

Access to Information and Public Participation in Environmental Decision-Making in Bosnia and Herzegovina



TRANSITION



Centar za
životnu sredinu

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**Spatial planning, EIA, environmental
and construction permitting process:
comprehensive guideline through
environmental-administrative processes**



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**Arnika / Center for Environment
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Access to Information and Public Participation in Environmental Decision-Making in Bosnia and Herzegovina
*Spatial planning, EIA, environmental and construction permitting process: comprehensive guideline
through environmental-administrative processes*

Arnika (the Czech Republic) / Center for Environment (Bosnia and Herzegovina)
2016

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DISCLAIMER

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The references made here are to legislation valid and effective as of 2016 when the guideline was completed. They do not reflect any statutory changes adopted thereafter. Given the fact that laws and regulations at State, Entity, and Cantonal level in Bosnia and Herzegovina are often duplicative and contradictory, the authors are unable to guarantee accuracy in this regard.

TABLE OF CONTENTS

List of Tables	5
List of Charts	5
PREFACE	6
STRUCTURE	7
EXECUTIVE SUMMARY	8
BIH'S ADMINISTRATIVE STRUCTURE AND THE SYSTEM OF GOVERNANCE	9
1. LEGAL FRAMEWORK OF ENVIRONMENTAL DECISION-MAKING AND ADMINISTRATIVE PROCESSES	12
1.1. Regulation of Spatial Planning, EIA, Environmental and Construction Permitting Process	12
1.2. Access to Information and Public Participation in Environmental Decision-making	17
2. COMPETENCIES AND RESPONSIBILITIES OF PUBLIC AUTHORITIES	23
2.1. Authorities involved in EIA Process	23
2.2. Authorities involved in Environmental Permitting Process	24
2.3. Authorities involved in Spatial Planning and Construction	25
3. ENVIRONMENTAL DECISION-MAKING AND ADMINISTRATIVE PROCESSES	26
3.1. Spatial Planning Process	27
3.2. Environmental Impact Assessment	31
3.3. Environmental Permitting Process in BiH	34
3.4. Construction Permitting Process	38
4. LEGISLATIVE AND POLICY-MAKING PROCESSES	42
4.1. Legislative Process in the State of BiH	43
4.2. Legislative Process in the Entities	45
5. CASE STUDIES: LESSONS LEARNT IN BIH	46
5.1. Case study 1: Hydropower plants Novakovići, Zapeće, Ilomska and Buna	46
5.2. Case study 2: Regulatory Plan Amendment in Borik	49
About us	52

List of Tables

Table 1	Legislation relevant to environmental decision-making processes in BiH
Table 2	Transposition and implementation of IPPC Directive in BiH
Table 3	Transposition and implementation of EIA Directive in BiH
Table 4	Transposition and implementation of SEA Directive in BiH
Table 5	Transposition and implementation of the Environmental Information Directive in BiH
Table 6	Transposition and implementation of the Public Participation Directive in BiH
Table 7	Access to information and public participation according to legal instruments
Table 8	Sources of information
Table 9	List of cantonal environmental ministries
Table 10	Competence and contact to relevant Entity ministries
Table 11	Overview of processes, public participation and legal remedies

List of Charts

Chart 1	BiH's administrative structure
Chart 2	BiH's system of governance
Chart 3	Information disclosure process
Chart 4	Sequence of processes to build an industrial facility
Chart 5	Spatial planning process
Chart 6	EIA process
Chart 7	Environmental permitting process
Chart 8	Legislative process in BiH
Chart 9	Legislative process in the Entities

PREFACE

This guideline was prepared in response to the need for a clear, comprehensive, and yet concise guide through processes regulating the disposition with land and operation of facilities that may have adverse environmental impact. It is intended primarily for civil society organizations and activists, environmental and civil rights lawyers, policy analysts, and other non-state/governmental actors in Bosnia and Herzegovina (BiH) already involved in or about to participate in environmental decision-making and/or administrative processes.

The purpose of this guideline is to walk you through relevant steps of environmental decision-making and administrative processes from initiation (request for permit/decision) to completion (issuance of permit/decision) and provide an overview of procedural requirements and obligations of public authorities. We will also highlight those stages of the processes where the public can participate and authorities are obliged to disclose environmental information and advise how to exercise the right to access information and to participate in environmental decision-making.

Given the fact that many sources of information contained in this guideline are only in local languages (Bosnian, Serbian, Croatian), enacted laws and regulations are not available electronically in official gazettes, and local idiosyncrasies are complex and confusing, this guideline has been prepared in close cooperation of Czech and Bosnian legal experts to assure it accurately describes each process and addresses realistic ways of exercising the right to access information and to participate in environmental decision-making.

By bringing clarity to voluminous regulation and a perplexed set of processes, the authors aspire to encourage the civil society to take better interest in, raise awareness of, and actively participate in environmental decision-making and administrative processes and thus contribute to the promotion of democratic governance in BiH. To add a certain value to this work and to distinguish it from other works on topics covered by this guideline the authors have included most recent case studies their local partners in BiH have dealt with.

STRUCTURE

The guideline is divided into the following sections:

Section 1 LEGISLATION provides overview of environmental protection laws of BiH that govern environmental decision-making and administrative processes. It lists relevant EU environmental directives and describes how they are transposed in BiH's legislation governing these processes. You may also consult this section for international, EU, and national legal framework on the right to access environmental information and to participate in environmental decision-making, including its enforcement in BiH.

Section 2 COMPETENCIES elaborates on authorities involved in the environmental decision-making and administrative processes on the State, Entity, Cantonal, and municipality level and the distribution of competence among them. In this section, you will also find contact information of these authorities.

Section 3 PROCESSES divided into four subsections (spatial planning, EIA, environmental and construction permitting process) walks you through the environmental-decision making and administrative processes from initiation to the issuance of a final permit/decision. The focus is on those stages of the processes where the public can participate and where publicly accessible information is generated. The section outlines, which authorities provide information, in which form, and advises on exercising the right to participate and legally compliant disclosure.

Section 4 LAWMAKING describes the process of adopting environmental laws, policies, and other high-level strategy documents, highlighting parts of the process where the public can participate and advising how to exercise this right.

Section 5 CASES puts the processes outlined in the previous sections into a broader, country-specific perspective to demonstrate issues you might encounter while involved in the environmental decision-making and administrative processes in BiH.

EXECUTIVE SUMMARY

BiH is a country with a four-tier system of governance at State, Entity (and District), Cantonal, and municipal level. The State and Entities each have their own president, government, and parliament. The powers of the State are the weakest, while those of the Entities (FBiH and RS) are the strongest. FBiH is divided into 10 cantons that have their own municipalities. RS has no cantons, only 63 municipalities. Municipalities are the lowest administrative levels. Municipalities do not enact (environmental) laws and do not have any (environmental) ministries. Most institutions that issue decisions/permits in the environmental decision-making and administrative processes are at Entity/Cantonal level.

The legal framework of environmental decision-making and administrative processes is fragmented. The basis is included in Entities (and Brčko District) environmental protection laws and Entities (and Brčko District) spatial planning and construction laws. These are framework laws; thus, other special (Entity level) laws (e.g. on air pollution prevention) as well as by-laws and ordinances (e.g. on the contents and preparation of spatial planning documents) need to be consulted.

The environmental decision-making and administrative processes do not conform to the requirements of EU environmental directives (e.g. IPPC Directive or Industrial Emissions Directive). Relevant directives are mostly transposed, but poorly implemented. The three pillars of Aarhus Convention (access to environmental information, public participation in environmental decision-making, access to justice) are often breached. Authorities' omission or inaction during the environmental decision-making and administrative processes may be challenged at administrative court and its unfavorable decision reversed by a request for extraordinary review of court judgment at the Supreme Court.

The sequence of the processes is as follows: spatial plan, urban permit, EIA, environmental permit, construction permit, use permit. Spatial planning documentation projects certain types of construction in particular territories; for other constructions, works can commence and necessary permits can be issued only if exceptions are granted. Similarly, construction permits cannot be issued for different parameters than those set in environmental permits.

The public is entitled to fully participate in spatial planning, EIA, and environmental permitting process. In urban and construction permitting process the public can participate only as an "intervener" upon proving "direct legal interest". Use permit process is not open for public participation. It is common that public consultations, though mandatory by law, are either not held at all, or when held, the comments, objections, and suggestions are disregarded.

If participation is denied, try to request minutes of the meeting that should document what has been opposed. Some ministries publish lists of environmental permits on their websites. An equivalent of publicly available EU integrated pollution register (E-PRTR) does not exist in BiH, but you might try to request environmental information from the existing pollutant registers (in FBiH and RS). If your data is still incomplete, request information under the Law on Freedom of Access to Information and detail the extent of disclosure.

The public is entitled to the same rights (i.e. consult proposals and access information) in environmental decision-making before legislative bodies of Entities/Cantons.

BIH'S ADMINISTRATIVE STRUCTURE AND THE SYSTEM OF GOVERNANCE

BiH's political and administrative structure was established by Dayton/Paris Peace Agreement (Dayton Accords) that put an end to the 1992-1995 Bosnian war. BiH's constitution (Annex IV to the Dayton/Paris Peace Agreement) contains the fourfold system of governance at the State, Entity (and District), Cantonal, and municipal level.¹ The State level features a tripartite Presidency, rotating between Bosniaks, Serbs, and Croats, a Council of Ministers (executive branch), and a bicameral Parliamentary Assembly (House of Peoples (upper chamber) and House of Representatives (lower chamber)).²

The Entity level comprises two largely politically autonomous, self-governing entities: Federation of Bosnia and Herzegovina (FBiH), and Republika Srpska (RS). Brčko District, a multi-ethnic self-governing administrative unit is formally a part of both Entities.³ The Entities function as states within a state (BiH). Like the State of BiH, they have their own president (each also a vice-president), government (a Prime Minister and ministries), and parliament.⁴

FBiH is administratively divided into 10 Cantons and 84 municipalities. RS has no cantons, only 63 municipalities. Municipalities are the lowest governmental administrative levels in both Entities. However, the hierarchy differs between two Entities.

In RS, this hierarchy is (from the lowest administrative level):

Municipality → Entity government

In FBiH, this hierarchy is:

Municipality → Canton → Entity government

The Entities (and Brčko District) and the Cantons have their own governments and assemblies with the authority to propose and enact their own laws and regulations.⁵ Note that ministries (including environmental) exist on State, Entity, Cantonal, but not municipality level.

BiH has a complex, multi-tiered, and overlapping system of governance unmatched, to such an extent, to virtually any other country in the world (BiH has certainly the most complicated system of governance in Europe). Note that the system produces dysfunctional institutions at all administrative levels, which are unable to create uniform policies and legal framework void of contradictory legislation, including efficient transposition of EU environmental acquis. The law enforcement power is also weak. Given the continuous efforts of the Entities to keep the powers of the State of BiH limited, virtually no nationwide legislation is adopted at the State-level. Note that there is currently no State-level law governing any environmental decision-making and administrative process. Although a proposal has been drafted, enactment of a State-level environmental protection law has been pending since 2006 and, due to the circumstances described above, seems unlikely to be ever enacted.⁶

¹ United Nations Economic Commission for Europe, 2nd Environmental Performance Review, Bosnia and Herzegovina (2011), page 6. [http://www.unece.org/fileadmin/DAM/env/epr/epr_studies/bosnia_and_herzegovina%20II.pdf].

² United Nations Economic Commission for Europe, 2nd Environmental Performance Review, Bosnia and Herzegovina (2011), page 6. [http://www.unece.org/fileadmin/DAM/env/epr/epr_studies/bosnia_and_herzegovina%20II.pdf].

³ United Nations Economic Commission for Europe, 2nd Environmental Performance Review, Bosnia and Herzegovina (2011), page 6. [http://www.unece.org/fileadmin/DAM/env/epr/epr_studies/bosnia_and_herzegovina%20II.pdf].

⁴ United Nations Economic Commission for Europe, 2nd Environmental Performance Review, Bosnia and Herzegovina (2011), page 6. [http://www.unece.org/fileadmin/DAM/env/epr/epr_studies/bosnia_and_herzegovina%20II.pdf].

⁵ USAID SPIRA/Chemonics International Inc., Investors Reference Manual, Construction Regulations in Bosnia and Herzegovina, 2009, p. 8 [http://www.mvteo.gov.ba/vijesti/posljednje_vijesti/default.aspx?id=1189&langTag=bs-BA].

⁶ Ministry of Foreign Trade and Economic Relations, State of the Environment Report of Bosnia and Herzegovina (2012), page 206 [http://apps.unece.org/publications/pmtdocuments/-State_of_the_Environment_Report_for_Bosnia_and_Herzegovina-2012SoEReport_BosniaandHerzegov.pdf].

