skadar - Shkodra Lake enjoys high protection from the regulations of abovementioned law. The care for transboundary effects is distinguished and the law provides specific regulations on the biodiversity protection in transboundary context as well as the responsible state authorities to monitor and harmonize the protection with neighbor states and international organization especially on common or transboundary biological diversity components, transboundary effects of the activities carried out in Albanian territory, affordability for emergency situations and compliance with the obligations that derive from international agreements.

Even though there is a Biodiversity Strategy and Action Plan (BSAP) for Albania, prepared by National Environmental Agency with the support of World Bank through the Global Environment Facility, since the year of 2000, according to the biodiversity protection law of the year 2006, the Council of Ministers should approve the national strategy as well as the action plan on biodiversity protection, which should be updated every 10 years. The CoM shall also decide on the establishment of the inventory and monitoring biodiversity network which will be the main information resource for the decision-making in all levels as well as the list of exceptional protected water and land species.

Protection of the countries' landscape and biological diversity is only possible if sustainable policies and practices are implemented as an integral part of sector policies, including agriculture, forestry, fishing and hunting, energy and industry, transport, tourism and water management.

In the frame of public awareness and active participation is foreseen to integrate into school curricula the education of pupils and students on nature protection principles. This aspect is implemented only in university programs, moreover at the Faculty of Environmental Engineering, Forestry Engineering, Faculty of Law and some private universities. It is necessary a further cooperation between the actors such as Ministry of Environment, Ministry of Education and Science and Universities.

6.4.1. Habitat and birds directives

The Skadar - Shkodra Lake comprises a variety of different habitats and an incredible range of wildlife. Thus, it is one of the most important birding sites in Europe.

Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 “On the conservation of wild birds”²⁸ (Birds Directive) and the Council Directive 92/43/EEC of 21 May 1992 “On the conservation of natural habitats and of wild fauna and flora”²⁹ (Habitats Directive) are essential instruments for the conservation of natural habitats and of wild fauna and flora especially in protected areas, as Skadar – Shkodra Lake is.

The main objectives of these Directives are to promote the maintenance of biodiversity, taking account of economic, social, cultural and regional requirements under global Conventions, including the Convention on Biological Diversity and the Ramsar Conventions. The full and proper implementation of both Directives will be crucial to achieving this target and this is to be emphasized more when consider that Albania and Montenegro are states that aspire to integrate in the EU. In this frame, both countries should transpose and implement these directives.

Directive 79/409/EEC on the conservation of Wild Birds as amended are transposed into the updated Albanian law on hunting which sets up the principles on wise use and ecologically balanced control on bird species. The legal framework is more completed with the order of the Minister No. 553, dated on July, 7, 2010 “On the approval of the list of species that can be hunted in the Republic of Albania”.

Birds and Habitats Directives require taking a number of measures in order to protect all bird species, their sites and their habitats. They oblige taking specific measures to conserve all naturally occurring bird species across the EU, classify as Special Protection Areas the most suitable territories for species listed on Annex I of the Directive and migratory species, maintain Special Protection Areas in Favorable Conservation Status, prepare and implement management plans, setting clear conservation objectives, provide co-financing for the management of these protected sites and regulate the hunting of certain species of birds listed in Annex II of the Birds Directive.

As the Birds Directive recognizes that habitat loss and degradation are the most serious threats to the conservation of wild birds, therefore in Skadar - Shkodra Lake both states Montenegro and Albania should put great emphasis on the protection of habitats for endangered as well as migratory species, especially through the establishment of a coherent network of Special Protection Areas comprising all the most suitable territories for these species. The wild birds, in particular those that are

²⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:020:0007:0025:EN:PDF>
²⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992L0043:EN:HTML>

migratory, are a shared heritage and for that reason their effective conservation requires close collaboration between Albania and Montenegro.

Wild Birds Directive 2009/147/EEC as well as Habitats Directive 92/43/EEC are transposed and implemented in an adequate level in both countries.

In order to ensure better protection and to safeguard Europe's biodiversity, since 1994 all Special Protection Areas form an integral part of the Natura 2000 ecological network. Natura 2000 network, as an EU wide ecological network of special areas of conservation, is important to have an adequate management.

The Birds Directive bans activities that directly threaten birds, such as the deliberate killing or capture of birds, the destruction of their nests and taking of their eggs, and associated activities such as trading in live or dead birds, with a few exceptions as listed in Annex III - III/1 - III/2 of the Directive.

From the other side, the Directive recognizes hunting as a legitimate activity and provides a comprehensive system for the management of hunting but limits hunting to the species listed in Annex II - II/1 - II/2 to ensure that this practice is not harmful. This includes a care to ensure that birds are not hunted during the periods of their greatest vulnerability, such as the return migration to the nesting areas, reproduction and the raising of chicks.

Therefore it is required that Albania and Montenegro should ban all forms of non-selective and large scale killing of birds, and to promote research to support the protection, management and use of all species of birds covered by the Birds Directive.

6.4.2. Hunting

Part of the nature protection legislation in Albania is the Law No. 10253 dated on 11.03.2010 "On Hunting" and the Law No. 10006 dated 23.10.2008 "On the Protection of Wild Fauna" that transpose mostly the wild bird directive. This law aims among others to protect the wild fauna and their habitats in the course of hunting. Thus there are definitions and related rules on hunting season, hunting zone, reservoirs on breeding of wild fauna types, allowed capacity of hunting zones, ten years management plan on hunting as well as responsible state institution on monitoring and control of hunting. Along with this legislation the law No. 9867, dated 31.01.2008 "On the determination of rules and procedures of international trade on endangered species of wild flora and fauna" and the ministerial order "On

the approval of the list of species that can be hunted in the Republic of Albania” satisfy better the related legal basis.

