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Protection in Practice
Aligning Environmental and Consumer Law and Policy in Serbia with EU Acquis

A good law in theory is not necessarily a good law in practice

In its European integration process, it cannot be denied that the Republic of Serbia, as the accession candidate, has achieved great progress in its implementation of European *acquis* in its national legal system. Insofar as the legislative process is concerned, the majority of systemic and sectoral laws have been adopted. In line with the Copenhagen criteria, alignment of the national legislation with EU Law represents one of the essential requirement for country's progress in the EU integration process.

However, the adoption of laws is not the only and is certainly not the crucial element of the implementation. The much more important objective is to secure the functioning of this legislation in practice and this is exactly the field in which the Republic of Serbia is experiencing numerous difficulties. Laws are adopted with the purpose of 'ticking the box' as part of EU accession requirement, rather than with the goal of improving the situation in practice which was the reason why a particular piece of the European legislation has been adopted. In that context, the areas of environmental protection and consumer protection, as tow areas that are of importance to every citizen of the Republic of Serbia, represent two excellent examples of this phenomenon: a very good Law in theory produces very little effects in practice. This is something that all relevant stakeholders and policy makers in Serbia need to be aware of while implementing EU acquis into Serbian legal system.

Environmental protection

Firstly, in case of environmental protection, the real effects of implementation are lacking because the practice has proven that the existing norms of certain transposed regulations are simply not applicable to the level of social development of Serbia. This is especially visible in the field of environmental protection legislation where the majority of adopted legislation was incompatible with the level of environmental governance extant in Serbia. It is only logical that before the adoption of a law, an analysis of the state of affairs is obligatory, which should include primarily the needs and capabilities of the state itself. In abovementioned field, where the legislative power was particularly active, adopting nine organic laws back in 2009, seven laws so far had to be amended or supplemented, which is the best indication of their prescriptive nature largely devoid of reality checks. That the law must follow the life is a tested and proven maxim, however in the case of Serbia's European integration policy it was largely ignored.

An example of this type of problem is the implementation of the EU Directive on Integrated Pollution Prevention and Control. The addressees of this Directive are the operators of industrial plants which are potentially serious polluters, therefore a special permit is required for their operation, one which conditions the respect for limits to emission values. The difficulty was in that the procedure for the issuance of permit is complex enough to create numerous problems, even in the part that relates to the preparation of the documentation for the request for permit. Furthermore, the Law on Integrated Prevention and Control of Environmental Pollution, together with respectable regulations and by-laws, poses certain ill-defined conditions to the operators. Their ill-definitions is a consequence of lack of legally established limits to emission values for water and air, in accordance with the Law, deficient number of accredited laboratories for monitoring of the air, water and earth emissions, and the inadequate cadaster of polluters for the territory of te Republic of Serbia. In addition to this, initially the implementation of the IPPC met with difficulties of pure economic nature. Namely, the implementation of the IPPC is dependent upon the close following of certain operating standards

which are compiled in codes of practice known as BAT (Best Available Techniques). The application of these standards is connected to an increase in production costs since the operators are obliged to follow the highly technical, often barely comprehensible instructions which are even in most cases not translated to Serbian language. For the economy which in 2004, when the IPPC implementation started, was still recovering from a long period of market isolation, this proved to be in most cases an insurmountable obstacle.

Also connected with the unpreparedness of the society for the implementation objectives is the notion that the addresses of adopted laws are sometimes unaware of their newly imposed obligations under these laws, since the laws are adopted with speed and frequency which is rarely followed with adequate preparation for their implementation. The survey which dealt with the reactions of the above mentioned operators at the beginning of the application of IPPC Directive showed that a very small number of operators interviewed was aware of the existence of Law on IPPC, as well as of the fact that he is obliged by its provisions and that it is necessary for him to file a request for permit so as to be allowed to continue to function and operate with no further obstacles in Serbia. Sometimes the Government reacts to such unawareness by providing some means of information disseminations, such as in the aforementioned case was done through various seminars, organised by the Chamber of commerce of the Republic of Serbia. However, the operators which from various reasons were not able to attend these seminars, were simply stripped of opportunities to become acquainted with the more detailed interpretation of their rights and obligations, and consequently met with paralyzing difficulties while trying to complete the required documentation for the request for the permit issuance. Therefore, it is necessary always to look for the provision of some official Guides for the addresses which was the case in some other spheres of regulatory politics concerned with the *acquis* transposition, especially if the transposition relates to such highly technical and complicated procedures.