Chart 1 - BiH's administrative structure

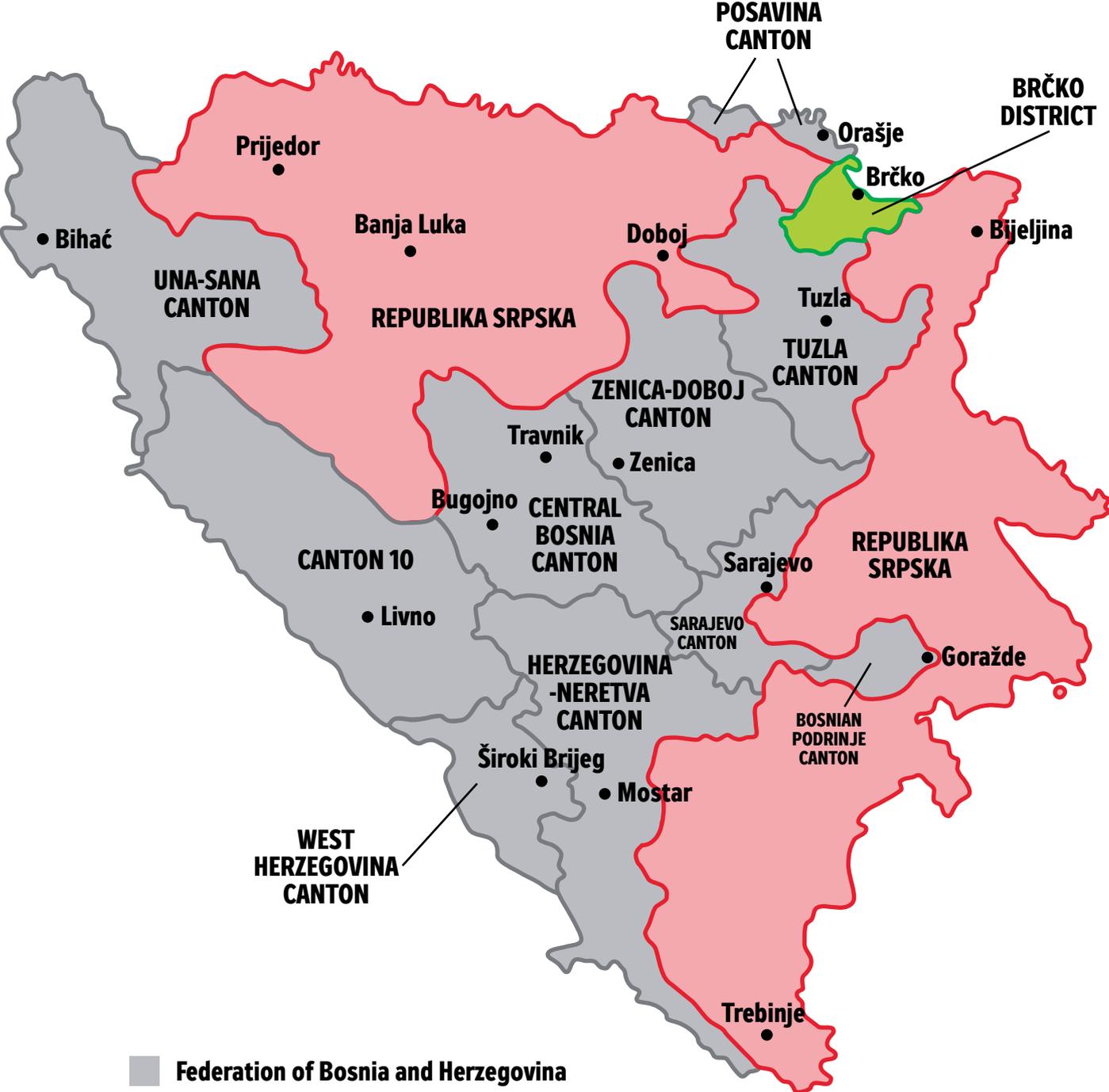
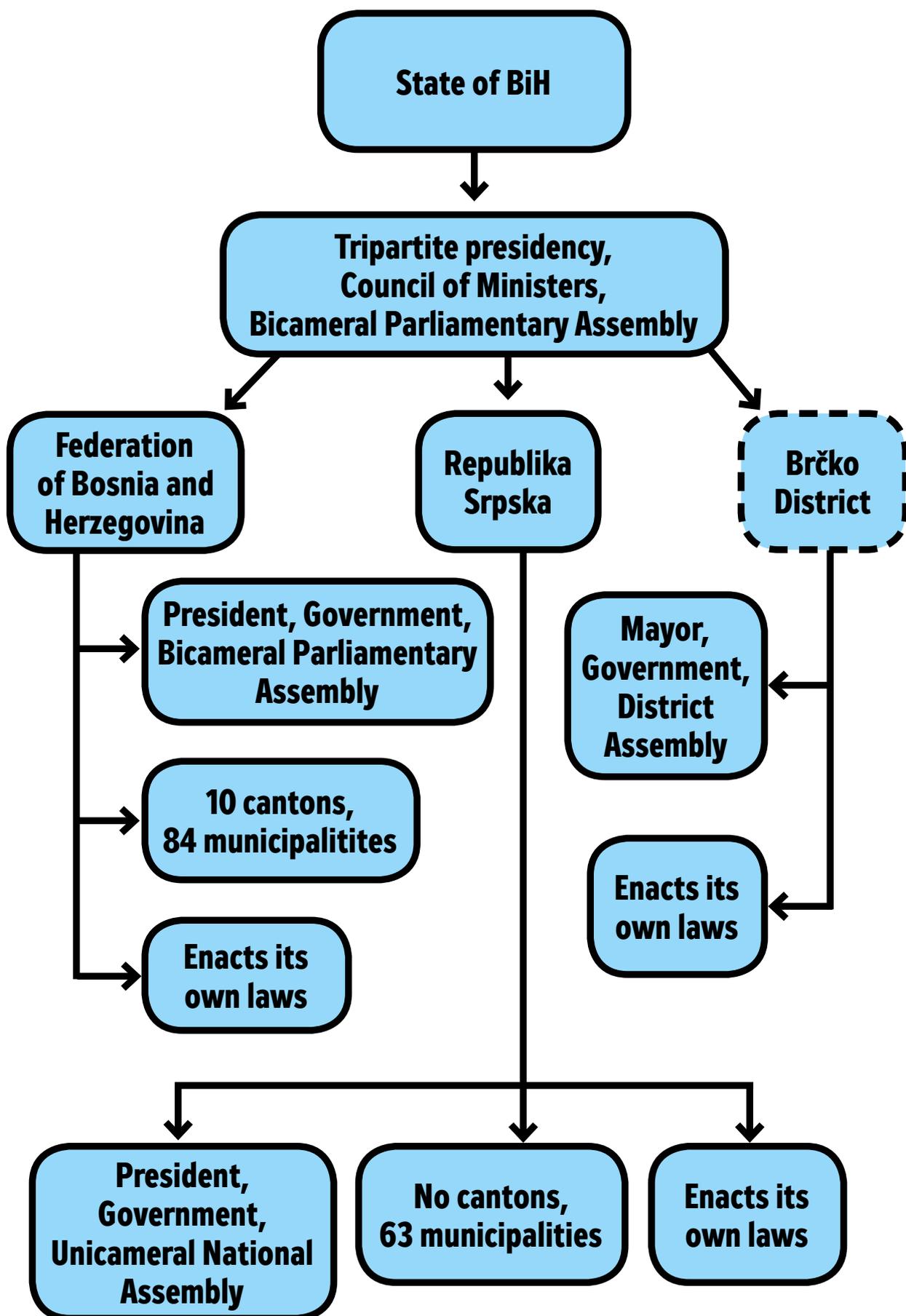


Chart 2 - BiH's system of governance



1. LEGAL FRAMEWORK OF ENVIRONMENTAL DECISION-MAKING AND ADMINISTRATIVE PROCESSES

1.1 Regulation of Spatial Planning, EIA, Environmental and Construction Permitting Process

Environmental decision-making and administrative processes in BiH (spatial planning, EIA, environmental and construction permitting processes) are governed by a series of acts with the most relevant matters of procedure contained in the following regulation:

Entity-level governing legislation

EIA and environmental permitting process are regulated by:

- Entity-level Laws on Environmental Protection of FBiH and RS, and
- Law on Environmental Protection of Brčko District.⁷

Note that these are framework laws, thus, an array of special (Entity level) laws such as those regulating air pollution prevention, waste management, nature protection, and the environmental protection fund will need to be consulted for particulars related to these processes.⁸

Spatial planning and construction are regulated by special Entity-level (and Brčko District) laws:

- Law on Spatial Planning and Land Use⁹ and the Law on Construction of FBiH¹⁰,
- Law on spatial planning and construction of RS,¹¹ and
- Law on Physical Planning and Construction.¹²

In addition, you will need to consult a number of by-laws and ordinances that govern, for instance, contents and preparation of spatial planning documents.

Table 1 - Legislation relevant to environmental decision-making processes in BiH

FBiH	Spatial planning	Laws: Law on Spatial Planning and Land Use of FBiH Secondary legislation: Methodology for preparation of spatial planning documents
	EIA	Law on Environmental Protection of FBiH
	Environmental permitting	Laws: Law on Environmental Protection of FBiH Secondary legislation: Regulation on plants and installations for which Environmental Impact Assessment is obligatory and on plants and installations which may be constructed and commissioned only if they receive an environmental permit
	Construction	Law on Construction of FBiH
	Environmental protection	Waters Act Law on Waste Management Law on Air Protection Law on Water Protection Law on Protection of Nature Law on Fund for Environment Protection
	Miscellaneous	Law on Administrative Disputes (State-level law)

⁷ Law on Environmental Protection (Official Gazette of FBiH, No. 33/03, 39/09), Law on Environmental Protection of Republika Srpska (Official Gazette of Republika Srpska, No. 71/12, 79/15), Law on Environmental Protection of Brčko District (Official Gazette of Brčko District, No. 24/04, 1/05, 19/07, 9/09).

⁸ Ministry of Foreign Trade and Economic Relations, State of the Environment Report of Bosnia and Herzegovina (2012), page 206 [http://apps.unep.org/publications/pmtdocuments/-State_of_the_Environment_Report_for_Bosnia_and_Herzegovina-2012SoEReport_BosniaandHerzegovina.pdf].

⁹ Law on spatial planning and land use of the Federation of Bosnia and Herzegovina (Official Gazette of FBiH, No. 02/06, 72/07, 32/08, 04/10 and 13/10).

¹⁰ Law on construction of the Federation of Bosnia and Herzegovina (Official Gazette of FBiH, No. 55/02).

¹¹ Law on Spatial Planning and Construction of Republika Srpska (Official Gazette of RS, No. 40/13 and 106/15).

¹² Law on Spatial Planning and Construction of Brčko District (Official Gazette of Brčko District, No. 29/08).

RS	Spatial planning	Laws: Law on Spatial Planning and Construction of RS Secondary legislation: Ordinance on the content creation and adopting of spatial planning documents
	EIA	Law on Environmental Protection of RS Decree on EIA
	Environmental permitting	Law on Environmental Protection of RS
	Construction	Law on Spatial Planning and Construction of RS
	Environmental protection	Waters Act Law on Waste Management Law on Air Protection Law on Water Protection Law on Protection of Nature Law on Fund for Environment Protection
	Miscellaneous	Law on Administrative Disputes (State-level law)

Brčko District	Spatial planning	Law on Physical Planning and Construction
	EIA	Law on Environmental Protection of Brčko District
	Environmental permitting	
	Construction	Law on Physical Planning and Construction
	Environmental protection	Law on Waste Management Law on Air Protection Law on Nature Protection Law on Water Protection
	Miscellaneous	Law on Administrative Disputes (State-level law)

Implementation of EU Environmental Directives

The most relevant EU directives related to the environmental decision-making and administrative processes you might need to consult are:

- IPPC Directive
- Industrial Emissions Directive
- EIA Directive
- SEA Directive
- Environmental Information Directive
- Public Participation Directive

As a potential candidate for EU membership, BiH is obliged to harmonize its legislation with the EU legal framework and has transposed these directives in its legislation as follows:

BiH (FBiH) has partially transposed and implemented certain requirements of the IPPC Directive¹³ concerning the environmental permitting process in the current (Entity-level) Law on Environmental Protection of FBiH¹⁴ and has been working towards implementing the requirements of the Industrial Emissions Directive,¹⁵ that streamlines and adds to the provisions of the IPPC Directive, in the new (Entity-level) draft law on environmental protection that is yet to be enacted to fully transpose this directive. Note that no law has been enacted in RS (or Brčko District) to transpose the IPPC Directive.

The extent to which the principles and requirements of the IPPC Directive are reflected in the Law on Environmental Protection of FBiH is included in the following table:

¹³ Council Directive 96/61/EC of 24 September 1996 concerning the integrated pollution prevention and control (IPPC). The codified version, following several amendments, was issued in the form of Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control that was later recast by Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control).

¹⁴ Law on Environmental Protection (Official Gazette of FBiH, No. 33/03, 39/09).

¹⁵ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control).

Table 2 - Transposition and implementation of IPPC Directive in BiH

IPPC Directive requirement	Transposition and implementation in BiH	Note
Integrated prevention and control of pollution arising from the activities listed in Annex I	Not transposed	The environmental permitting process is not integrated. Separate permits are issued for pollution of air, water, soil, and even for activities that extend beyond those listed in the IPPC Directive.
No new installations may operate without an integrated permit.	Not transposed	New installations require a permit, but not an integrated one, and the law requires a permit even for installations that do not fall under the IPPC Directive.
Contents of the permit application	Transposed	
Existing installations must operate in accordance with the IPPC Directive.	Not transposed	Existing installations, if permits are issued for them, operate in accordance with the law and conditions not compliant with the IPPC Directive.
The conditions of the permit shall be determined and the installation operated through the application of the best available techniques.	Transposed, but not fully applied in practice	The law contains a definition of the best available techniques as a basis for setting the emission values and conditions for the operation of the installation. However, BAT has not been developed for any other than the food industry.
Substantial changes in the operation require a permit.	Not transposed correctly	The law states that substantial changes in BAT require a permit review, but remains silent on obligations of both the operator and the competent authority if substantial changes in the operation occur.
Access to information and public participation	Not fully transposed	The law vaguely transposes the procedure for the purposes of public participation set out in Annex V to the Directive; how and where the information on particular stages of the permitting procedure is accessible is not always clear.
Access to justice	Transposed restrictively	The IPPC Directive requires that anyone is enabled to challenge the legality of decisions, acts, or omissions subject to the public participation provisions of the IPPC Directive; the law, however, restricts this right to participants to the procedure only. ¹⁾
Exchange of information	Not transposed	No current obligation to send the Commission the limit values by specific category of activities set in the IPPC Directive (Annex I), and BAT derived therefrom, exists.

¹⁾ The wording of the law is unfortunate. While it allows the public concerned to initiate a review of the legality of decisions, acts, or omissions, it also states that the members of the public concerned can do so only if they already participated in the first instance procedure, thus, giving this right only to participants of the procedure. In practice, even entities that do not constitute participants to the procedure file for a review and their submissions are accepted, though, the truth remains that the submissions may not be addressed or the review conducted duly and timely.

The EIA Directive¹⁶ that lays down rules for assessing potential effects of projects on the environment is mostly well transposed, yet sometimes poorly implemented in both Entities. In FBiH, it is transposed through the Law on Environmental Protection and the Regulation on plants and installations for which Environmental Impact Assessment is obligatory and on plants and installations which may be constructed and commissioned only if they receive an environmental permit.¹⁷ In RS, the EIA Directive has been transposed mainly by the Law on Environmental Protection, and the Decree on EIA.¹⁸ Further transposition is contained in the Regulation on installations which may be built and put into operation only if they have environmental permit, Regulation on projects that are performing an environmental impact assessment and the criteria for decision making on the required implementation and scope of the environmental impact assessment¹⁹ and Guidance on the contents of the environmental impact assessment study.²⁰

Table 3 - Transposition and implementation of EIA Directive in BiH

EIA Directive requirement	Transposition and implementation in BiH	Note
Projects listed in Annex I with significant effects on the environment shall be subject to assessment	Transposed	Ministries may issue decrees stating, which facilities require EIA, and thus extend the statutory list
If requested before submitting an application for development consent, the competent authority shall consult the developer and give opinion on the information supplied	The request for scoping and related steps are well transposed	
The public shall be informed about particular steps in the EIA process and provided information as early as with the request for development consent	Transposed but sometimes poorly implemented	Missing or incomplete announcements in newspapers, the ministry's website, and written notices
The public concerned shall be given opportunities to participate in the EIA process	Transposed but poorly implemented	It is common that the public consultations are either not held at all, or when held, the comments and suggestions garnered are disregarded

The SEA Directive on the assessment of the effects of certain plans and programmes on the environment is only partially transposed through the Law on Environmental Protection of FBiH, RS, and Brčko District.²¹ Although the EIA and SEA Directives have been transposed and EIA processes established, further efforts are necessary to implement the directives in a harmonized way at the State and Entity level and strengthen the regulation on public participation.