The hunting in the zone of Skadar - Shkodra Lake is plainly prohibited because of being part of the Ramsar List, and never can be included in the territories of hunting zones. The Albanian responsible ministry which for the moment is the Ministry of Environment, Forest and Water Administration has to make public in its web site the maps where are shown the accessible zones and prohibited zones for hunting.

The monitoring of hunting is led by the ministry which establishes the monitoring programs and attends its implementation. The law also provides sanctions for violators that hunt in prohibited zones for hunting.

The Montenegro’s law on hunting provides similar regulations and monitoring instruments except one thing that hunting in the Skadar Lake zone is not strictly prohibited as it is in Albania but the National Park management unit is in charge of managing the hunting aspects in that zone.

7. CONVENTIONS

Being a very demand issue the environmental matters are covered by numerous conventions but here below are given the most significant conventions that affect the Skadar - Shkodra Lake for the reason of being a transboundary lake.

7.1. *RAMSAR Convention*

RAMSAR Convention is an intergovernmental treaty that embodies the commitments of its member countries to maintain the ecological character of their Wetlands of International Importance. One of the pillars of this convention is to ensure the effective management of the wetlands included and to work towards the wise use of all their wetlands through national land-use planning, appropriate policies and legislation, management actions, and public education as well as to cooperate internationally concerning transboundary wetlands.

In February 2, 2006, by Ramsar Convention on Wetlands, the Shkodra Lake, Albanian part, was included in the Ramsar list of wetlands of international importance while in December 15, 1995 was included the Skadar Lake, Montenegro’s part. Wetlands included in that List acquire a new status at the national level and are recognized by the international community as being of significant value not only for the country, or the countries, in which they are located, but for humanity as a whole.

7.2. ESPOO Convention

The Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention 1991), known as the Espoo Convention, establishes a procedure to manage transboundary impacts. The Convention was adopted with the support of the United Nations Economic Commission for Europe (UNECE) and entered into force in 1997.

The general aim of the Convention is to “ensure environmentally sound and sustainable development” through the prevention, reduction and control of significant adverse transboundary environmental impacts from proposed activities. More specific objectives are to “enhance international co-operation in assessing environmental impact in particular in a transboundary context”, and “to give explicit consideration to environmental factors at an early stage in the decision-making process”. The last mentioned objective recalls the concept of prevention, a core value in EIA.

Transboundary assessments under the Espoo Convention have already helped to mitigate tensions between countries. Some of the Espoo Convention mechanisms are the requirement to undertake an EIA process, the consultation between countries, and the facilitation for public participation for all the stakeholders. At this moment the Convention applies only at the project level of proposed activities leaving open the possibility to be applied for policies, plans and programmes.

For activities likely to cause transboundary impacts, the party of origin should notify the affected party through the “point of contact”. According to the Convention a party of origin is the country under whose jurisdiction a proposed activity is planned to take place. Several countries could be party of origin simultaneously. The Notification should be sent as early as possible as and not later than when the public in the party of origin is informed about the EIA process. When parties of the Convention are simultaneously parties of origin and affected parties, reciprocal notifications should be sent.

Before taking the final decision the party of origin should enter into consultations with the affected party concerning the potential transboundary impacts and measures to mitigate them. Concerned parties should agree on the timing of consultation, issues to be addressed, who is participating in the consultations, roles of different stakeholders, and means to be used in the consultation. The final decision of approval is taken by the party of origin and should be based on the results of the EIA process and the EIA documentation. It should be specified how comments of affected party authorities and general public were taken into account.

The party of origin should provide the affected party the final decision with the reasons on which it was based.

7.3. AARHUS Convention

Challenges are present, in Albania and Montenegro, in regard to the implementation of the Aarhus Convention provisions, in particular regarding the need to strengthen public participation in decision-making and improve access to environmental information.

The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters was signed on 25 June 1998 in Aarhus, Denmark, by the European Community. The European Community has, since then, been adopting appropriate legislation both at the Member States level and at the level of its institutions and bodies in order to fully implement this international legal instrument with a view to its accession by the European Community. Aarhus Convention was concluded as part of the United Nations Economic Commission for Europe in line with "Environment for Europe" process. It entered into force on 30 October 2001.

The subject matter of this convention is divided into "three pillars:" access to information, public participation in decision making and access to justice in environmental matters. These three procedural rights are tools to attain a substantive goal, that of environmental protection.

Moreover, the Aarhus Convention also concerns government accountability, transparency and responsiveness and it is considered as a pioneer governance tool in the environmental field. With the view to its implementation, the European Community has adopted two directives in 2003, the first one dealing with access to environmental information, which repeals the existing regime of Directive 90/313/EEC, and the second with public participation in environmental decision making. In the case of public participation mechanisms, there is an association between public participation and environmental performance and transparency.

The Aarhus Convention on Public Participation reflects this point: *"in the field of the environment, improved access to information and public participation in decision-making enhance the quality and the implementation of decisions..."*. The Convention also implies that public participation will *"further the accountability of and transparency in decision-making..."*. Accordingly, public participation would encourage the inclusion of environmental issues in decision making; and transparency would also have positive influences. This would contribute to protect the environment.

With regard to access to information and public participation, Albania and Montenegro has made progress to transpose and implement the Directive 2003/4/EC and Directive 2003/35/EC.