In connection with the previous paragraph is the ordinary occurrence of the adoption of further legislative provisions in the course of the process of preparation for the implementation in practice. This was also the case in the IPPC implementation process where during the preparation of the documentation new regulations in the field of environment and other related fields such as water governance, energy, planning and construction, security and protection from fire were adopted, all in observance of Serbia's European integration policy, which prompted in turn changes in the process of documentation preparation itself, with the aim of adaptation to newly adopted regulations. This exacerbated further the problems in practice for the operators, which had to revise their previously agreed upon business plans, and accrued on them further costs for fees given to technical consultants which advised them on how to implement the new changes in their documentation preparation process.

The next negative aspect of the mode of transposition of *acquis* in Serbia is the dissonance of various laws, since in legislative policy still the dominant behavior is sectoral planning with little to none horizontal integration. The competent ministries cannot provide the necessary coordination of the implementing activities because of their inadequate status. If environmental protection is again taken as the point of reference, the lack of coordination between environmental laws and laws which define the competences of the institutions on national or regional level is visible, which provoke in turn overlapping of functions and unbalanced cooperation (especially visible in the Law on local administration and the Law on the definition of competences of the Autonomous Province of Vojvodina).

If the IPPC implementation is put into perspective, one of the greatest problems that arose in relation to it was the omission on the part of the legislator to put in accord the provisions of some laws which were not at first glance relevant for its implementation. Such was the case with the Law on waters, which prescribed a lengthy and complicated procedure for the issuance of water permit. Water permit is however a necessary precondition for the issuance of IPPC permit. A similar case was also present with the issuance of the construction permit for linear infrastructure projects. The revised procedure which was accorded with European legislation failed to take into account the complicated procedure under the Serbian Law on expropriation which rendered a large number of investments in these projects useless, since the operators got entangled in lengthy procedures in front of administrative and judicial organs flawed with their own inefficiencies, with procedures based on a patchwork of accumulated land ownership and tenure problem leading back several decades in the past of Serbian society.

This last point is of more general nature when the transposition of *acquis* is concerned. Simply put the competences and resources of the state administration supposed to supervise and effect the implementation process are often overrated and ultimately lead to failures on the part of this same administration to stand up to its task. A quite remarkable example can be provided in the environmental field, concretely in the prosecution of criminal acts which target environment. In this respect, Serbia has an elaborated legislation which

satisfies both the international and European standards. However, the research shows that the real impact of this legislation is quite weak. Yearly only 15 criminal awards are adopted and mainly they are concerned with the forest theft, which existed as a crime even before the adoption of new legislation. There is virtually no award which deals with the environmental pollution which is the most important crime in this respect. The essence of the problem is in the lack of judicial experts in many local municipalities and even where they exist, their credibility and objectivity is doubtful, which is related to the problem of endemic corruption in Serbian society (they tend to provide expertise for the benefit of polluters). Also lacking are the studies of the environmental and human health impact of the pollution which would serve as parameters in the judicial proceedings. Obviously, what is lacking is the developed administrative procedure, which is based on the efficient and resourceful administration and would certainly secure higher standards of the environmental impact assessment. At the end, it is worthy of note that the courts themselves are not aware or are simply lacking knowledge of these matters to promptly deal with them. They tend to award the lowest penalties in the already lowly set ranges due to the opinion that these types of offences do not bear the high degree of danger for the society.

In conclusion, it is necessary to stress again the importance of reality checks in the implementation process. Otherwise the results tend to be quite the opposite from projected expectations. The colorful example are the statistics for the implementation of the IPPC Directive. It was one of the first fully transposed Directives in Serbian legal system, back in 2004, when the Law on IPPC was adopted. The period for the completion of the issuance of permits was set in the range from 2009-2014, and the Law was finally amended and supplemented in 2015, when the period was prolonged for the end of 2020. So far from the list of 196 operators only 10 has acquired the IPPC permit. Therefore, during a decade of the implementation only 5.1 % aims of the Directive was accomplished. Is it possible to think that during next five years, twice the shorter period, the process will be accelerated so as to complete the remaining 94.9 %?

Consumer protection

In its attempt to get aligned with consumer acquis, Serbia adopted four different legal framework for consumer protection in the period of only twelve years (2002, 2005, 2010 and 2014). Despite representing satisfactory pieces of legislation which showed rather high level of alignment of the Serbian rules on consumer protection with EU Law, the first three laws have produced hardly any results in practice, leaving Serbian consumer unprotected, with little or no redress in cases where it should have been available. Moreover, instead of investing efforts to improve the application of the existing law in practice, as a remedy for unsatisfactory application of consumer protection rules in practice, the efforts were put exclusively in the changes of the legislative framework.