¹⁶ Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.

¹⁷ Official Gazette of FBiH, No. 19/04; Energy Community, Bosnia and Herzegovina Environment, not dated [https://www.energy-community.org/portal/page/portal/ENC_HOME/AREAS_OF_WORK/Implementation/Bosnia_Herzegovina/Environment].

¹⁸ Official Gazette of RS, No. 07/06; European Investment Bank, Environmental and Social Data Sheet (2012) [<http://www.eib.org/info-centre/register/all/54919483.pdf>].

¹⁹ Official Gazette of RS, No. 124/12.

²⁰ Official Gazette of RS, No. 108/13.

²¹ Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment; Damir Petrovic, European Network of Environmental Law Organizations, Implementation of SEA Directive in Bosnia and Herzegovina (2012) [http://www.justiceandenvironment.org/_files/file/2012/Implementation%20of%20SEA%20Directive%20in%20BiH%20-%20DP.pdf].

Table 4 - Transposition and implementation of SEA Directive in BiH

SEA Directive requirement	Transposition and implementation in BiH	Note
All plans and programmes with significant environmental impacts referred to in the SEA Directive are subject to SEA	Not fully transposed and implemented	SEAs are not carried out for all projects and plans under SEA Directive
The draft plans and programmes shall be made available to the public for consultations	Transposed but not fully implemented	Public consultations are not always conducted as required
The adopted plans and programmes shall be made available to the public	Transposed but not fully implemented	The adopted plans and programmes are frequently not made available to the public and when it is, it is not clear where and how it can be accessed

The Environmental Information Directive on public access to environmental information²² is almost fully transposed mainly through the Law on Environmental Protection and the Law on Freedom of Access to Information. There are a number of definitions and some key provisions that still need to be transposed.²³

Table 5 - Transposition and implementation of the Environmental Information Directive in BiH

Environmental Information Directive requirement	Transposition and implementation in BiH	Note
Manner of making environmental information available to the public	Transposed but incorrectly implemented	Requirements on deadlines, form and/or format are frequently not observed
Definition of practical arrangements under which environmental information is made available to the public	Mostly transposed but not fully implemented	Information officer was appointed and the office of ombudsman established; functional facilities for examination of the information required are sometimes missing; some information is available on the website of the Federal Ministry of Environment and Tourism and the Hydro-Meteorological Institute but it is not always clearly indicated where to find more/additional information
Definition of applicable exceptions	Not fully transposed and implemented	The extent when authority may refuse to provide environmental information is often exceeded
Ensuring that public authorities make environmental information available to the public	Mostly transposed but not fully implemented	The requests are often obstructed and conditioned by the applicants stating an interest
Establishing procedures for review of a decision not to supply environmental information	Mostly transposed but not fully implemented	Access to justice is restricted; procedures are lengthy and bureaucratic and rarely lead to adequate reconsideration or review of a contested decision, act or omission
Deciding on reasonable charges for supplying environmental information	Mostly transposed but not fully implemented	High charges are sometimes used to restrict access to information and justice
Establishing a system to disseminate environmental information to the public	Mostly transposed but not fully implemented	The system is chaotic; information is rarely provided by means of functional computer telecommunication and/or electronic technology
Establishing measures for quality assurance of information	Mostly transposed but not fully implemented	The information provided might be inaccurate

²² Directive 2003/4/EC of 28 January 2003 on public access to environmental information and repealing Council Directive 90/270/EEC.

²³ European Commission, Progress Monitoring Report, Federation of Bosnia and Herzegovina (2008), p. 15-16 [http://www.mvteogov.ba/org_struktura/sektor_prirodni_resursi/odjel_zastita_okolisa/English/Reports/default.aspx?id=2795&langTag=bs-BA].

The public participation directive²⁴ is only partially transposed through the Law on Environmental Protection.²⁵

Table 6 - Transposition and implementation of the Public Participation Directive in BiH

Public Participation Directive requirement	Transposition in BiH	Note
Defining the “public”	Not fully transposed and implemented	The definition of the “public” is more restrictive in national law
Establishing a mechanism for providing the public with information	Not fully transposed and implemented	No uniform way of providing information exists; authorities’ discretion is significant (sometimes they use notice boards, other times they wait for a request)
Establishing a mechanism for public consultation	Not fully transposed and implemented	The right to express comments and opinions is not always respected; the public is not always properly informed about the decisions taken based on the comments and opinions
Establishing a mechanism for public comments and opinions to be taken into account in the decision-making process	Not fully transposed and implemented	

Although marginally, the Water Framework Directive²⁶ is relevant for the environmental-administrative processes as it contains provisions on public participation and consultations that state which documents and in what manner shall be provided to the public.²⁷ It is partially transposed through the Law on Water Protection.²⁸

Note that BiH implemented EIA and environmental permitting process in largely similar Entity-level (and Brčko district) Laws on Environmental Protection, which are framework laws that normally lay down general obligations and principles and, as such, need to be used in conjunction with more special legislation.²⁹ Given the fragmented regulation of EIA and environmental permitting process, do not to forget, in addition to the framework laws on environmental protection, reviewing legislation such as the Law on Air Protection³⁰ or the Law on Waters.³¹ In addition to statutes, you should not overlook implementing legislation such as the Decree on EIA.

→ REMEMBER ←

- No State level law on spatial planning, EIA, environmental and construction permitting process exists
- No State level law transposing IPPC, Industrial Emissions, EIA, SEA, Environmental Information and Public Participation Directives has been enacted
- Legal framework and Entity-level legislation on spatial planning, EIA, environmental and construction permitting process is fragmented

1.2 Access to Information and Public Participation in Environmental Decision-making

Throughout the environmental decision-making and administrative processes the authorities will have an obligation to disclose and you will have the right to obtain certain information. You will also have the right to participate in

²⁴ Directive 2003/35/EC of the European Parliament and of the Council of 23 May 2003 providing for public participation in respect of drawing up certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC.

²⁵ European Commission, Progress Monitoring Report, Federation of Bosnia and Herzegovina (2008), p. 16-17 [http://www.mvteo.gov.ba/org_struktura/sektor_prirodni_resursi/odjel_zastita_okolisa/English/Reports/default.aspx?id=2795&langTag=bs-BA].

²⁶ Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy.

²⁷ See Article 14 of the Water Framework Directive.

²⁸ Official Gazette of FBiH, No. 33/03.

²⁹ In established jurisdictions such as the Czech Republic you will rarely see specific procedural (EIA and environmental permitting) rules integrated into a regulation that sets a framework for an array of other legislation related to environmental matters. You will more likely come across specific procedure (e.g. environmental permitting (IPPC) process) regulated in a separate act (IPPC Act – Act No. 76/2002 Coll. on Integrated Pollution Prevention and Control, on the Integrated Pollution Register and on amendment to some laws, as amended) and a framework regulation for environmental protection (e.g. Act No. 17/1992 Coll., on Environment, as amended) that unlike in BiH will not contain regulation of any administrative procedure.

³⁰ Law on Air Protection of FBiH (Official Gazette of FBiH, No. 33/03, 04/10); Law on Air Protection of RS (Official Gazette of RS, No. 124/11).

³¹ Law on Waters of FBiH (Official Gazette of FBiH, No. 70/06); Law on Waters in RS (Official Gazette of RS, No. 50/06, 92/09, 121/12).

these processes, make comments and give opinions, as well as to participate in a review of contested decisions, acts or omissions. BiH's obligations related to providing access to environmental information and the right to participate in environmental decision-making ensue from:

- International legal instruments governing environmental protection and pollution prevention (Aarhus and Espoo Conventions and Kyiv Protocol),
- EU law (Industrial Emissions, Environmental Information and Public Participation Directives), and
- National law (the Law on Freedom of Access to Information).

Aarhus Convention

Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (known as Aarhus Convention) was adopted in 1998 in the Danish city of Aarhus. In 2008, BiH acceded to the Aarhus Convention that became a part of the BiH's legal system and BiH is obliged to implement its provisions. The Aarhus Convention establishes the following rights of the public (individuals and their associations) with regard to the environment:

- (i) The right to access environmental information held by public authorities,³²
- (ii) The right to participate in environmental decision-making,³³
- (iii) The right to access justice.³⁴

The right to access environmental information can include various types of information: on the state of the environment, on policies or measures taken, or on the state of human health and safety that can be affected by the state of the environment. Public authorities need to provide this information within one month of the request and without requiring the reason for obtaining this information from applicants. In addition, public authorities are obliged to actively disseminate environmental information in their possession.³⁵

As regards the right to participate in environmental decision-making, public authorities need to enable the public affected and environmental non-governmental organisations to comment on, for example, proposals for projects affecting the environment, or plans and programmes related to the environment, take these comments into consideration during decision-making, and provide information on the final decisions including reasons for it.³⁶

In ensuring access to justice, public authorities need to enable exercising the right to review procedures to challenge public decisions that have been made irrespective the two aforementioned rights or environmental law in general.³⁷

Public authorities may refuse the provision of environmental information only for valid reasons such as manifestly unreasonable request, the request would adversely affect national defence and security, or confidentiality of information protected by law.³⁸

Espoo (EIA) Convention and Kyiv (SEA) Protocol

The Convention on Environmental Impact Assessment in a Transboundary Context (known as Espoo (EIA) Convention) is a United Nations Economic Commission for Europe (UNECE) convention signed in Espoo, Finland, in 1991 that entered into force in 1997.³⁹ In 2003, the extraordinary meeting of the parties to the Espoo Convention held in Kyiv adopted the Protocol on Strategic Environmental Assessment to the Espoo Convention (known as Kyiv (SEA) Protocol). BiH became party to Espoo (EIA) Convention in 2009 and signatory to the Kyiv (SEA) Protocol in 2003.⁴⁰

Both the Espoo (EIA) Convention and Kyiv (SEA) Protocol acknowledge a vital role that the public and non-governmental organizations (NGOs) have to play in the development, implementation, and support of these instruments. The Espoo (EIA) Convention extends assessments across borders between its parties where a project causes significant adverse transboundary impact. It sets out the obligations of parties to assess the environmental impact of certain activities at an early stage of planning, to enable the government and public of an affected country to participate in the assessment, and to ensure the results of the assessment are taken into account in the final decision about the project.⁴¹

³² See Article 4 of the Aarhus Convention.

³³ See Articles 6-8 of the Aarhus Convention.

³⁴ See Articles 9 of the Aarhus Convention.

³⁵ See Article 4 of the Aarhus Convention.

³⁶ See Articles 6-8 of the Aarhus Convention.

³⁷ See Article 9 of the Aarhus Convention.

³⁸ See Article 4 (3) of the Aarhus Convention.

³⁹ United Nations Economic Commission for Europe, Introduction to Espoo Convention, not dated [<https://www.unece.org/env/eia/eia.html>].

⁴⁰ United Nations Economic Commission for Europe, Introduction, not dated [https://www.unece.org/env/eia/sea_protocol.html].

⁴¹ United Nations Economic Commission for Europe, Introduction to Espoo Convention, not dated [<https://www.unece.org/env/eia/eia.html>].

The Kyiv (SEA) Protocol augments the Aarhus Convention by requiring its parties to evaluate the environmental consequences of their draft plans and programmes at the earliest stages, thus, laying foundations for sustainable development. The Protocol also provides for extensive public participation in government decision-making and the obligation to inform and consult the public on these plans and programmes.⁴²

Industrial Emissions Directive

The Industrial Emissions Directive is one of EU legal instruments reflecting the principles and obligations ensuing from the Aarhus Convention. It is the main EU instrument regulating pollutant emissions from industrial installations, which sets out the IPPC process, and specifies requirements for access to information and public participation.

The Industrial Emissions Directive ensures that the public has a right to participate in the decision-making process (IPPC process), and to be informed of its consequences, by having access to permit applications, permits and the results of releases monitoring.⁴³ The Industrial Emissions Directive also ensures that the public has access to a review procedure before a court or another independent and impartial body to challenge the substantive or procedural legality of decisions issued and/or acts made throughout the procedure.⁴⁴

Environmental Information Directive

The Environmental Information Directive transposes the first pillar of Aarhus Convention (access to information) into EU law. It upholds the right of any natural and legal person to access environmental information held by or for public authorities without having to state an interest. The environmental information should be made available and disseminated to the public to the widest extent possible and in a reasonable time scale. The directive views the disclosure of information as the general rule and mandates that grounds for refusal be interpreted restrictively. Similarly as the Industrial Emissions Directive, the Environmental Information Directive ensures access to administrative or judicial review of the acts or omissions of a public authority in relation to a request for information.⁴⁵

Public Participation Directive

The Public Participation Directive transposes the second pillar of Aarhus Convention (access to information) into EU law. It obliges member states to introduce mechanisms to facilitate public participation in decisions about the environment. Under the provisions of this Directive, the public is entitled to have relevant decisions of public bodies reversed by way of judicial review.

Note that EU directives are not directly applicable in EU Member States (and potential candidate countries). Thus, the rights ensuing from the Industrial Emissions, Environmental Information, and Public Participation Directives can only be enforceable in BiH when legislation is passed to make the directive a law in BiH. While the Environmental Information and Public Participation Directives are already partially transposed (see tables 5 and 6 above), the Industrial Emissions Directive is yet to be transposed into the BiH legislation.

Law on Freedom of Access to Information

At the national level, three largely similar Laws on Freedom of Access to Information adopted in the State of BiH⁴⁶ and in FBiH and RS in 2001 (Brčko District uses the State-level act) govern disclosure of information held by governmental bodies.⁴⁷

The Law on Freedom of Access to Information views information controlled by public authorities as a valuable public resource and public access to such information as a means to promote greater transparency and accountability of those authorities, which is essential to the democratic process. It grants every person the right to access information held by public authorities, as long as it complies with the public interest, and imposes corresponding obligation upon public authorities to disclose information. Information within the meaning of this law is defined broadly as all information in the possession or control of a public authority, which can be any material communicating facts, opinions, data or any other matter, including any copy or portion thereof, and regardless of physical form or characteristics, when it was created and how it is classified.⁴⁸

⁴² United Nations Economic Commission for Europe, Introduction, not dated [https://www.unece.org/env/eia/sea_protocol.html]; See Article 8 of the Kyiv (SEA) Convention.

⁴³ See Article 24 of the Industrial Emissions Directive.

⁴⁴ See Article 25 of the Industrial Emissions Directive.

⁴⁵ See preamble of the Environmental Information Directive.

⁴⁶ The Law on Freedom of Access to Information of BiH (Official Gazette of BiH, No. 28/00, 45/06, 102/09, 62/11, 100/13).