7.4. *BASEL Convention*

The fundamental aims of the Basel Convention are the control and reduction of transboundary movements of hazardous and other wastes subject to the Basel Convention, the prevention and minimization of their generation, the environmentally sound management of such wastes and the active promotion of the transfer and use of cleaner technologies

Table 4. Important Conventions related to Skadar - Shkodra Lake protection

	Conventions	Albania	Montenegro
1	ESPOO Convention "On Environmental Impact Assessment in a transboundary context"	Member/ Ratified in 04.10.1991	Member/ Ratified in 09.07.2009
2	Helsinki Convention "On the protection and use of transboundary watercourses and international lakes"	Member/ Ratified in 05.01.1994	Non member of the Convention
3	Ramsar Convention "On Wetlands of International Importance especially as Waterfowl Habitat"	Member/ Ratified in 29.02.1996	Member/ Ratified in 03.06.2006
4	Aarhus Convention "On Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters"	Member/ Ratified in 27.06.2001	Non member of the Convention
5	Basel Convention	Accession in 29.06.1999	Succession in 23.10.2006

8. STRATEGIES

The significance of this matter is that evaluating the effectiveness of the whole parts of environmental legal systems in a selected geographical area such as Skadar - Shkodra Lake, is an integral component of wider government policy cycles and planning processes. In this context, a strategy is a position taken and communicated by government that recognizes a problem and states in general what will be done.

8.1. Environmental Strategy

In Albania the main document that sets the state policy in the field of the environmental protection is the “Environmental Crosscutting Strategy “(ECS) of 2007³⁰. ECS is integral part of the National Strategy for Development and Integration. Crosscutting framework provides a modern and integrated treatment of the environmental sector and of other sectors with strong impact in environmental quality. ECS is supported by more detailed action programs that address specific issues such as Strategy and Biodiversity Action Plan, Strategy for the Development of Forest and Pasture Sector, Fishery Strategy and National Plan of Waste Management. This Environmental Crosscutting Strategy brings together the most important elements of these actions in a single and contemporary whole.

It is noted that ECS is designed in full accordance with drafting standards of the strategies of the European countries. The Albanian Strategy includes development drafting of sectional policies for integrated environment, strengthening of the national management system of these natural elements, integrated management of protected zones, enterprise policies to increase green areas, contemporary policies in fishing, increase the rate of the usage of the renewable resource in relation to the non renewable ones.

It also provides the steps that need to be taken to approximate the regulator legal framework with European legal framework and its implementation, increasing tendency to transfer step by step the process of natural resource management of the community. An important issue that it is affected by this strategy is the execution of environmental impact assessment for diverse activities and the strategic environmental assessment for plans, programs and policies.

Other issues that are treated in ECS are the fulfillments of the obligations that derive from the membership in international agreements, strengthening the role of the public and civil society represent some of the main directions of this strategy for achieving the above basic target. ECS has used as methodology the incorporation of the Action Plan in an integrated manner in all covered areas.

ECS puts a special emphasis to the compliance of national legislation with the EU Community that is estimated as partial. Albanian environmental legislation is wide in fields and goals, though it doesn't cover all the areas of *Acquis* and control regime is not effective in providing its implementation.

³⁰<http://www.moe.gov.al/upload/Legjislacioni/strategji/Strategjia%20Ndersektoriale%20e%20Mjedisit%202007.pdf>

Strategic priorities set by Albanian Government Program are the implementation of environmental legislation, the adoption of legal standards of EC, the capital investment in environmental protection, the financial support for environmental infrastructure, environmental resource management, communication and awareness and the decentralization and ownership.

The conservation of biodiversity is one of the key elements of a sustainable development. Strategy for Biodiversity and Action Plan approved in 1999 constitutes the main document that defines goals, objectives and the measures of biodiversity management in Albania for the period of 2000-2015. This document is also reflected in ECS.

Montenegro doesn't have an Environmental Crosscutting Strategy but it is included in the National Strategy of Sustainable Development of Montenegro of 2007³¹. One of the vital pillars of sustainable development is Environment and Natural Resources where the most important issue is identification of problems and challenges, priority objectives and measures.

A special challenge is the pressures in the area of Skadar Lake, which need to be adequately addressed through a more efficient protection of the protected zones and establishment of sustainable development at the level of local communities that gravitate towards national parks. Besides, significant challenges are related to protection of biodiversity and conservation of natural values, especially in the protected areas. Responses to these challenges should be sought through the protection of especially valuable habitats and through an integrated management of the whole area.

The process of National Capacity Self-Assessment (NCSA) for the implementation of global environmental conventions was initiated in Montenegro in 2006. The National Capacity Self-Assessment refers to the three thematic areas and respective United Nations Conventions such as Climate change, Biodiversity and Land degradation. So the Government of Montenegro adopted on July 29 2010 the National Biodiversity Strategy and Action Plan for the period 2010 – 2015. The strategy is the fundamental document for protection of nature, which determine long-term goals and numerous actions for protection biological diversity and protected natural assets, as well as ways of its implementation coherent with overall economic and social circumstances in the country.

³¹ <http://www.gov.me/files/1207655097.pdf>

Prior to Strategy adopted, a new modern Nature Protection Law in 2008 has been adopted in order to transpose relevant provisions from various international agreements in the field of nature protection, including the Convention on Biological Diversity, and the relevant regulations of EU.

A special challenge in the protection of biodiversity and natural values is finding a way to resolve conflicts between nature protection and development. For this purpose it is necessary to include mechanisms for the assessment of impacts on biodiversity and to ensure a greater level of integration of knowledge about biodiversity and natural values in sector plans, programs and strategies.

8.2. Fishery Strategy

In Albania there is a sectorial strategy on the development of fishing and aquaculture for the year 2007 through 2015.

Fishing in inland waters is regulated in a specific title of the strategy and particularly in Shkodra Lake. The strategy takes into consideration that fishing in Shkodra Lake is a traditional activity and an important source of their incomes. It also implies measures on the implementation of the legislation on fishing.