The noticeable fast changes of consumer legislation show well the way consumer law and consumer rights are developed in Serbia, demonstrating a lack of clearly defined consumer policy. The latest piece of legislation in this area, the Law on consumer protection of 2014 has established an excellent legal framework for consumer protection in Serbia, fully aligned with EU Law. If only the text of the law is to be assessed, Serbia has certainly got one of the best regimes for consumer protection in this part of Europe. However, the problem is applying of these rules in practice. So, for the improvement of consumer protection in Serbia is not anymore the legislative changes, but implementation of the law in practice. However, the implementation of the Consumer law in Serbia in practice is faced with the following problems:

First, one of the main problems with the application of consumer law in practice is the fact that the Serbian Courts are not familiar with the existence of a separate legal regime for consumer protection. The lack of familiarity of the judges with consumer law is noticeable. One of the major general presumption of the Serbian legal system is that "The judges know the law". However, that is not the case when it comes to their knowledge of consumer law. For instance, in several recent judgements of the Serbian courts dealing with unfair contract terms in consumer credit agreements stipulates in Swiss francs, *par excellence* consumer law cases, the courts did not at all apply the provisions of Law on consumer protection. In those decisions, the unfair contract terms, despite being incorporated in consumer contracts, as contracts between banks and consumers, were not annulled by the Court on the grounds on provisions on unfair contract terms and unfair commercial practices of the Law on consumer protection, but on the ground of the Law on obligations of 1978. The problem is that the Law of Obligations of 1978 does not recognize a special need for protection of consumer as weaker parties in their contractual relationships with the trader, so in case of these decisions consumer were deprived of some rights that they have under the Law on consumer protection.

Second, further strengthening of the institutional capacity of the authorities in charge of consumer protection is necessary. In that sense, it should be noticed that a certain level of the improvement may

be observed in comparison to the previous years. The previously existing Department for Consumer Protection of the Ministry of Trade was upgraded to a separate sector and a new Assistant Minister has been appointed. This Assistant Professor in exclusively in charge of consumer protection. However, despite a very high number of employees in public sector in Serbia, the number of those dealing with consumer protection is not satisfactory. The Law on consumer protection of 2014 gives great power to the Ministry of Trade when it comes to the enforcement, but more employees are needed to secure an efficient enforcement. In addition to this, additional professional trainings are needed, especially in case of market inspectors, in order to be able to easily recognize some of the breaches of consumer law, e.g. in case of trader's engagement in unfair commercial practices.

Third, the mechanism of collective redress in case of breach of consumer rights seems to be particularly problematic. The mechanism of collective redress represents in the European Union and the United States of America the most powerful instrument for protection of consumers. However, despite being envisaged by the text of the previous Law on consumer protection of 2010, this mechanism was never applied in practice. Moreover, the alignment of the collective redress mechanism was declared not to be in line with the Constitution of the Republic of Serbia by the Decision of the Constitutional Court. The Law on Consumer Protection of 2014 reinforces the collective redress mechanism, but it still remains in practice how it will be reinforced. In that sense, additional efforts need to be made to stimulate all relevant stakeholders to initiate collective redress in case of traders who breach consumer law. Only through a functional system of collective redress, an efficient protection of the consumers may be secured.

Fourth, the capacities of consumer organization need to be improved. Again, in case of consumer organizations as one of the pillars of consumer protection, an improvement may be noticed in comparison to the previous years. However, consumer organizations still miss capacities and financial support in a necessary prerequisite. In that sense, securing of regular and adequate financing, together with continuous and regular professional education of the representatives of consumer organization has to be secured. Also, different education activities are needed in order to help consumers get familiar with the existence of their rights and what they are supposed to do in case when these rights have been breached. That is something where still additional work is needed.