⁴⁷ The Institution of Human Rights – Ombudsman of Bosnia and Herzegovina, Freedom of Access to Information (2015) [<http://www.ombudsmen.gov.ba/Default.aspx?id=32&lang=EN>].

⁴⁸ Law on Freedom of Access to Information of BiH (Official Gazette of BiH, No. 28/00, 45/06, 102/09, 62/11, 100/13), Law on Freedom of Access to Information of RS (Official Gazette of the Republic of Srpska, No. 20/01), Law on Freedom Access to Information FBiH (Official Gazette of FBiH, No. 32/01, 48/11).

Table 7 - Access to information and public participation according to legal instruments

International law	Aarhus Convention	Right to access environmental information
		Right to participate in environmental decision-making
		Right to access justice
	Espoo (EIA) Convention	Obligation of transboundary EIA
	Kyiv (SEA) Protocol	Obligation of transboundary SEA
EU law	Industrial Emissions Directive/IPPC Directive	Right to participate in IPPC process
		Right to access information of IPPC process
		Right to challenge legality of decisions in IPPC process
	Public Participation Directive	Right to public participation in decisions about the environment
	Environmental Information Directive	Right to access environmental information
	EIA Directive	Obligation of national EIA
	SEA Directive	Obligation of national SEA
National (BiH) law	Law on Freedom of Access to Information	Right to access and obligation to disclose information held by public authorities

How to obtain information held by public authorities?

The process is described in the Law on Freedom of Access to Information.⁴⁹

Request for information

The request shall be in writing and shall contain requirements stated in Article 11 (2) of the Law on Freedom of Access to Information. You can file it yourself or you authorize a representative to do it on your behalf.

Examination of the request

The public authority will examine the request and if it does not comply with formal requirements, it will notify you within fifteen days following the receipt thereof that it could not process it, including the reasons.⁵⁰

Determination of competence

If the public authority determines it is not competent to process the request, it will transfer the request to the competent authority within fifteen days following the receipt and notify you in writing thereof.⁵¹ Otherwise, it will proceed to complying with the request.

Providing information

If access to information is granted, the public authority will notify you in writing, attaching a duplicate of the requested information (if it entails no cost) or stating the information is available at the public authority's address.⁵²

⁴⁹ See Articles 11 et seq. of the Law on Freedom of Access to Information.

⁵⁰ See Article 12 et seq. of the Law on Freedom of Access to Information.

⁵¹ See Article 13 et seq. of the Law on Freedom of Access to Information.

⁵² See Article 14 et seq. of the Law on Freedom of Access to Information.

If the access is denied, the public authority will notify you in writing, stating the grounds of exemption.⁵³

Right to appeal

Any decision made pursuant to the Law on Freedom of Access to Information may be appealed to the head of the public authority that issued it. It does not prejudice the rights to administrative appeal and judicial review pursuant to special laws.⁵⁴

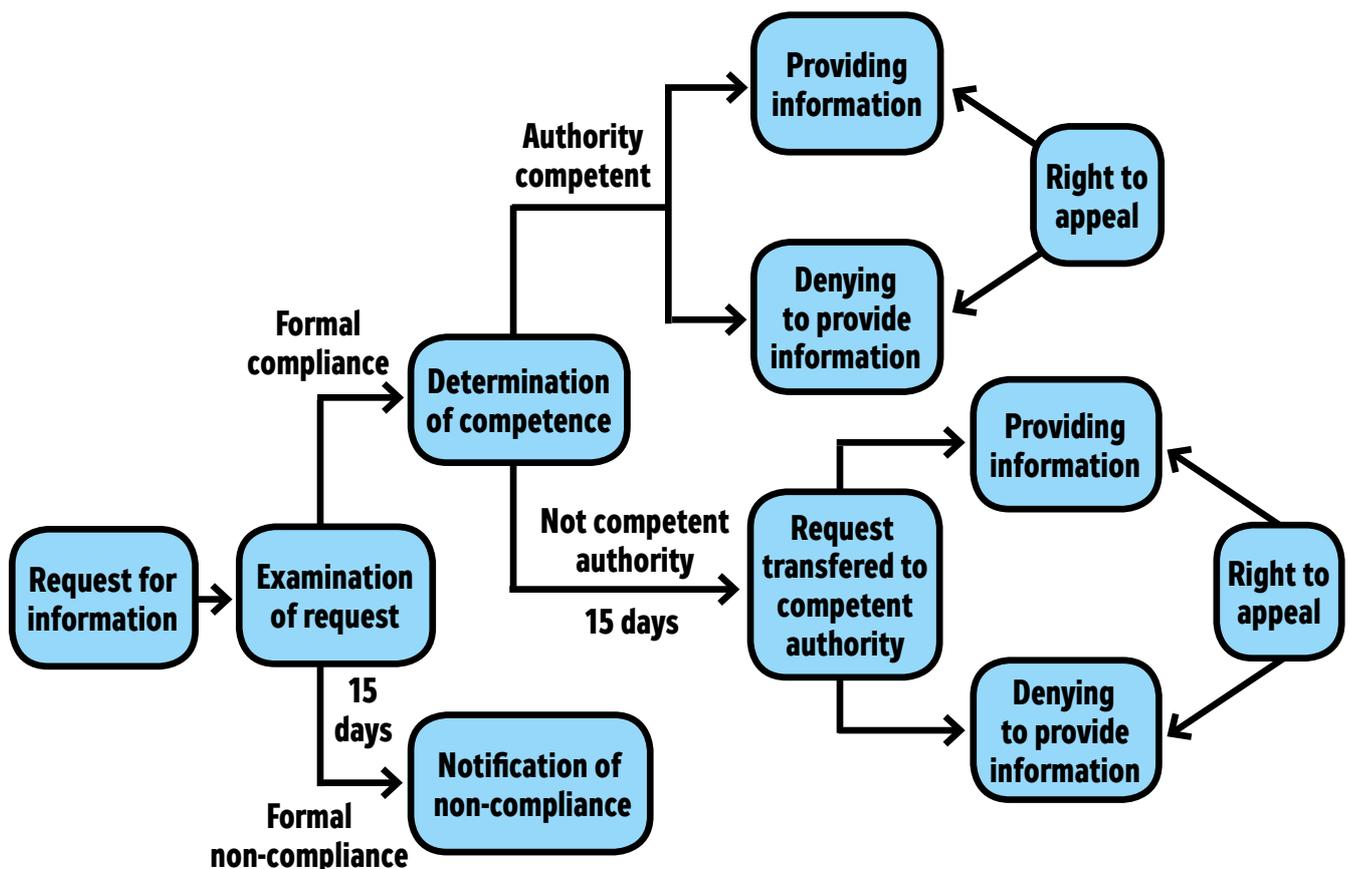
Administrative appeal and judicial review

If the public authority fails to act upon the request for information or obstructs the disclosure, you may file a legal claim to administrative court for administrative omission or inaction and request the public authority be ordered to follow the Law on Freedom of Access to Information and provide the information. The procedural requirements are included in the Law on Administrative Disputes.⁵⁵ Note that a decision delivered by court in this type of administrative dispute is final and cannot be appealed.⁵⁶

Ombudsman of BiH

Within its functions under the Law on Freedom of Access to Information the ombudsman may issue instructions and recommendations on the implementation of that law. Note that you cannot request any remedies from ombudsman for the breach of the public authorities' obligations in relation to the request for information, but filing a complaint will induce ombudsman's investigation with relevant authorities that might lead to systemic change in the authorities approach to information disclosure.

Chart 3 - Information disclosure process



⁵³ See Article 14 et seq. of the Law on Freedom of Access to Information.

⁵⁴ See Article 23 of the Law on Freedom of Access to Information.

⁵⁵ Official Gazette of BiH, No. 19/02.

⁵⁶ See Article 3 of the Law on Administrative Disputes.

Note that even though the Aarhus Convention is well transposed to the BiH's legal system, its practical application and enforcement is largely inadequate. A major obstacle in this regard lies in BiH's complex governance system and administrative structures. In practice, the three pillars of the Aarhus Convention (outlined above) are often breached as follows:

The majority of public requests for information are ignored or inadequately addressed, and when the response is provided, it does not happen within the statutory deadline. Lawsuits initiated and protests organized to demand that authorities take action and provide relevant information are not a rarity.⁵⁷ Public participation is frequently undermined by omitting public discussion in relevant decision-making and access to justice is often deterred by relatively high court fees and lengthy (court) proceedings.⁵⁸

Table 8 - Sources of information

Where to find information?		
BiH government and state institutions	BiH ministries	Access to information, public participation – international instruments
<p>Government of FBiH http://www.fbihvlada.gov.ba/</p> <p>Government of RS www.vladars.net</p> <p>Government of Brčko District http://www.bdcentral.net/</p> <p>Parliament of BiH www.parliament.ba</p> <p>Parliament of FBiH http://www.parlamentfbih.gov.ba/</p> <p>Parliament of RS http://www.narodnaskupstinars.net/</p> <p>Ombudsman of BiH http://ombudsmen.gov.ba/</p>	<p>Ministries of FBiH http://www.fbihvlada.gov.ba/bosanski/ministarstva/</p> <p>Ministries of RS www.vladars.net</p> <p>Ministries of Brčko District http://www.bdcentral.net/</p> <p>Federal Ministry for Physical Planning of FBiH http://www.fmpu.gov.ba/</p> <p>Federal Ministry of the Environment and Tourism of FBiH www.fmoit.gov.ba</p> <p>Ministry of Spatial Planning, Civil Engineering and Ecology http://www.vladars.net/eng/vlada/ministries/MSPCEE/Pages/default.aspx</p>	<p>UN Treaty Series https://treaties.un.org/</p> <p>UNECE conventions and protocols (Aarhus, Espoo, and Kyiv) http://www.unece.org/env/treaties</p> <p>European Union and EU law EU law database (including directives and treaties) eur-lex.europa.eu</p> <p>European IPPC Bureau eippcb.jrc.ec.europa.eu/</p> <p>National (BiH) laws List of Entity-level laws of FBiH published in official gazettes since 1996 http://www.fbihvlada.gov.ba/english/zakoni/</p> <p>Public pollutant registers European Pollutant Release and Transfer Register http://prtr.ec.europa.eu/</p> <p>Website on environmental information and public participation http://eko.ba/baza-zagadivaca</p>

⁵⁷ Recent and detailed account of the implementation of the Aarhus Convention can be found in the report "Environmental Democracy in BiH – Limping Along: Alternative Report on the Implementation of the Aarhus Convention in Bosnia and Herzegovina" prepared in collaboration of the environmental NGOs – Arnika (CZ) and EKO forum Zenica (BiH) and available at <http://english.arnika.org/e-shop/publications/environmental-democracy-in-bih-limping-along>.

⁵⁸ Arnika, EKO forum Zenica, Environmental Democracy in BiH – Limping Along: Alternative Report on the Implementation of the Aarhus Convention in Bosnia and Herzegovina (2015), page 33 [<http://english.arnika.org/e-shop/publications/environmental-democracy-in-bih-limping-along>].

→ REMEMBER ←

- Key rights of the public: to access environmental information, to participate in environmental decision-making, to access justice
- The rights are reflected in Aarhus and Espoo Conventions and Kyiv Protocol, Industrial Emissions, Environmental Information and Public Participation Directives, the Law on Freedom of Access to Information (and Entity-level Laws on Environmental Protection)
- The rights are often breached (requests for information are ignored, or insufficiently addressed; public authorities' compliance is to be often enforced by lawsuits and protests)
- The public may raise claims at the administrative court for authorities' inaction or omission

2. COMPETENCIES AND RESPONSIBILITIES OF PUBLIC AUTHORITIES

According to the BiH constitution, the State of BiH has no jurisdiction in environmental matters, thus, the pivotal institutions responsible for environmental governance lay at the Entity level. The Entities make continuous efforts to keep the powers of the state limited, the central State of BiH is relatively weak, and no centralized Ministry for Environment with State-level environmental agenda exists —the State-level Ministry for Foreign Trade and Economic Relations (MOFTER) undertakes some minimal co-ordinating role, and retains formal, (but not actual) powers to formulate environmental policy and legislation.⁵⁹

In the environmental decision-making and administrative processes, majority of decisions and permits are issued by Entity and Cantonal-level ministries and some, at municipal level by local authorities. You should be prepared to encounter some serious government bureaucracy benefiting from confusing processes that lack clearly defined framework. Do not be surprised by arbitrary interpretation of laws and regulations, failure to comply with statutory deadlines, unfounded requests for additional documents and information, and other intricacies. Note that you can file a claim with administrative court for authorities' omission or inaction (see above under "Administrative appeal and judicial review" in subchapter 1.2.).

2.1 Authorities involved in EIA Process

The EIA process is carried out by the Federal Ministry for Environment and Tourism in FBiH (FMoET) and the Ministry of Spatial Planning, Civil Engineering and Ecology in RS (MoSPCEE) for large installations exceeding thresholds of implementing legislation (and where FMoET determines on a case by case basis that EIA is required). For small installations falling below thresholds of implementing legislation EIA is not necessary and environmental permits are issued by cantonal ministries in FBiH and municipal administration bureaus in RS.⁶⁰

Federal Ministry for Environment and Tourism in FBiH

Competence and responsibilities of FMoET in FBiH in the field of environment (and EIA) are governed by the following laws:

- Law on Waste Management⁶¹
- Law on Air Protection⁶²
- Law on Water Protection⁶³
- Law on Environment Protection⁶⁴
- Law on Protection of Nature⁶⁵
- Law on Fund for Environment Protection⁶⁶

In the field of environment, FMoET carries out administrative, expert, and other tasks related to: air, water and soil protection; drafting environmental strategy and policy; creating and monitoring quality standards; monitoring and control of air, water and soil pollution; and other tasks as set out by the applicable legislation.

⁵⁹ United Nations Economic Commission for Europe, 2nd Environmental Performance Review, Bosnia and Herzegovina (2011), page 14 [http://www.unece.org/fileadmin/DAM/env/epr/epr_studies/bosnia_and_herzegovina%2011.pdf].

⁶⁰ United Nations Economic Commission for Europe, 2nd Environmental Performance Review, Bosnia and Herzegovina (2011), page 28, 54 [http://www.unece.org/fileadmin/DAM/env/epr/epr_studies/bosnia_and_herzegovina%2011.pdf].

⁶¹ Official Gazette of FBiH, No. 33/03, 72/09.

⁶² Official Gazette of FBiH, No. 33/03, 04/10.

⁶³ Official Gazette of FBiH, No. 33/03.

⁶⁴ Official Gazette of FBiH, No. 33/03, 39/09.

⁶⁵ Official Gazette of FBiH, No. 66/13.

⁶⁶ Official Gazette of FBiH, No. 33/03, 39/09.