The strategy paves the way for the continuous improvements into the national fishery legislation in line with EU directives in the frame of Common Fisheries Policy and the positive regional policies and practices.

Among short-term, mid-term and long-term sectorial development policies is the management of common reserves and international relationship.

The main objective of this policy are the establishment and implementation of fishery management plan including monitoring mechanism as well as application of obstacles measures on the water resources exploitation.

Montenegro fisheries development strategy is introduced as an implementation instrument for EU Common Fisheries Policies in Montenegro. In the focus of the strategy is the establishment of adequate administrative structure to ensure effective implementation of fisheries policy and management of the resources.

The main areas covered by the strategy with the significant for the Skadar – Shkodra Lake are the protection and sustainable use of freshwater fishery.

Within inland fisheries sector, Skadar Lake provides an important fishery resource for Montenegro.

9. REVISION OF THE CURRENT LEGISLATION THAT AFFECT SKADAR - SHKODRA LAKE AND RECOMMENDATIONS IN THE LIGHT OF EU STANDARDS

EU standards and Directives are used to bring different national laws into line with each other, and are particularly common in matters that affect the protection of the environment. RENA has undertaken programs to monitor the transposition and implementation of EU environmental *acquis* in regional countries at accession's door to EU, including Albania and Montenegro.

The EU's Environmental Impact Assessment (EIA) Directive has been in operation for over 20 years. From the member states experience two main aspects related to the EIA procedure have been identified such as that environmental considerations are taken into account in the decision-making processes and the transparency is ensured in the environmental decision making.

9.1. Revision of the Current Legislation

The ESPOO (EIA) Convention implementation, which is ratified by Albania in October 4 1991 and by Montenegro July 9, 2009, encounters some problems that relate to the insertion of the EIA procedures into existing procedures. The inconsistencies refer to regulatory legal framework in place in both countries before being required to adopt national legislation to the requirements of the EIA Directive. For Albania and Montenegro the EIA Directive should be transposed as part of the accession requirements to ensure harmonization of the national legislation with the EU Acquis. Thus Albania and Montenegro before entering the EU has to promote the implementation of Espoo Convention on EIA in a trans-boundary context and to some degree also the Aarhus Convention facilitating the active participation of the public.

As part of the two above mentioned conventions, both states should be focused on ensuring that environmental consequences of projects are identified and assessed before authorization or study is given and the public have had realistic opportunity to give its opinion and those opinions are taken into account into evaluation procedure of a given project. Part of the public involvement in the process is the information on the taken decision/authorization. The main emphasis remains the

prevention of negative environmental impacts. It is also of great importance to identify the appropriate measures to mitigate impacts through the design of the schemes and means to give the environmental situations a higher standing and clearer position in the decision-making process.

Environmental assessment is a procedure that ensures that the environmental implications of projects are taken into account before the decisions are made. Environmental assessment can be undertaken for different individual projects that may have environmental impact, on the basis of Directive 85/337/EEC, as amended (known as 'Environmental Impact Assessment' – EIA Directive) or for public plans or programs on the basis of Directive 2001/42/EC (known as 'Strategic Environmental Assessment' – SEA Directive). The common principle of both Directives is to ensure that plans, programs and projects likely to have significant effects on the environment are made subject to an environmental assessment, prior to their approval or authorization. Consultation with the public should always be part of environmental assessment procedures.

The Directives on Environmental Assessment aim to provide a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation of projects, plans and programs with a view to reduce their environmental impact. The 85/337/EEC on EIA as amended by Directives 97/11/EC, 2003/35/EC and 2009/31/EC has a satisfactory level of transposition and implementation in both countries while 2001/42/EC Directive on SEA is transposed partly but encounters weaknesses in implementation.

The new Albanian law of 2011 “On Environmental Protection” doesn’t address the SEA component but the previous related weak regulations on SEA will remain into force for an undefined period of time, until a new specific law will abrogate them. Only, the Law No. 10119 dated 23.04.2009 “On Territory Planning” provides sufficient ground for SEA in land use plans.

In Montenegro since November 2005 are approved the Law “On Environment Impact Assessment” and the Law “On Strategic Environment Assessment”³², but it is not yet reached the full compliance with SEA EU Directive and ESPOO Convention.

The Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment as amended, known as the "EIA" (environmental impact assessment) Directive, requires that an environmental

³² Official Gazette of Montenegro 80/05.

assessment to be carried out by the competent national authority for certain projects which are likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location, before development consent is given. The projects may be proposed by a public or private person.

The EIA Directive of 1985 has been amended three times, in 1997, in 2003 and in 2009. Directive 97/11/EC brought the Directive in line with the Espoo Convention on EIA in a trans-boundary context. The Directive of 1997 widened the scope of the EIA Directive by increasing the types of projects covered, and the number of projects requiring mandatory environmental impact assessment given in the Annex I of the directive. That Directive also provided for new screening arrangements, including new screening criteria given at the Annex III for the list of the projects given to the Annex II, and established minimum information requirements. These three annexes should be transposed to the national legislation of Albania and Montenegro.

Being conscious that there are 50 species of fish living in the Skadar - Shkodra Lake, the fishery policies are of high importance. The projects and programs co-financed by the EU like fisheries policies, which in Albania and Montenegro are expected to be implemented in the future, have to comply with the EIA and SEA Directives to receive approval for financial assistance.