Recommendations:

A IPPC

1. The slow process of the issuance of IPPC permits was in large part due to the fact that with**in** local government in Serbia there are neither organizational units in charge of integrated permit issuance, nor administration employees working on implementation of the IPPC Law, except in the municipality of Belgrade. It was therefore the Department for Integrated Permits within the competent Ministry for environment which took over integrated permit applications submitted to the local government authorities. Therefore, the Ministry of Agriculture and Environment should in cooperation with the Ministry of Public Administration and Local Government ensure in the future period that the institutional organization and capacities of local administration are enhanced in order to deal with permit applications and therefore lift a part of the burden from the Department for Integrated Permits. The costs should be covered from the budget of the Ministry of Agriculture and Environment.
2. In order to fill the integrated permit in accordance with the legal deadline, staff in competent authorities as well as relevant operators and their staff need technical assistance. Experience gained from exchanges with foreign experts is of great importance for employees of statutory authorities charged with issuing IPPC permits, as well as for operators in applying BREF documents, BAT and monitoring. Therefore trainings and seminars for public servants should be organized by the Ministry of Agriculture and Environment in cooperation with civil society organisations which have expertise on the matter and EU advisors. These seminars should be obligatory for public servants, but the operators and their staff should be encouraged to attend as well with financial incentives. In addition, generic permit templates should be provided to competent units to expedite the permitting process. The costs should be covered by the IPA II financial assistance program, since environment and climate action are one of the priorities of this program. The sustainability of seminars can be secured through the "training the trainers approach", where
3. Public awareness should be promoted by the Ministry of Agriculture and Environment in form of leaflets, guidelines and other publications of sort, public campaigns and debates and seminars and workshops for interested citizens. Therefore the public participation in decision making in IPPC permitting procedures can be secured

which could lead in practice to more efficient results in issuance of permits. Increased public awareness at all levels will moreover exert positive pressure to enforce applicable legislation within the timelines prescribed by law and increase the momentum of moving towards compliance with the acquis. The costs should be covered by the IPA II financial assistance program, since environment and climate action are one of the priorities of this program.

4. Any subsequently adopted legislation which can influence the application of IPPC legislation in practice must be preceded by a study of its possible effects on the effectiveness of the implementation of IPPC objectives, and if the study shows it can influence it negatively, its adoption must be amended or altogether delayed, in order to give priority to IPPC implementation, this study should be conducted by the Office for European Integration in cooperation with ministry competent for the field which is regulated by the proposed legislative act.

B Consumer Protection

1. Further strengthening of the institutional capacities of the authorities in charge of consumer protection, in particular of the Sector for consumer protection of the Ministry of Trade. This should be done through increasing of the number of people in the Sector for consumer protection. The increasing of the employees in the Sector does not necessarily mean that new people need to be employed, but this goal may be also perfectly well achieved through the allocation of employees from other Sectors where they are not needed. In such a manner, no additional cost would be required (i.e. salaries for newly employed). In addition to this, continuous professional education of the staff could be done through diverse seminars that may be funded either from the budget of the Republic of Serbia or diverse EU and other international organizations funding.
2. Organization of diverse forms of campaign of consumer awareness so that consumers can become aware of their rights and what they are supposed to do when their consumer rights have been breached. This should be organized and executed both by the Ministry of Trade and by the representatives of consumer organizations. Diverse sources of funding are possible, including, but not being limited to the budget of the Republic of Serbia and diverse international organizations.
3. Organization of different kind of seminars for judges and court clerks throughout Serbia whose aim would be to explain the point of the existence and the relevance of separate consumer legislation in Serbia, so that they can start applying it in practice. The seminars should be organized by the Ministry of Justice in order to increase the importance of this events, so that judges really attend them. In that sense, a cooperation between the Ministry of Trade and Ministry of Justice should be improved. Diverse models of financing are possible, either through donations, projects, but also from the budget of the Republic of Serbia.
4. Securing continuous financing of consumer organizations and professional trainings of their representatives. In that experience from consumer organizations of Member States of the European Union may be of great importance, so different models of experience-exchange should be established. This should be done through participation of diverse project run and financed by the European Union and international organizations that support NGO sector which also includes consumer organisations.
5. The application of collective redress mechanism in practice needs to be secured. This should be primarily done through, first, education of all relevant stakeholders (the Ministry and the consumer organizations) and, second, through securing financial aid necessary for initiation of the collective redress. Education should be done by people who have experience in collective redress (e.g. representatives of consumer organizations from diverse EU Member States) and financing should come from the budget of the Republic of Serbia or diverse EU and other international organizations funding.

The correct, full and timely fulfilment of the made Recommendations would certainly secure better implementation and application of the European acquis in practice, so that a good law on the paper also becomes a good law in practice. Bearing in mind that the two examined areas in this Paper are the protection of environment and protection of consumers, both in case of which EU Law has continuously established and reaffirmed a high level of protection, better application of this part of acquis in practice in Serbia would be something from which every citizen in Serbia would eventually profit.