The Sector for Environmental Licenses of the Department of Environment is competent in matters of EIA (and environmental permitting process). For FMOET contact information see table 10 below.

Ministry of Spatial Planning, Civil Engineering and Ecology in RS

The Ministry of Spatial Planning, Civil Engineering and Ecology in RS (MoSPCEE) has competence and coordinates activities in the areas of spatial planning, construction and environment.

Competence and responsibilities of MoSPCEE in RS in these areas (and EIA) are governed by the same laws as those of FMOET (see above):

The department for Ecology is competent in matters of EIA (and environmental permitting for projects requiring EIA). For MoSPCEE contact information see table 10 below.

2.2 Authorities involved in Environmental Permitting Process

The environmental permits are issued by the authorities at Entity and Cantonal/municipality level. In FBiH, the Federal Ministry for the Environment and Tourism issues the environmental permits based on EIA. Cantonal-level ministries (i.e., Ministry of Spatial Planning, Transport, and Environmental Protection in Zenica-Doboj Canton) may issue environmental permits where a respective facility is not subject to EIA. In RS, the Ministry for Spatial Planning, Civil Engineering, and Ecology issues the environmental permits based on EIA, whereas Cantons/municipalities may issue environmental permits where a facility is not subject to EIA.⁶⁷

Federal Ministry of Environment and Tourism in FBiH

For competence and contact information of the Federal Ministry of Environment and Tourism that issues environmental permits (and decides on EIA) in FBiH see explanation above and table 10.

Ministry of Spatial Planning, Civil Engineering and Ecology in RS

For competence and contact information of the Republic Ministry of Spatial Planning, Civil Engineering and Ecology that issues environmental permits (and decides on EIA) in RS see explanation above and table 10.

Cantonal ministries

The competencies of Cantons are set out in the Constitution of FBiH. Each of 10 Cantons of FBiH has its own government and adopts its own laws (harmonized with the FBiH legislation). Note that there is no unique form of organization or policy for ministries dealing with environmental issues at the Cantonal level.⁶⁸

Which Cantonal ministry issued environmental permit depends on the location of a facility in a Canton, for which a permit is required.

⁶⁷ United Nations Economic Commission for Europe, 2nd Environmental Performance Review, Bosnia and Herzegovina (2011), page 28 [http://www.unece.org/fileadmin/DAM/env/epr/epr_studies/bosnia_and_herzegovina%20II.pdf].

⁶⁸ UNEP Office in Bosnia and Herzegovina, Institutions at cantonal and local level, not dated [<http://www.unep.ba/cantonal-and-local-level.html>].

Table 9 - List of cantonal environmental ministries

No.	Name of the Canton	Name of the competent Ministry
1	Una-Sana Canton	Ministry of Construction, Spatial Planning and Environmental Protection
2	Posavina Canton	Ministry of Transport, Communications, Tourism and Environmental Protection
3	Tuzla Canton	Ministry of Urban Planning, Spatial Planning and Environmental Protection
4	Zenica-Doboj Canton	Ministry of Spatial Planning, Transport and Communications and Environmental Protection
5	Bosnian Podrinje Canton	Ministry of Urban Planning, Spatial Planning and Environmental Protection
6	Central Bosnia Canton	Ministry of Spatial Planning, Reconstruction and Return (it also deals with the environment)
7	Herzegovina-Neretva Canton	Ministry of Trade, Tourism and Environmental Protection
8	West Herzegovina Canton	Ministry of Spatial Planning, Natural Resources and Environmental Protection
9	Sarajevo Canton	Ministry of Spatial Planning and Environmental Protection
10	Canton 10 (West Bosnia Canton)	Ministry of Construction, Reconstruction, Spatial Planning and Environmental Protection

2.3 Authorities involved in Spatial Planning and Construction

Spatial planning authorities

On the level of FBiH Entity, spatial plans are prepared and implemented by the Ministry of Physical Planning of FBiH and adopted by the Parliament.

Ministry of Physical Planning in FBiH

Competence and responsibilities of the Ministry of Physical Planning (FMoPP) in FBiH in the field of spatial planning and land use are governed by the following laws:

- Law on Physical Planning and Land use of the Federation of BiH⁶⁹
- Law on Building of the Federation of BiH⁷⁰

FMoPP carries out administrative, expert and other tasks related to: spatial planning, land use at the Federal level; drafting, implementing and enforcing spatial plan of the FBiH, harmonization of spatial plans of the Cantons with the Spatial plan of the FBiH, use of natural resources, and other tasks as set out by applicable legislation.

Sector for Physical Planning of FMoPP is competent in matters of spatial planning and construction. For FMoPP contact information see table 10 below.

On Cantonal level, the spatial plans are adopted by Cantonal assemblies and, on municipal level, by municipality assemblies.

On the level of the Entity of RS, the Ministry of Spatial Planning, Civil Engineering, and Ecology is responsible for the preparation of the spatial plan that is adopted by the national assembly. For competencies of the Ministry of Spatial Planning, Civil Engineering, and Ecology see the text above and for contact information table 10.

At the municipality level, spatial plans are adopted by municipality assemblies.

Construction permit authorities

In FBiH, the construction permits for projects requiring EIA are issued by the Federal Ministry for Physical Planning. For competencies see the text above and for contact information table 10.

At cantonal and municipal level in FBiH, the construction permits for projects not requiring EIA are issued by cantonal/municipal authorities.

In RS, municipal authorities issue construction permits in all cases except for big infrastructure projects or projects on territory of two or more municipalities when the Ministry of Spatial Planning, Civil Engineering and Ecology issues the construction permit.

⁶⁹ Official Gazette of FBiH, No. 02/06, 72/07, 32/08, 04/10 and 13/10.

⁷⁰ Official Gazette of FBiH, No. 55/02.

Table 10 - Competence and contact to relevant Entity ministries

AUTHORITY	COMPETENCE	CONTACT INFORMATION
Federal Ministry for Physical Planning	Spatial planning and construction permitting process	Maršala Tita 9a Sarajevo BiH Tel: +387 33 226 420 www.fmpu.gov.ba
Ministry of Physical Planning, Civil Engineering and Ecology in RS	Spatial planning, EIA, environmental and construction permitting process	1 Trg Republike Srpske 78000 Banja Luka http://www.vladars.net/eng/vlada/ministries/MSPCEE/Pages/default.aspx
Federal Ministry for the Environment and Tourism	EIA, environmental permitting process	Marka Marulića 2 Sarajevo Telefon: +387 33 726 700 www.fmoit.gov.ba

→ REMEMBER ←

- No jurisdiction in environmental matters at the State of BiH
- Majority of decisions/permits issued by Entity and Cantonal ministries
- Heavy bureaucracy, arbitrary interpretation of procedural rules, confusing procedural legal framework
- You can raise claims at the administrative court for authorities' inaction, omission, and failure to act within their competence, or raise complaint with ombudsman for institutional malfunctioning/violation of rights

3. ENVIRONMENTAL DECISION-MAKING AND ADMINISTRATIVE PROCESSES

The sequence of processes to build and operate an industrial facility in BiH is as follows:

- Spatial planning
- Urban permitting
- Environmental permitting (and EIA, if any)
- Construction permitting
- Use permitting

In order to build an industrial facility in BiH a developer first needs to make sure that a spatial plan of either Entity designated that the industrial facility's desired location may be utilized for industrial purposes. Spatial plan is a public document adopted through a spatial planning process where the public may participate and raise comments to a draft spatial plan. Note that spatial planning process in BiH may be initiated (and spatial planning documents adopted) only by public authorities (not private entities/individuals) (for details on the spatial planning process see section 3.1.).

Spatial planning documents are important documents to pay attention to as urban, construction, and use permits are issued on the basis of clauses therein. Consequently, if a certain type of construction is prohibited by these documents, or if the proposed construction is not allowed, a developer needs to request an exception and, if not granted, the works cannot commence and permits cannot be issued. If they were issued despite the lack of legal basis in spatial planning documents, you could raise claims for authorities' maladministration.

If a spatial plan enables industrial project in a particular location, then an investor needs to obtain essentially four permits: urban, environmental, construction, and use permit. Urban permit (or location conditions) establishes a facility's location and existing point to connect to infrastructure (electricity, etc.) and is issued by public authorities (ministries or municipalities) upon request of a private entity (developer). The public cannot participate in the urban permitting process; not even as an "intervener" that proved a "direct legal interest" in the project.

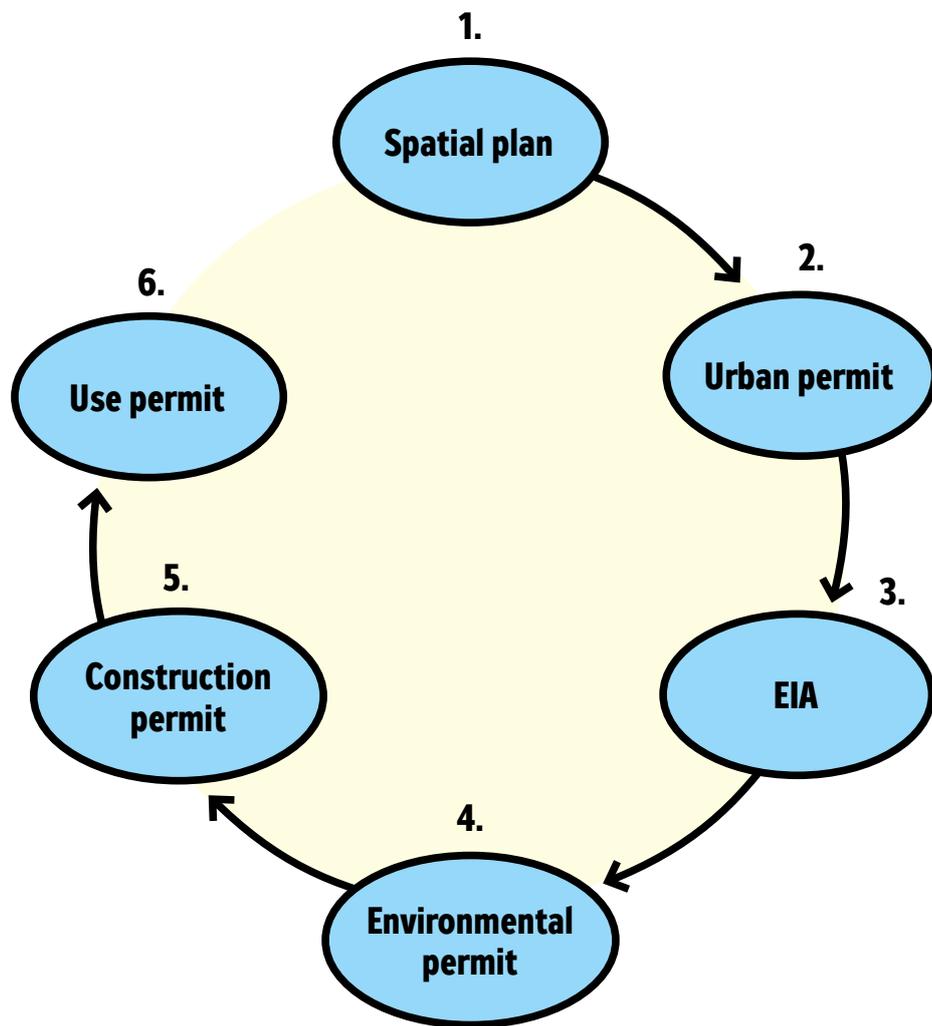
Prior to applying for construction permit and commencing the works a developer will need to obtain environmental permit (and EIA, if any). Environmental permits that set the conditions to operate industrial facility and the emission limits are issued by public authorities (Entity and cantonal level ministries) upon request of an operator. Note that since the thresholds are set very low, virtually any industrial facility needs environmental permit. The environmental permit process is open to the public that can raise comments and suggestions. EIA constitutes a part of environmental permitting process (for details on the environmental permitting process see section 3.3.).

EIA is carried out where the regulation in FBiH and RS mandates it for projects of certain environmental impact or where a respective ministry determines that EIA is necessary. For other projects not listed in FBiH and RS regulations and where a respective ministry determines that EIA is unnecessary, it proceeds directly to issuing environmental permit. EIA process is open for the public that can comment on the EIA draft before it is sent to a respective ministry that adopts EIA (for details on EIA see section 3.2.).

Once a developer obtains environmental permit (and EIA), it can apply for a construction permit. Construction permit is issued on the basis of urban permit upon request of a private entity (developer) and authorizes the works to commence. The public can participate in the construction permitting process only as an “intervener” when it proves it has a “direct legal interest” in the project (for details on constructing permitting process see section 3.4.).

Use permit is the last permit to receive. It confirms that a facility has complied with all relevant regulations and is fit for occupancy. Use permit is issued upon request of a private entity (developer). There is no room for public participation in the use permit issuance process.

Chart 4 - Sequence of processes to build an industrial facility



3.1. Spatial Planning Process

In BiH, spatial planning (and construction) is implemented at the Entity level. There is no State-level law regulating spatial planning (and construction) and no nation-wide spatial development strategy is adopted. At the State level, there also exist no responsible body for spatial planning. Each Entity (and Brčko District) as well as Cantons/municipalities develop their own spatial plans and urban development strategy. Higher level spatial plans (e.g. Entity) set up obligatory guidelines for lower level plans (e.g. Cantons) and projections included in higher level spatial plans need to be also included in lower-level spatial plans.

Spatial planning in FBiH

In FBiH, spatial plans are adopted for the period of 20 years. On the basis of the spatial plan for FBiH, cantonal spatial plans are developed that establish basic rules, goals of spatial planning for all areas of the canton (urban and rural), designated land use, environmental protection measures, and construction use of buildings. On the basis of and in accordance with cantonal spatial plans, municipal spatial plans are prepared for most municipalities.⁷¹

In FBiH, spatial plans and cantonal spatial plans for significant areas are also adopted, which include, for example, hydro energy facilities and water supply in case of FBiH and protected natural resources or thermal water sources in case of RS. On the basis of cantonal and municipal spatial plan urban plan is adopted that defines the use of land, environmental protection measures, protective zone, etc. Detailed land use and construction requirements are included in a regulation plan.⁷²

Spatial planning regulation in FBiH

The main regulation in FBiH that governs land use planning, the development, adoption and implementation of planning documents and defines authorities responsible for it is the Law on Spatial Planning and Land Use of FBiH.⁷³ In addition to this law, there is a whole set of by-laws and environmental regulations related to spatial planning and land use that govern, for example, methodology for preparation of spatial planning documents. Note that each of FBiH's cantons adopts their own spatial planning laws and municipalities adopt their own decisions on spatial planning. Although the previous one has expired, a new spatial plan of FBiH has not been adopted so far.