The environmental impact assessment must identify the direct and indirect effects of a project on the following factors: human beings, the fauna, the flora, the soil, water, air, the climate, the landscape, the material assets and cultural heritage, as well as the interaction between these various elements. The developer must provide the authority responsible for approving the project with the following information as a minimum: a description of the project with regard to location, design and size, possible measures to reduce significant adverse effects, data required to assess the main effects of the project on the environment.

Directive 2003/35/EC was seeking to align the provisions on public participation with the Aarhus Convention on public participation in decision-making and access to justice in environmental matters. Beside the Aarhus Convention implementation and related regulations to the law on environmental protection, a new action to fully transpose the Environmental Information Directive 2003/4/EC of January 2003 needs to be addressed to both countries legislation.

Directive 2008/98/EC on waste management framework is in an early stage of approximation and implementation. This Directive is partly transposed but not properly implemented in both countries.

The provisions of 2001/81/EC National Emission Ceilings Directive as amended, even though there are entered into national pieces of environmental legislations in alternating manner, should be transposed by both countries for certain atmospheric pollutants.

Directive 2007/60/EC “On the assessment and management of flood risks” is a good basis for the countries to establish a framework for the assessment and management of flood risks in order to reduce the adverse consequences for human health, the environment, cultural heritage and economic activity associated with floods within their territory. Each of the countries should have a legislation approximated with that directive and establish a competent authority for flood management.

For projects that affect Skadar – Shkodra Lake, because of having transboundary effects Albania and Montenegro must make the related information available to interested parties on its territory and the neighbor territory to enable them to express an opinion. Reasonable time-limits must be provided for, allowing sufficient time for all the interested parties to participate in the environmental decision-making procedures and express their opinions. These opinions and the information gathered pursuant to consultations must be taken into account in the approval procedure. Each of the countries, Albania and Montenegro, at the end of the procedure, should transmit to the other country the information on the approval or rejection of the project and any conditions associated with it, the arguments upon which the decision was based and any measures to reduce the adverse effects of the project.

9.2. Articulation of proposals for improvement

Albanian and Montenegro’s environmental legislation manifests structural problems. Also, the enforcement mechanism of these rules is not working. Thus to be successful in transposing and implementing the EU legislation, both countries must carry out in advance a review of national legislations.

Successful forcing will also require improvements in the system of environmental permits, which is the main mechanism of control. Implementation and enforcement of law at the same time requires awareness or changes in the general attitude towards the environment. This will be accomplished through the improvements in the legislation and communication.

In order to provide a balance between environmental protection and economic development, interim standards should be established on the base of a clear analysis

of financial and economic resources required for implementation of any part of legislation.

It is noted that existing legal and institutional framework doesn't provide a satisfactory level of efficiency in implementing nature and biodiversity protection measures. Apart from the insufficient level of enforcement of national regulation, there are also numerous international obligations from the conventions and protocols to which Albania and Montenegro are part, but still await adequate solutions.

In order to improve the legal framework for the protection of biodiversity and an effective system for biodiversity monitoring, it necessary the change of the relevant regulations and harmonization with EU legislation and the establishment of the adequate monitoring program through establishing managers for all the nature protected areas.

For the Skadar - Shkodra Lake, the implementation of environmental legislations in both countries require necessarily additional structures that will be able to act as advisory body to assist the local authorities in meeting environmental obligations, increase environmental awareness at local level, in conservation of natural resources and in sustainable use of natural resources which have under management including forest, pasture, water and fishery resources.

As for the fishery, to protect the freshwater fisheries to sustainable levels is required to adapt and improve legislation, to improve the system of resource, monitoring and data collection, and by applying the demanding EU and international standards of fisheries control.

The legal transposition process should be managed carefully by each country in order to avoid the legal vacuum in any aspect and the newly adopted laws should state clearly the law or part of the law that will remain into force until a new law will replace it in accordance with respective governmental matrixes of Albania and Montenegro.

In support of legal transposition process with EU Directives, assessments of effectiveness of measures taken under the new adopted legislation have to be undertaken periodically.

In this table below are served in synthesized way the proposals for improvement

Table 5. Recommendations on national legislation revision in the light of EU standards

Recommendations on national legislation revision	Albania	Montenegro
Insertion of EIA procedures into existing relevant legislation	✓	✓
Transposition of EIA Directive	✓	✓
Elaboration of implementation of ESPOO Convention on EIA trans-boundary context & Aarhus Convention	✓	✓
Identification and Implementation of appropriate measures to mitigate environmental impacts	✓	✓
Compliance with SEA Directive on different projects	✓	✓
Unification of the lists of projects & screening criteria given in the annex I, II, III of the EIA Directive	-	✓
Exchange of information on EIA process and results	✓	-
The explicit possibility to challenge environmental decisions in court	-	✓
Appropriate monitoring measures and tools	✓	-
Implementation of Stabilization Association Agreement	✓	✓
Guidelines on screening criteria's	✓	✓
Water legislation update and strengthen	✓	✓
Implement <i>acquis</i> on fishery	✓	✓

Explanatory Note: In Table no.4 the symbol (✓) means the indicator it is recommended to be improved.

9.3. Intergovernmental Agreement between Albania and Montenegro

The Skadar - Shkodra Lake and its protection and sustainable development is of high interest and importance for the Republic of Albania and Republic of Montenegro. It already exist cooperation between these two countries, but a more demanding collaboration it is needed.

On May 9, 2003 was finalized and signed a Memorandum of Understanding between the Ministry of Environment of the Republic of Albania and Ministry of Environment and Physical Planning of Montenegro whose subject was the institutional cooperation on environmental issues. Skadar-Shkodra Lake related joint projects engage an important part of that memorandum but does not address

properly some important components of the cooperation with regard to the Lake. This Memorandum of Understanding was valid only for 5 years but in 2008 was renewed.

There is also an agreement between the Government of the Republic of Albania and the Government of Montenegro on water problems, the Statute of Joint Albanian-Montenegrin Intergovernmental Commission for border waters treatment as well as the Protocol of meeting of this Commission signed in 31.10.2001 and entered into force on 13.02.2003.

With the focus to the integrated protection and development of Skadar - Shkodra Lake an intergovernmental agreement followed the MoU between respective ministries. The both states should be engaged to harmonize the criteria, standards in respective native legislation that in a way affect the Skadar - Shkodra Lake as well as develop missing strategies, in order to ensure the lake management according to the principle of sustainable development. They also should establish and maintain an effective system of data base registration, system of monitoring in order to keep under control the environmental conditions and the quality of the Lake.

In order to ensure effectiveness of the cooperation for the achievement of the objectives, it is established a joint structure, Joint Commission for Skadar - Shkodra Lake as well as four working group with representatives from both countries.

The two other important documents with regard to the cooperation between two countries on environmental protection and sustainable development of Skadar - Shkodra Lake are MoU between Council of Ministers of Albania and Government of Montenegro on the transboundary development of Skadar - Shkodra Lake, signed on 26. 05.2006 and MoU between Ministry of Environment, Forests and Water Administration of the Republic of Albania and the Ministry of Agriculture, Forests and Water Administration of Montenegro, signed and entered into force on 14.12.2010.

Pursuant to the continuous technical and diplomatic cooperation between two countries, in January 2011 Albania and Montenegro have entered into a MoU on flood management in Shkodra.

In the frame of ESPOO Convention membership, Albania and Montenegro should have a bilateral consecrate official agreement to ensure the appropriate and full implementation of convention requirements. The bilateral agreement shall cover but not limited to, important aspects such as the requirements and modalities how a party will be informed, the participation as a party of origin or affected party, opening requirements to initiate a procedure, respective proposals with solution

options for a given case, the investigation documents file and case report, facilitation of public participation, concerns related to a decision for a certain case, monitoring procedures coordination, the right to appeal a decision, relationship with the Convention Secretariat and its involvement in specific cases, standardization of the communication documents, the language of communication, terms and related expenses to be estimated by each party.

In the frame of national legislations amendments and changes to approximate them with the *acqius* is necessary for Albania and Montenegro to revise the agreements between two countries in order them to reflect the dynamic of legislations upgrading.

10. KEY RECCOMANDATIONS OF THE LEGAL REVIEW

Table 5. Matrix of Main Differences in Albania and Montenegro Legal Framework and Key Recommendations

Area	Law		Indicator	Current Status		Recommendations	
	Albania	Montenegro		Albania	Montenegro	Albania	Montenegro
Protected areas & Natural Parks	Law No. 8906 dated on 06.06.2002 as amended by Law No.9868 dated on 04.02.2008	Law on National Parks (Official Gazette of Montenegro 56/09 of 14 August 2009)	Status of the Skadar – Shkodra Lake	Protected Area <i>Natural Managed Reservation</i> (Natural Park)	Protected Area <i>National Park</i>	Change the Status from Natural Managed Reservation to National Park: Draft new CoM Decision on the declaration of Shkodra Lake as National Park	✓
Nature Protection	Law No. 9587 dated on 20.07.2006 "On Biodiversity Protection"	Law "On Nature Protection" (Official Gazette of Montenegro", No. 51/08 from the 22nd of August 2008)	Dedicated rules on nature protection and conservation as well as feasibility assessment component	The regulation of this component is shared in different laws	Complete	CoM Decision on National Strategy on biodiversity	Management Plan with outstanding features on National Park protection
			Basic principles of nature protection and enhancement	Complete			

Nature Protection	Law No. 9587 dated on 20.07.2006 "On Biodiversity Protection"	Law "On Nature Protection" (Official Gazette of Montenegro", No. 51/08 from the 22nd of August 2008)	Nature & biodiversity protection in transboundary context	Included		Exchange information in regular basis on the inventory network for the biodiversity elements in the Skadar - Shkodra Lake	
			Special protection on transboundary natural assets	Not complete		Draft bilateral agreement on protection of transboundary natural assets	
Environmental Protection	Law No.8934 dated on 05.09.2002 as amended by Law No.9537 dated on 18.05.2006, by Law No.9890 dated on 20.03.2008 and by Law No.10137 dated on 11.05.2009	The Official Gazette of Montenegro No. 12/1998	Clarification of the objectives of the Law	Clear		Further elaborate the objective of the law	
			Definitions	Incomplete		To be completed and elaborated	To be completed and elaborated
			Liability	Missing	Provided	To be completed	✓
			Stimulating measures	Missing	Provided	To be incorporated	✓
			Special transboundary Protection	Provided by special Law no. 9103 "On the protection of transboundary Lakes", dated on 10.07.2003	Included within the general environment protection law	✓	To draft a special Law on transboundary lakes protection
			Principles	Incomplete / unclear definitions of principles	More comprehensive	To be amended & elaborated	✓
			The principle of mutual responsibility and cooperation	Missing		To be included	

Environmental Protection	Law No.8934 dated on 05.09.2002 as amended by Law No.9537 dated on 18.05.2006, by Law No.9890 dated on 20.03.2008 and by Law No.10137 dated on 11.05.2009	The Official Gazette of Montenegro No. 12/1998	Special assessment in trans-boundary context	Included	Missing	✓	To be introduced
			Monitoring/ Supervision	Included		Better define responsibilities of monitoring/supervision state authorities to avoid overlapping of competences	
			Detailed aspects on environmental conditions monitoring	Not proper defined		To be elaborated	
			Duties of state organs	Better defined	Not proper defined	✓	To be further elaborated
			Environmental protection in the light of climate change	Not addressed specifically	Not addressed specifically	To be included	
Environmental Protection from Transboundary Impacts	Law No. 9700, dated on 26.03.2007	-	Implementation of ESPOO Convention in country context/ Adoption of the specific legislation	In place	Missing	✓	To be drafted and approved
			Accurate implementation of ESPOO Convention/ Draft and enter into a bilateral agreement	Missing		To be drafted and signed	