Spatial planning authorities in FBiH

On the level of FBiH Entity, the Ministry of Spatial Planning of the Federation of Bosnia and Herzegovina prepares and implements spatial planning documents that are adopted by the Parliament. On cantonal level, the spatial plans are adopted by cantonal assemblies and, on municipal level; spatial plans are adopted by municipalities.⁷⁴ Note that unlike other decisions/permits issued in procedures described in this manual, spatial plan is atypical in that it is not adopted by state authorities/bureaus but by a lawgiver and reflects a political will.

Process of adopting spatial plans and public participation

The spatial plans in FBiH are adopted through the following process. The contracting authority (relevant Entity or cantonal ministry or municipality) by public tender contracts a developer (public or private institution licensed to produce spatial planning documentation) that prepares a draft spatial plan. The draft is then revised by government-affiliated expert institutions during experts hearing where the developer, in addition to comments from expert institutions, collects also comments from the contracting authority and expert committee (or council) appointed to supervise the process. When the comments are implemented the draft is passed for approval by the expert committee. After the approval, the draft is passed to the public for review, which last mostly from 30-60 days. After that the developer takes the comments into account and prepares the final draft, which becomes a spatial plan proposal and is then adopted by a parliament or cantonal/municipal assembly.

Amending spatial plans

The process of amending spatial planning documentation is essentially the same as that of adoption of new plans. Note that amendments to a strategic spatial plan can be initiated only by public authorities, while amendments to lower level spatial planning documents can be initiated also by investors and the public. The initiators will need to pay the costs of the changes if the relevant parliament makes a decision to adopt amendments.⁷⁵

⁷¹ Municipalities of Sarajevo and Mostar are exceptions as urban plans relate to them. Ministry of Foreign Trade and Economic Relations, State of the Environment Report of Bosnia and Herzegovina (2012), page 96 [http://ba.one.un.org/content/dam/unct/bih/PDFs/BiH_Izvjestaj_o_stanju_okolisa_En.pdf].

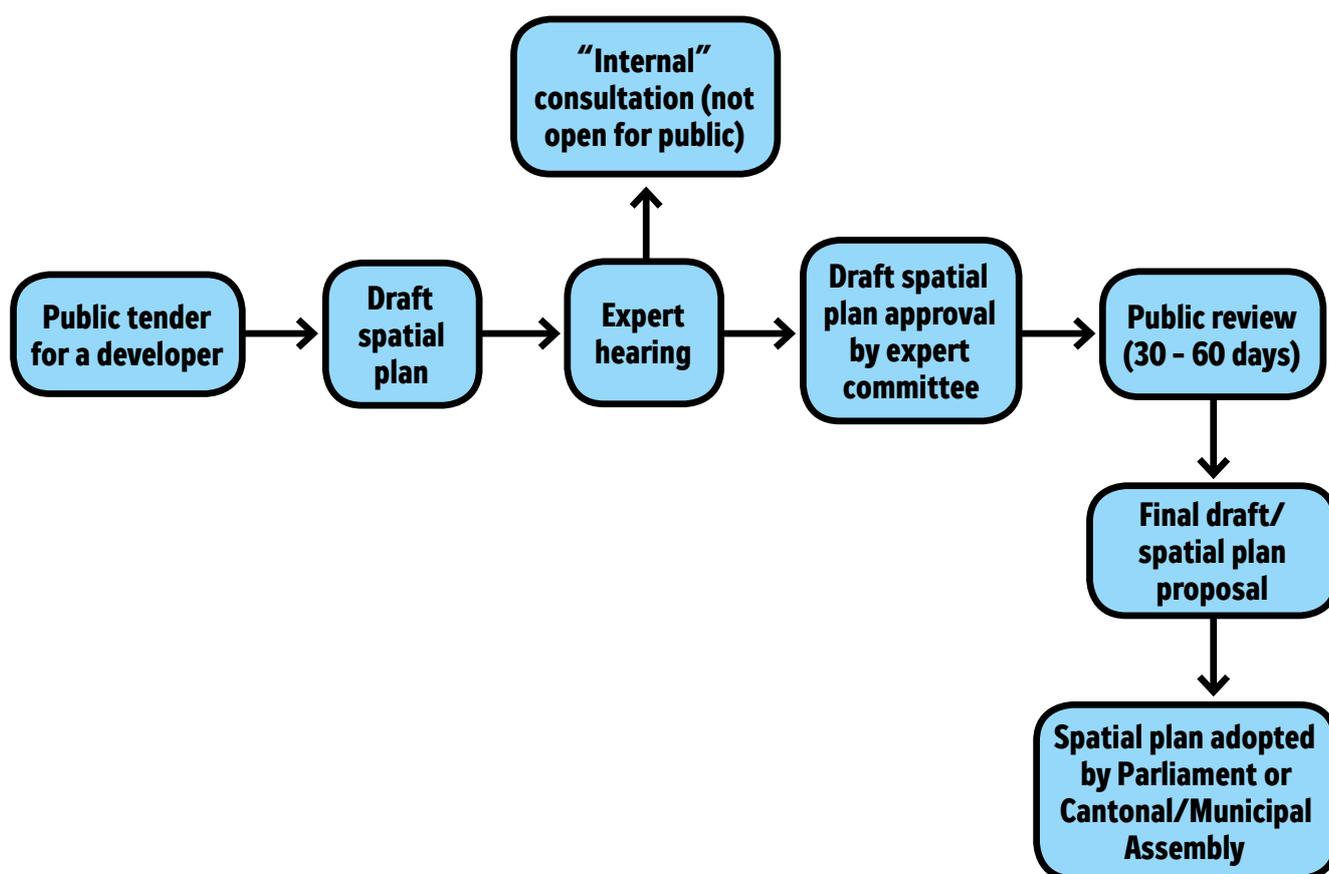
⁷² Ministry of Foreign Trade and Economic Relations, State of the Environment Report of Bosnia and Herzegovina (2012), page 96 [http://ba.one.un.org/content/dam/unct/bih/PDFs/BiH_Izvjestaj_o_stanju_okolisa_En.pdf].

⁷³ Official Gazette of FBiH, No. 02/06, 72/07, 32/08, 04/10 and 13/10.

⁷⁴ Acta geographica Bosniae et Herzegovinae, Aida Korjenic, Spatial planning in Bosnia and Herzegovina, 2015, p. 54 [<http://www.geoubih.ba/publications/Acta3/Article-Aida%20Korjenic.pdf>].

⁷⁵ See Law on Spatial Planning and Land Use of FBiH (Official Gazette of FBiH, No. 02/06, 72/07, 32/08, 04/10 and 13/10).

Chart 5 - Spatial planning process



Legal remedies

Note that during the spatial planning process the spatial planning documentation will be available mostly upon request, occasionally on notice boards (rarely electronically on authorities' websites). If public participation during the process of adopting/amending spatial plan is obstructed (including the refusal to provide spatial planning documentation), you may file a claim with administrative court for authorities' omission or inaction pursuant to the Law on Administrative Disputes of BiH.⁷⁶

The judgment of the court delivered in administrative disputes is final, binding, and cannot be appealed.⁷⁷ To reverse a potentially unfavourable judgment of the administrative court, you may only file a request for extraordinary review of court judgment to the Supreme Court that may revoke or revise the administrative court judgment, against which the request was submitted. If the Supreme Court revokes the administrative court judgment, the case returns back to the administrative court for a new decision.

→ REMEMBER ←

- Spatial plan in FBiH is adopted for 20 years
- In FBiH Entity, spatial plans are adopted by the Parliament, in cantons by cantonal assemblies and, in municipalities by municipal assemblies
- Spatial plan is issued by a lawgiver and reflects political will
- The process of adopting and amending spatial plans is open to public
- Higher level spatial plans (e.g. Entity) set up obligatory guidelines for lower level plans (e.g. Cantons) and projections included in higher level spatial plans need to be included in lower-level plans

⁷⁶ Law on Administrative Disputes of BiH (Official Gazette of BiH, No. 19/02).

⁷⁷ See Article 3 of the Law on Administrative Disputes of BiH.

Spatial planning in RS

In RS, executive spatial planning documents are adopted for 10 years while strategic spatial planning and urban planning documents are adopted for 20 years. Spatial plan of RS defines long-term goals and spatial development measures. Municipal spatial plan defines city and village system of settlements, infrastructure, public buildings and environmental protection. Urban plan regulates in detail what is set in municipal spatial plan, e.g. it sets out construction, agricultural spaces, construction requirements, energy and utility infrastructure, etc. Zoning plan defines specific land use and designing and building of new as well as reconstruction of old buildings. Regulation plan defines use of plots, purpose and size of buildings, population density in the cities and regulation and construction borders, etc. Urban planning projects describe in detail usage of areas, size, use, design of buildings, spatial planning requirements, concept solution for transport, utility, and energy infrastructure. Parcelling plan contains a plan for spatial organization, transport, infrastructure plan for energy, etc.⁷⁸

Spatial planning regulation in RS

In RS, the main regulation that governs land use planning, the development, adoption and implementation of planning documents and defines authorities responsible for it is the Law on Spatial Planning and Construction of Republika Srpska.⁷⁹ In addition, a number of ordinances have been adopted that govern the contents and creation of spatial planning documents such as the Ordinance on the content creation and adopting spatial planning documents.⁸⁰ Municipalities adopt decisions on spatial planning (or construction) that specify conditions of spatial planning and construction reflecting local specificities and shall comply with the Law on Spatial Planning and Construction of RS.⁸¹

Spatial planning authorities

On the level of the Entity of RS, the Ministry of Spatial Planning, Civil Engineering, and Ecology is responsible for the preparation of the spatial plan that is adopted by a national assembly. At the municipality level, spatial plans are adopted by municipality assemblies.

Process of adopting spatial plans and public participation

The process of adopting and amending spatial plan in RS is essentially the same as that in FBiH except that no cantonal authorities are involved because RS does not have any cantons. For the process of adopting spatial plans in RS, see section "Process of adopting spatial plans and public participation" above.

Legal remedies

For legal remedies in case of authorities obstructing public participation during the process of adopting/amending spatial plan in RS see section "Legal remedies" of subsection 3.1. above. In addition to administrative dispute and request for extraordinary review of court judgment, under the recently enacted Law on Referendum and Civil Initiative in RS⁸² the public can initiate referenda/civil initiatives on issues of public importance such as reversing a regulatory plan amendment for residential areas (see case study Borik in section 5.2. below). Note that the law merely authorizes civil initiatives and does not provide for any remedies. The authorities are also not bound to act upon the initiative by virtue of this law.

⁷⁸ Ministry of Foreign Trade and Economic Relations, State of the Environment Report of Bosnia and Herzegovina (2012), page 96 [http://ba.one.un.org/content/dam/unct/bih/PDFs/BiH_Izvjestaj_o_stanju_okolisa_En.pdf].

⁷⁹ Official Gazette of Republica Srpska, No. 40/13 and 106/15.

⁸⁰ Official Gazette of Republica Srpska, No. 59/11.

⁸¹ Acta geographica Bosniae et Herzegovinae, Aida Korjenic, Spatial planning in Bosnia and Herzegovina, 2015, p. 58 [<http://www.geoubih.ba/publications/Acta3/Article-Aida%20Korjenic.pdf>].

⁸² Official Gazette of Republic of Srpska, No. 46/10.

→ REMEMBER ←

- Strategic spatial plans in RS adopted for 20 years
- Executive spatial plans in RS adopted for 10 years
- In the Entity of RS, a spatial plan is adopted by the national assembly and at the municipality level, a spatial plan is adopted by municipality assemblies
- Spatial plan is issued by a lawgiver and reflects political will similarly as in FBiH
- The process of adopting and amending spatial plans is open to public as in FBiH
- Amendments of spatial planning documents may be initiated under the Law on Referendum and Civil Initiative

Spatial planning in Brčko District

In Brčko District, spatial development strategy is adopted for the period of 20 years, while spatial and urban plans are adopted for the period of 10 to 15 years. Spatial and urban plans have the same purpose and application as in FBiH and RS. As regards the implementation plans, the regulation plan and urban planning projects have the same purpose and application as in the FBiH and RS. Zoning plan defines the area use and requirements for construction as well as reconstruction of the existing buildings. Parcelling plan may be adopted for city areas where new construction may be approved.⁸⁵

Note that although the relevant laws prescribe spatial and urban development plans they are not always properly adopted. These strategic documents govern the use and protection of land, which is achieved by defining principles and goals for its development and by defining construction rules in planning documents. The lack thereof negatively affects the environment as locations and types of development are not selected through a planning process but randomly.⁸⁴ The lack of planning documents at all levels of government enables profound illegal construction, uncontrolled development, and no control over activities that generate pollution.⁸⁵

You can use the same legal remedies for authorities' obstructing public participation during the process of adopting/amending spatial plan in Brčko District as in FBiH and RS except that referenda/civil initiatives under the Law on Referendum and Civil Initiative can be initiated only in RS (no such law in FBiH and Brčko District).

If a spatial plan enables industrial project in a particular location, then is the first permit to obtain to build a facility is urban permit (or localization conditions). It establishes the location of a facility and existing points to connect to the city's infrastructure (e.g. electricity and water). Note that the public cannot participate in the urban permitting process even as an intervener.

→ REMEMBER ←

- Spatial plan in Brčko District adopted for 10 to 15 years by the Parliament of Brčko District
- The process of adopting and amending spatial plans is open to public as in FBiH and RS

3.2. Environmental Impact Assessment

The practice of EIA, which requires public consultation in respect of proposals for installations with potentially negative environmental impact, was first established in the US through the National Environmental Policy Act (NEPA) of 1969. This practice of consultative decision-making where all stakeholders and not only political elites have the ownership of the process to effectively protect the environment has since then spread around the world.⁸⁶

EIA legal framework

In BiH, the EIA process is regulated by the Laws on Environmental Protection of FBiH and RS that both contain a requirement for interested parties – including the public – to be able to access relevant information and provide feedback at all stages of the environmental decision-making process.⁸⁷ The EIA laws largely adhere to the most recent version of

⁸³ Ministry of Foreign Trade and Economic Relations, State of the Environment Report of Bosnia and Herzegovina (2012), page 96 [http://ba.one.un.org/content/dam/unct/bih/PDFs/BiH_Izvjestaj_o_stanju_okolisa_En.pdf].

⁸⁴ Ministry of Foreign Trade and Economic Relations, State of the Environment Report of Bosnia and Herzegovina (2012), page 97 [http://ba.one.un.org/content/dam/unct/bih/PDFs/BiH_Izvjestaj_o_stanju_okolisa_En.pdf].

⁸⁵ Ministry of Foreign Trade and Economic Relations, State of the Environment Report of Bosnia and Herzegovina (2012), page 97 [http://ba.one.un.org/content/dam/unct/bih/PDFs/BiH_Izvjestaj_o_stanju_okolisa_En.pdf].