Environmental Liability	Ref: Directive 2004/35/CE		Monitoring Authorities and Mechanism	Not enforced properly		Strengthen of monitoring authorities & mechanisms	
			Provisions	Lack of proper enforcement		Implementation of environmental liability provisions	
			Cooperation	Not sufficient		More distinct institutional cooperation between two countries to be established	
			Protection measures	Not comprehensive rules in the existing legal and institutional framework		Update the existing legal framework with protection measures in order to provide a satisfactory level of efficiency in implementing nature and biodiversity protection measures	
Environmental Impact Assessment	Law No.8990 dated on 23.01.2003 & Law No.10050 dated on 24.12.2008	Law "On Environmental Impact Assessment" Podgorica, November 2005	EIA for projects that affect Skadar - Shkodra Lake	Undergoes through a profound process	Not specified	✓	To be undergo through a profound process
			Requirements for EIA	Mandatory for all projects provided in the Law	Not clearly specified Mandatory or Optional	✓	To provide a list of projects for which the EIA is Mandatory
			Approval of lists of projects to undergo EIA	Specified in the Law	Specified through a CoM regulation	✓	To be provided by the Law
			Determination of competent authorities to manage the EIA process	Clear	Vague	✓	Better determination of responsible competent authorities

Environmental Impact Assessment	Law No.8990 dated on 23.01.2003 & Law No.10050 dated on 24.12.2008	Law "On Environmental Impact Assessment" Podgorica, November 2005	Levels of review on terms of EIA	Specified two levels: Profound & Summarized process	Missing	✓	To be introduced levels of review
			Categorization of Impacts	Detailed list	Missing	✓	To be included
			EIA process coverage on ongoing and/or intended projects	Foreseen only for Intended projects	Foreseen for Intended & Ongoing projects	EIA process should cover also Ongoing projects	✓
			Right to appeal	Judicial Review explicitly mentioned	Administrative Review is managed by head administrator	✓	Judicial review should be mentioned explicitly
			Involvement of other state in EIA process on projects with trans-boundary impact	Missing	Included	To be added the involvement of neighbor state in EIA process on projects with transboundary impact	✓
			Public consultation and information	Included		✓	
			Inspection-Supervision on EIA implementation	Missing	Included	To determine the responsible authorities for supervision of the EIA implementation	✓

Revision of the current National Legislation in the light of EU standards	Ref. 85/337/EEC of June 27, 1985	EIA procedures	Missing		Insertion of EIA procedures into existing relevant legislature	
		EIA Directive	Transposed and implemented partly		Fully transposition and implementation of EIA Directive	
		Measures to mitigate environmental impacts	Not complete measures		Identification and Implementation of appropriate measures to mitigate environmental impacts	
	Ref. SEA Directive 2001/42/EC	Compliance level with SEA Directive on different projects	Not adequate level		Better compliance with SEA Directive is required	
	Ref. ESPOO & AARHUS Convention	Implementation level of ESPOO Convention & Aarhus Convention	Not satisfied level of implementation		Elaboration of implementation of ESPOO Convention on EIA trans-boundary context & Aarhus Convention	
	Ref. Water Framework Directive	Transposition & Implementation level of the Directive	In process	Partly transposed	To be fully transposed and implemented in both countries	
	Ref. 85/337/EEC of June 27, 1985	Unification level of the lists of projects & screening criteria given in the annex I, II, III of the EIA Directive	In place	Not in place	To be introduced and approved	
		Exchange of information on EIA process and results	Missing	Specific provisions in place	To be provided specific provisions on exchange of information on EIA process and results	✓

Revision of the current National Legislation in the light of EU standards	Ref. 85/337/EEC of June 27, 1985	The explicit possibility to challenge environmental decisions in Court	In place	Missing	✓	To explicitly include the possibility to challenge environmental decisions in Court into the Environmental Laws
		Monitoring measures and tools	Not appropriate	In place	Define appropriate monitoring measures and tools	✓
	Stabilization Association Agreements	Implementation level of Stabilization Association Agreement	Not satisfactory level		Enhance the implementation of Stabilization & Association Agreement with Albania	Enhance the implementation of Stabilization & Association Agreement with Montenegro
	Ref. 85/337/EEC of June 27, 1985	Screening Criteria for EIA process	Lacking guidelines on screening criteria		Adapt guidelines on screening criteria	
	Albanian & Montenegro Law "On Fishery"	Implementation level of <i>acquis</i> on fishery	In process	Not completed	To be implemented	To be adapted and implemented

Revision of the current National Legislation in the light of EU standards	Albanian & Montenegro Law "On Fishery"	Implementation level of EU CFP	Not satisfactory		To be improved		
		Preparation level of the administration and operators for participation in CFP	Incomplete		To be adapted		
		Fishery information system	Not in place	To be kept by trained staff	To be established	To be further improved	
		Collection, monitoring & use level of data on fishing	Not appropriate		To be further improved		
		Policy-making & administrative capacity in central & local level	Not appropriate		To be supported in central and local level		
		Principles	In process	Not complete	To be approved and implemented the draft law and to be drafted the necessary by-laws	To be revised and improved the freshwater fishery part of legislation	