⁸⁶ Fagan, Adam and Sircar, Indraneel, Compliance without governance: the role of NGOs in environmental impact assessment processes in Bosnia-Herzegovina in *Environmental Politics*, vol. 19, no. 4, July 2010, p. 600.

⁸⁷ See Article 36 of FBiH Law and Article 35 of RS law.

the EU Directive on public participation (2003/35/EC)⁸⁸, which incorporates the provisions of the Aarhus Convention on public participation in environmental decision-making.

EIA process

The first step in the EIA process is to determine whether the construction and operation of the proposed infrastructure will have a major environmental impact and, thus, requires an EIA. EIA is only required if:

- FBiH and RS regulations require EIA;
- Competent ministries determine EIA is needed.

In both Entities, there are regulations⁸⁹ stipulating which projects require an EIA. Note that even though the extent of projects requiring EIA, is formally set by law, competent Entity-level ministries of environment may also issue decrees that determine which facilities require EIA.⁹⁰ If EIA is not required, competent ministry (see subsection 2.2.) issues environmental permit.⁹¹

The EIA process is then divided into two phases:

- (i) If an EIA is needed, the developer will submit the request (application) for the preliminary environmental assessment to the competent Entity ministry to determine the obligation and the scope of the EIA study.
- (ii) In both Entities, the competent Entity ministry defines the scope of the EIA and instructs the investor to select a consultant to carry out the study from a list of registered local institutions.⁹² After public and "internal" consultations the competent Entity ministry adopts EIA and issues environmental permit.

Public and "internal" consultations in EIA

During the EIA process two consultations of 30 days each take place:

- (i) "Internal" consultation – during phase I when the relevant administrative bodies and authorities such as the Ministry of Agriculture send their opinions, and
- (ii) Public consultation – after the draft EIA is produced. After the draft EIA is written, it is made available to interested parties for 30 days for a feedback. Following the consultation period, the Entity ministries assess the report, approve/reject comments made by public and adopt an EIA. The representatives of affected parties are also allowed to join the public consultation in case of transboundary or inter-entity environmental effects. After the approval of EIA, project developer is instructed by the Entity ministries to provide environmental and other necessary permits within two years (RS)/three years (FBiH) (there is a possibility of extension).⁹³

⁸⁸ Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC.

⁸⁹ Regulation on plants and facilities subject to obligatory environmental impact assessment and facilities allowed to be constructed and commissioned only if granted environmental permit of FBiH (Official Gazette of FBiH, No. 19/04) and Regulation on facilities which can be constructed and become operational only if environmental permit is issued (Official Gazette of the RS, No. 124/12).

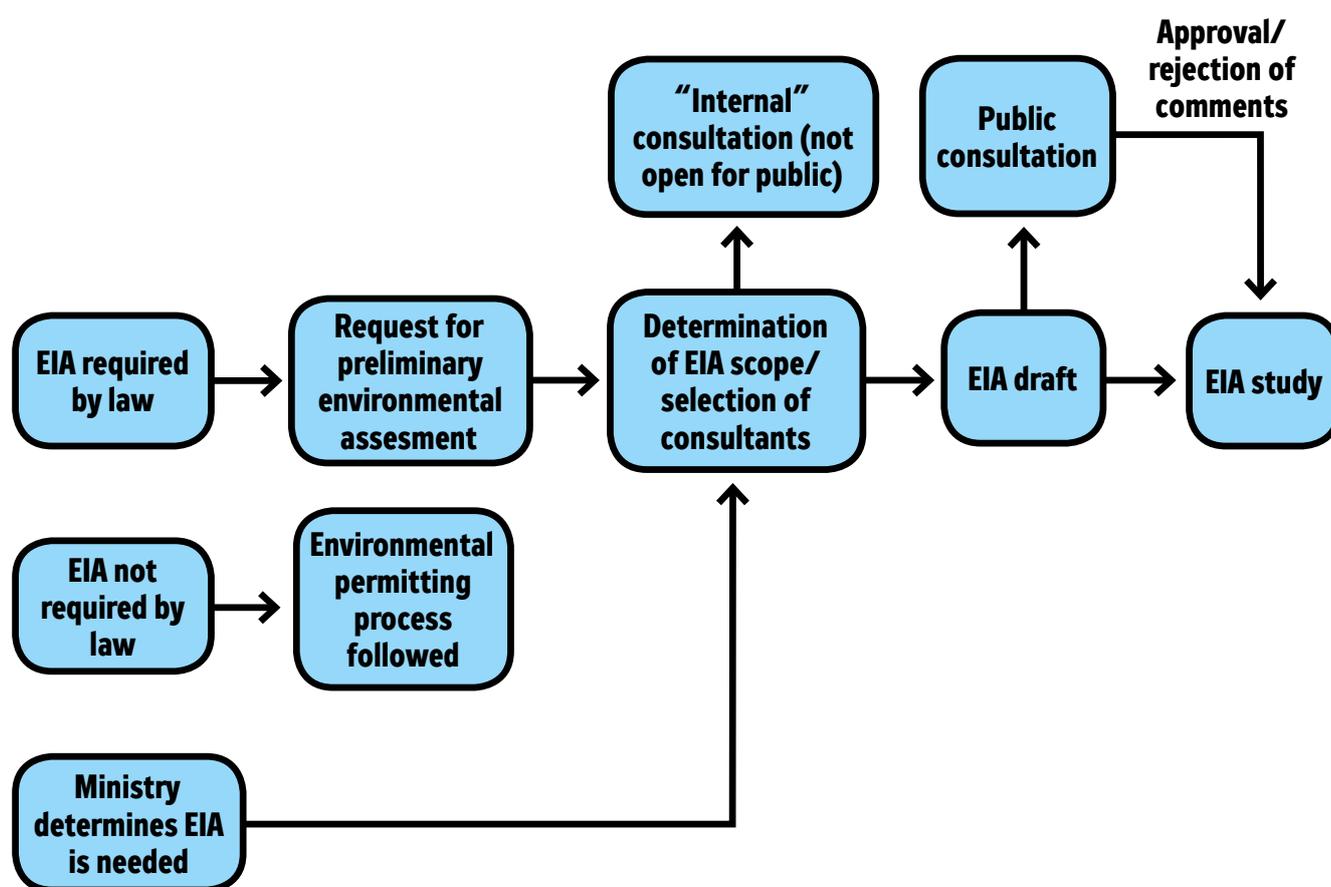
⁹⁰ Arnika, EKO forum Zenica, Environmental Democracy in BiH – Limping Along: Alternative Report on the Implementation of the Aarhus Convention in Bosnia and Herzegovina (2015), page 51 [<http://english.arnika.org/e-shop/publications/environmental-democracy-in-bih-limping-along>].

⁹¹ Ministry of Foreign Trade and Economic Relations of BiH, Bosnia and Herzegovina, Environmental and Social Management Framework, 2013, page 8 [http://www.mvteo.gov.ba/linkovi/Adriatic_Sea_ESMF_BiH.pdf].

⁹² Fagan, Adam and Sircar, Indraneel, Compliance without governance: the role of NGOs in environmental impact assessment processes in Bosnia-Herzegovina in Environmental Politics, vol. 19, no. 4, July 2010, p. 601.

⁹³ Ministry of Foreign Trade and Economic Relations of BiH, Bosnia and Herzegovina, Environmental and Social Management Framework, 2013, page 8 [http://www.mvteo.gov.ba/linkovi/Adriatic_Sea_ESMF_BiH.pdf].

Chart 6 – EIA process



Legal remedies

If public participation during the EIA is obstructed, you may file a claim with administrative court for authorities' omission or inaction pursuant to the Law on Administrative Disputes of BiH and request that the EIA process is repeated.⁹⁴

The judgment of the court delivered in administrative disputes is final, binding, and cannot be appealed.⁹⁵ To reverse a potentially unfavorable judgment of the administrative court, you may only file a request for extraordinary review of court judgment to the Supreme Court that may revoke or revise the administrative court judgment, against which the request was submitted. If the Supreme Court revokes the administrative court judgment, the case returns back to the administrative court for a new decision.

Note that the legislation in BiH ensures that projects proposed in either Entity have consultations also at the preliminary "scoping" phase of EIA process, which is not a norm in many of BiH's western and central European counterparts. The BiH's legal framework might, thus, appear (superficially) even more "robust", but bear in mind that the EIA process is constrained by a complex, ineffective administrative structure, the weakness of State-level authority, as well as the absence of an efficacious civil society.⁹⁶ Although public consultations on EIA are mandatory by law, it is common that they are either not held at all, or when held, the comments, objections, and suggestions garnered are often disregarded without relevant explanation.⁹⁷

Note that EIA processes are often poorly implemented, which might result in local NGOs playing quite negligible roles vis-à-vis investors or powerful interests. In EIA process, social/civil arguments of NGOs will often clash against technical/bureaucratic arguments of EIA authorities and scientific arguments of consultants investigating the environmental effects in EIAs. Even though your NGO might have some capacities to mobilize communities and articulate social and

⁹⁴ Law on Administrative Disputes of BiH (Official Gazette of BiH, No. 19/02).

⁹⁵ See Article 3 of the Law on Administrative Disputes of BiH.

⁹⁶ Fagan, Adam and Sircar, Indraneel, Compliance without governance: the role of NGOs in environmental impact assessment processes in Bosnia-Herzegovina in *Environmental Politics*, vol. 19, no. 4, July 2010, p. 603.

⁹⁷ Arnika, EKO forum Zenica, *Environmental Democracy in BiH – Limping Along: Alternative Report on the Implementation of the Aarhus Convention in Bosnia and Herzegovina* (2015), page 54 [<http://english.arnika.org/e-shop/publications/environmental-democracy-in-bih-limping-along>].

civic impacts of development proposals, be prepared that civil arguments might be marginalized by technical and scientific justifications that are more privileged during EIA processes.⁹⁸

→ REMEMBER ←

- List of projects requiring EIA is formally set by law
- Entity-level ministries of environment determine, which other facilities (above the compulsory list) require EIA
- Two consultations take place during EIA: “internal” consultation – during preliminary assessment – not open to public (only administrative bodies and authorities) and public consultation – when EIA draft is made – open for public
- EIA process is constrained by bureaucracy, public participation is obstructed
- During public consultation present factual, well researched arguments on social and civil impacts of projects that override technical/bureaucratic arguments

3.3. Environmental Permitting Process in BiH

BiH has not yet implemented the full-fledged integrated pollution prevention and control (IPPC) system. The current environmental permitting process in BiH is still disintegrated, which means that even though an integrated permit is issued for air and soil pollutants, a separate permit is issued for water pollutants. Such a procedure is not cost efficient and increases the administrative burden for both the authority and the applicants. The process is also time-consuming and its intricacies are confusing for all participants including the public.

Legal framework of environmental permitting process in BiH

The environmental permitting process in BiH is governed by series of acts but its most relevant matters of procedure are contained in the Laws on Environmental Protection of FBiH and RS.⁹⁹ Note that these are not State-level, but Entity-level laws and both the Law on Environmental Protection of FBiH and that of RS are virtually identical (unless stated otherwise, references made to the regulation contained in the Law on Environmental Protection apply to both FBiH and RS).

In addition to the above-mentioned Law on Environmental Protection, you will need to consult an Entity-level (FBiH) regulation that defines the criteria and thresholds for permitting at the Entity and Cantonal level to find out, which facilities require an environmental permit.¹⁰⁰ Also note that the pollutants’ thresholds are set particularly low, which means that virtually all facilities, even those that may have very negligible environmental impact, require environmental permits. Moreover, Cantonal authorities may issue environmental permits for facilities where the pollution limits fall even below these thresholds.¹⁰¹

Permit issuing authorities

Environmental permits are issued by the authorities at Entity and Cantonal/Municipality level. In FBiH, the Federal Ministry for the Environment and Tourism issues the environmental permits for projects that require EIA. Cantonal-level ministries (e.g. Ministry of Spatial Planning, Transport and Environmental Protection Zenica – Dobož Canton) may issue environmental permits where a respective facility is not subject to environmental impact assessment. Only in Central Bosnia Canton municipality may issue the environmental permit if a project is targeting the territory of only that particular municipality. In RS, the Ministry for Spatial Planning, Civil Engineering and Ecology issues the permits for projects, which require EIA, and municipalities issue the environmental permits for projects, which do not require an EIA.¹⁰²

Note that this centralized approach is quite unusual. In most EU Member States, the environmental permits are issued by regional authorities (bureaus) or specialized environmental agencies, rather than ministries acting as central government authorities that formulate and implement specific policies. In some, they also have specialized expert bodies¹⁰³ for providing expert opinions, which ensures technical accuracy of environmental permits and transfers the burden of providing technical expertise from permitting authorities to specialized bodies (or agencies). No such institution exists in BiH and thus you should not be surprised if the environmental permits reflect poor capacity to assess the highly technical matters necessary for issuing environmental permits and are technically inaccurate.

⁹⁸ Fagan, Adam and Sircar, Indraneel, Compliance without governance: the role of NGOs in environmental impact assessment processes in Bosnia-Herzegovina in *Environmental Politics*, vol. 19, no. 4, July 2010, p. 601.

⁹⁹ Law on Environmental Protection (Official Gazette of FBiH, No. 33/03, 39/09); Law on Environmental Protection of Republika Srpska (Official Gazette of Republika Srpska, No. 71/12, 79/15); Law on Environmental Protection of Brčko District (Official Gazette of Brčko District, No. 24/04, 1/05, 19/07, 9/09).

¹⁰⁰ Rules for plants and installations for which the environmental impact assessment is mandatory, and for plants that can be built and operated only with the environmental permit (Official Gazette of FBiH, No. 19/04).

¹⁰¹ Data obtained from lawyers of NGO EKO forum Zenica in BiH.