ANNEX 1. A detailed List of Relevant National Legislation in Albanian and Montenegro

No.	AREA	LAWS	
		Albania	Montenegro
1	Laws on Environmental Conservation		
1.1	Protected areas & National Parks	Law “On Protected areas” No. 8906 dated on 06.06.2002 amended by Law No.9868 dated on 04.02.2008	Law on National Parks (Official Gazette of Montenegro 56/09 of 14 August 2009)
1.2	On Water	Law No.8093 dated on 21.03.1996 amended by Law No.9375 dated on 21.03.1998, by Law No.8605 dated on 20.04.2000, by Law No.8763 dated on 01.02.2001, by Law No.9837 dated on 03.12.2007 and by Law No.10137 dated on 11.05.2009	The Water Law (Official Gazette No. 27/07)
1.3	On Waste Water Management	Law No. 8102 dated on 23.08.1996, amended by Law No.9352 dated on 03.03.2005 and by Law No.9915 dated on 12.05.2008. Law No. 9115 dated on 24.07.2003	Law “On Waste Management” (Official Gazette No. 80/05)
1.4	Fishery and Aquaculture	Law No. 7908 dated on 05.04.1995 amended by Law No.8870 dated on 21.03.2002 and by Law No. 10001 dated on 01.10.2008	Law “On Freshwater Fishery” (Official Gazette of Republic of Montenegro No.011/07-9)
1.5	On the protection of transboundary lakes	Law No.9103 dated on 10.07.2003	-
1.6	Tourism	Law No.9734 dated on 14.05.2007 amended by Law No.10001 dated on 06.10.2008	Law “On Tourism” (Official Gazette of Republic of Montenegro No.61/10 of 22.10.2010)

1.7	On Land	Law No. 7501 dated on 19.07.1991 amended by Law No.7715 dated on 02.06.1993, by Law No. 7855 dated on 29.07.1994, by Law No.7971 dated on 26.07.1995, by Law No.8752 dated on 26.03.2001 and by Law No.9244 dated on 17.06.2004	-
1.5	On Forests	Law No.9385 dated on 04.05.2005 amended by Law No.9533 dated on 15.05.2006, by Law No.9791 dated on 23.07.2007, by Law No.9989 dated on 15.09.2008 and by Law No.10137 dated on 11.05.2009	Law "On Forest" (Official Gazette of Montenegro", No.55/00)
1.6	On Urban Planning	Law No.8405 dated on 17.09.1998 amended by Law No.8453 dated on 04.02.1999, by Law No.8501 dated on 16.06.1999, by law No.8991 dated on 23.01.2003, by Law No. 9632 dated on 30.10.2006, by Law No.9743 dated on 28.05.2007, by Law No.9843 dated on 17.12.2007, by Law No.10078 dated on 16.02.2009 and by Law No.10137 dated on 11.05.2009	Law on Spatial Development and Construction of Structures (Official Gazette of Montenegro, number 51/08 of 22 August 2008)
1.7	On Nature Protection	Law No. 9587 dated on 20.07.2006 "On Biodiversity Protection"	Law "On Nature Protection" (Official Gazette of Montenegro", No. 51/08 and No.21/09)
1.8	On Hunting	Law No. 10253 dated on 11.03.2010	Law "On Hunting" dated on 27.05.1993

2	Laws on Environmental Impact Assessment and Environmental Protection		
2.1	Environment protection	Law No.8934 dated 05.09.2002 amended by Law No.9537 dated on 18.05.2006, by Law No.9890 dated on 20.03.2008, by Law No.9983 dated on 08.09.2008 and by Law No.10137 dated on 11.05.2009	The Official Gazette of Montenegro No. 12/1998
2.2	Environmental Impact Assessment	Law No.8990 dated on 23.01.2003 amended by Law No.10050 dated on 24.12.2008	Law "On Environmental Impact Assessment" Podgorica, November 2005
2.3	Strategic Environmental Assessment	Law No. 9424 dated on 06.10.2005 "On ratification of Strategic Environmental Assessment Protocol" Law No. 9478 dated on 16.02.2006 "On accession of Republic of Albania in the Decisions II/14 and III/7", Amendments of ESPOO Convention	Law On Strategic Environment Assessment (Official Gazette of Montenegro 80/05)
3	Conventions		
3.1	ESPOO Convention "On Environmental Impact Assessment in a transboundary context"	Member / Ratified in 04.10.1991	Member/ Ratified in 09.07.2009
3.2	Helsinki Convention "On the protection and use of transboundary watercourses and international lakes"	Member / Ratified in 05.01.1994	Non member of the Convention

3.3	Ramsar Convention “On Wetlands of International Importance especially as Waterfowl Habitat”	Member / Ratified in 29.02.1996	Member/ Ratified in 03.06.2006
3.4	Aarhus Convention “On Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters”	Member / Ratified in 27.06.2001	Non member of the Convention
3.5	Basel Convention	Accession in 29.06.1999	Succession in 23.10.2006
3.6	Convention “On the Transboundary Effects of Industrial Accidents”	Member since 05.01.1994	Member since 19.05.2009
3.7	Convention ‘On long -range Transboundary Air Pollution’	Accession 02.12.2005	Succession 23.10.2006
3.8	Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)	Member since 25.09.2003	Member since 03.06.2006
3.9	Convention on Biological Diversity	Accession in 01.05.1994	Succession in 03.06.2006
4	Strategies		
4.1	On Environment	Environmental Cross-cutting Strategy	National Strategy of Sustainable Development of Montenegro
4.2	On Fishery	Draft Strategy for development of fisheries and aquaculture 2007-2015	Montenegro’s fisheries Development Strategy