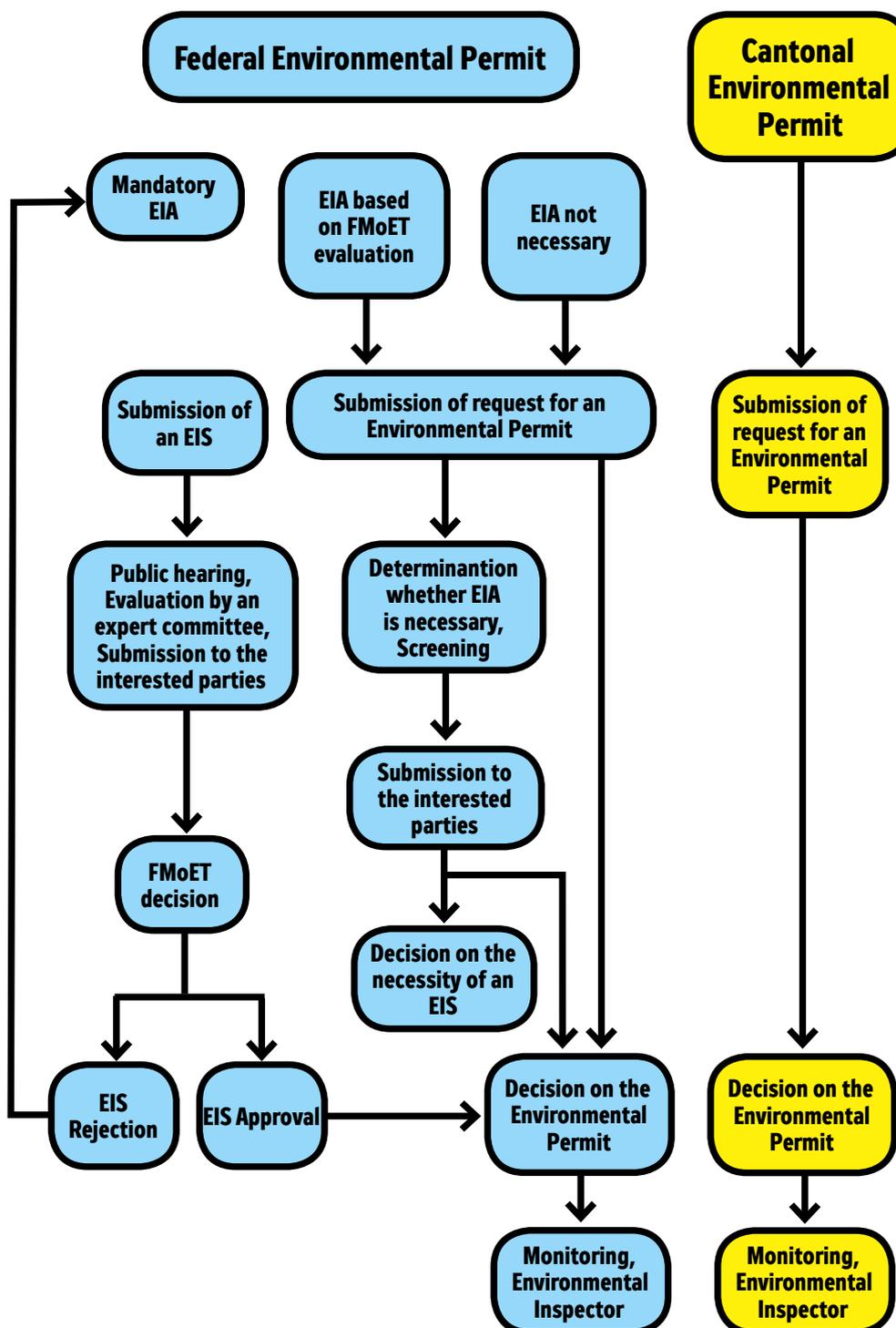
¹⁰² United Nations Economic Commission for Europe, 2nd Environmental Performance Review, Bosnia and Herzegovina (2011), page 28 [http://www.unece.org/fileadmin/DAM/env/epr/epr_studies/bosnia_and_herzegovina%20II.pdf].

¹⁰³ For example, CENIA – Czech Environmental Information Agency in the Czech Republic (<http://www1.cenia.cz/www/>).

Environmental permitting process in a nutshell

Once filed, the competent ministry has 120 days to act on the application containing the requirements pursuant to Article 69 of the Law on Environmental Protection (of FBiH). If the environmental impact assessment (EIA) is required, the deadline decreases to two months. Note that the ministries, frequently, decide without regard to these deadlines and prolong the proceeding, which curtails the procedural rights of the participants (including the public). Between 2007 and 2010, this was an issue for ArcelorMittal in Zenica, where environmental permits were issued with the delay of 12 to 24 months.¹⁰⁴

Chart 7 - Environmental permitting process



¹⁰⁴ Data obtained from lawyers of NGO EKO forum Zenica in BiH.

Grounds for setting emission values

According to the European legal framework, emission limit values shall be based on the best available techniques (BAT). BAT constitutes a case-specific, framework indicator that is determined by the level of technical equipment, particular to the achieved level of emissions to air, water, soil.¹⁰⁵ Though BAT for a given industrial sector are described in BAT reference documents (BREFs),¹⁰⁶ BREFs do not reflect local conditions and are non-binding. To reflect local conditions and accurately determine the level of emissions, countries need to set their own framework in deciding on BAT for a particular facility.

Note that BiH has adopted BAT only for the food industry,¹⁰⁷ but lacks BAT for any other, even more widespread and environmentally impactful sectors, including the chemical industry (or metallurgy). To fill this loophole, the authorities use BREFs (BiH has not translated BREFs to the national languages). However, since BREFs are too general, and designed to serve as a reference document, rather than a basis for setting binding conditions for operation, it is possible that the permits will contain arbitrary conditions for operation and unreasonable emissions limit values.

Public participation

The Laws on Environmental Protection enable the public to participate and raise possible objections during the environmental permitting process. In practice, however, this right is heavily curtailed. Your comments and suggestions in many cases might go completely ignored, as it happened during the procedure to issue environmental permits for ArcelorMittal in 2009.¹⁰⁸ In other cases, while inclined to provide information at the beginning, the authorities later withheld cooperation.¹⁰⁹

If that happens in your case, you might try to access environmental permits and information on the environmental permitting process by virtue of the Freedom of Information Act,¹¹⁰ under which public authorities have an obligation to disclose information in their possession. If that does not work, you may challenge authorities' inaction in administrative dispute (see subsection 1.2. above). Although local NGOs report the situation has somehow improved in the last two years, the success of such requests for information has been minor; while the authorities occasionally respond, they often do not enclose any permit or related information. Even when they do, the submission is often incomplete.¹¹¹

Legal remedies

The legal remedies for authorities' obstructing public participation in environmental permitting process are the same as in EIA process (see "Legal remedies" in subsection 3.2. above).

Publication and inspection

Environmental permits in BiH are issued for a period of five years. Inspectors oversee adherence to the permits' conditions. However, the sanctions that can be imposed, ranging from BAM 2,000 to BAM 20,000¹¹² (approximately €1000 to €10,000), are very symbolic and do not motivate the operators to comply with the permit conditions. Regarding the publication of environmental permits and other information, an equivalent of the integrated pollution register (European Pollutant Release and Transfer Register – E-PRTR),¹¹³ as required by European legislation, does not exist in BiH.¹¹⁴

Note that pollutant registers formally exist only on Entity level; not for Cantons/municipalities. However, the current registers (separate registers exist for FBiH and RS) are not publicly available databases; merely closed databases main-

¹⁰⁵ Emission reduction plans, waste management plans, and conditions of operation ensuing from the documentation and the EIA, etc. also need to be taken into account in deciding on emission limits.

¹⁰⁶ BREFs as defined in Article 3(11) of the Industrial Emissions Directive.

¹⁰⁷ See the website of the Ministry of Environment and Tourism of FBiH under <http://www.fmoit.gov.ba/ba/page/46/bat>.

¹⁰⁸ Arnika, EKO forum Zenica, Environmental Democracy in BiH – Limping Along: Alternative Report on the Implementation of the Aarhus Convention in Bosnia and Herzegovina (2015), page 60 [<http://english.arnika.org/e-shop/publications/environmental-democracy-in-bih-limping-along>].

¹⁰⁹ Most recently, this has been the case in the environmental permitting process involving BOF (blow oxygen furnace) division of Arcelor-Mittal Zenica where a Bosnian environmental NGO EKO forum Zenica submitted comments, all of which have been disregarded.

¹¹⁰ Law on Freedom of Access to Information BiH (Official Gazette of BiH, No. 28/00, 45/06, 102/09, 62/11, 100/13).

¹¹¹ Arnika, EKO forum Zenica, Environmental Democracy in BiH – Limping Along: Alternative Report on the Implementation of the Aarhus Convention in Bosnia and Herzegovina (2015), page 54, 59, and 89 [<http://english.arnika.org/e-shop/publications/environmental-democracy-in-bih-limping-along>].

¹¹² Article 116 of the Law on Environmental Protection.

¹¹³ E-PRTR is available under this reference <http://prtr.ec.europa.eu/#/home>.

¹¹⁴ Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC.

tained by the Ministry of Environment and Tourism (in FBiH) and Hydrometeorology Institute (in RS) where data is available upon request, but where very few operators ever submit any information.¹¹⁵

NGOs began to publish available environmental information on EKO.ba website.¹¹⁶ The website contains data provided by relevant ministries under the Law on Freedom of Access to Information. This initiative is still relatively new and data from many polluters is missing.

Evidently, the current environmental permitting process in BiH is a fragmented procedure that lacks a clear, efficient, and enforceable regulatory framework that prevents arbitrary decision-making and safeguards the rights of relevant stakeholders, including the right to participate and access environmental information. Although measures (including remedial) formally exist to enable access to environmental information and the environmental permitting process, the enforcement is weak. Any remediation might lead to the same result as the request for information itself – inaction of the authorities. NGOs have reported that when they challenged the authorities' inaction before administrative courts, they eventually obtained the desired information.

➔ REMEMBER ⬅

- No integrated pollution prevention and control (IPPC) process is implemented
- Environmental permitting process in BiH is disintegrated – separate environmental permits are issued for air, water, and soil pollutants
- Most relevant matters of procedure are contained in Entity-level Laws on Environmental Protection of FBiH and RS
- The right to participate and access to information is often curtailed; the process lacks clear and enforceable regulatory framework
- Success lies in persistence with requesting information and demanding participation, emphasizing authorities' statutory obligations to disclosure
- If requests under the Law on Freedom of Access to Information does not generate desired results, authorities' inaction (or omission) might be successfully challenged before administrative courts
- Pollutant registers with environmental information exist only on Entity-level (closed, not publicly available databases)
- Try to search EKO.ba database (NGO initiative) or file a request under the Law on Freedom of Access to Information for missing information

¹¹⁵ The current Bosnian version of the "European Pollutant Release and Transfer Register" (PRTR) with a restricted access is available under <http://prtr.fmoit.gov.ba/login.aspx?ReturnUrl=%2f>.

¹¹⁶ See <http://eko.ba/baza-zagadivaca>.

3.4. Construction Permitting Process

Construction regulations in BiH are not codified in a single code; thus, you will need to consult various laws and regulations. They are complex and often not written in understandable and concise language. Numerous cross-references to other laws make it difficult to understand, which piece of legislation is relevant and which one is not. The procedure to obtain construction and use permit, relevant consents, and type of supporting documents depends on which administrative jurisdiction one desires to build and/or repair existing facility, what kind of plan exists for a particular area and what type of construction it involves.

Construction permitting process in Cantons and municipalities of FBiH

The procedure to obtain a construction permit is the same at cantonal and municipal level and differs on Entity level in FBiH. At cantonal level, once an investor obtained urban permit, he has one year to apply for construction permit. Application for construction permit is submitted to the same institution that issued the urban permit, i.e., if the municipal administration issued the urban permit, the construction permit application should be submitted to the same administrative office.¹¹⁷

Application for construction permit

Upon submission, the application for construction permit is reviewed for completeness and, if incomplete, the canton or municipality may notify an investor and request additional documents that must be supplemented within 15 (in Bosnia-Podrinje canton 10) days following the notification.¹¹⁸

Construction permit and its validity

The cantonal ministry or municipality will review the application and if it is, along with the accompanying documents, in order, it will issue the construction permit at the latest 30 days from the date of delivery of the complete request (application + all required documents).¹¹⁹

The permit will cease to be valid if the construction work does not commence within one (1) year (or within two (2) years in Central Bosnia Canton, Canton 10, West Herzegovina, Posavina and Bosnia-Podrinje cantons) from the effective date of the permit. The validity of the construction permit can be extended for an additional one (1) year (or for two (2) years in Central Bosnia, Canton 10, West Herzegovina, Posavina and Bosnia-Podrinje cantons) if conditions used in consideration of the approved permit did not change or had changed due to justified reasons.¹²⁰

Appealing the construction permit

Construction permit issued under the authority of the municipality or the city mayor may be appealed to canton ministry within 15 days (or 30 days in Sarajevo canton) from the day the permit was received. The decision of the Canton Ministry may not be appealed but an administrative dispute may be initiated at canton court within 30 days (or within 15 days in Bosnia-Podrinje canton from the day of the receipt of a decision).¹²¹

At least eight (8) days before the planned groundbreaking, an investor must inform the canton or the municipality (whichever issued the construction permit) of the commencement of construction work.¹²²

Public participation and legal remedies

In general, the construction permitting process is not formally open for public. The public may participate only as an "intervener" when it proves it has a "direct legal interest" in the process and providing it has learnt the construction permitting process is underway. An "intervener" is defined in the Law on Administrative Procedure¹²³ as a natural person or legal entity who has the right to participate in the proceedings to protect its rights or legal interests. .

¹¹⁷ USAID SPIRA/Chemonics International Inc., Investors Reference Manual, Construction Regulations in Bosnia and Herzegovina, 2009, p. 31 and 32. [http://www.mvteo.gov.ba/vijesti/posljednje_vijesti/default.aspx?id=1189&langTag=bs-BA].

¹¹⁸ USAID SPIRA/Chemonics International Inc., Investors Reference Manual, Construction Regulations in Bosnia and Herzegovina, 2009, p. 32. [http://www.mvteo.gov.ba/vijesti/posljednje_vijesti/default.aspx?id=1189&langTag=bs-BA].

¹¹⁹ USAID SPIRA/Chemonics International Inc., Investors Reference Manual, Construction Regulations in Bosnia and Herzegovina, 2009, p. 32. [http://www.mvteo.gov.ba/vijesti/posljednje_vijesti/default.aspx?id=1189&langTag=bs-BA].

¹²⁰ USAID SPIRA/Chemonics International Inc., Investors Reference Manual, Construction Regulations in Bosnia and Herzegovina, 2009, p. 33. [http://www.mvteo.gov.ba/vijesti/posljednje_vijesti/default.aspx?id=1189&langTag=bs-BA].

¹²¹ USAID SPIRA/Chemonics International Inc., Investors Reference Manual, Construction Regulations in Bosnia and Herzegovina, 2009, p. 33. [http://www.mvteo.gov.ba/vijesti/posljednje_vijesti/default.aspx?id=1189&langTag=bs-BA].

¹²² USAID SPIRA/Chemonics International Inc., Investors Reference Manual, Construction Regulations in Bosnia and Herzegovina, 2009, p. 33. [http://www.mvteo.gov.ba/vijesti/posljednje_vijesti/default.aspx?id=1189&langTag=bs-BA].

¹²³ Official Gazette of FBiH No. 2/98, 48/99.

Direct legal interest is not defined in law and what constitutes direct legal interest is determined from circumstances on case-by-case basis. Direct legal interest may be invoked, for example, when a construction is carried out in contrariety with environmental permit, or spatial/urban plans have not projected a particular construction to be built in a location, to which these plans relate.

If the authorities ignored or obstructed your request for participation as an “intervener” even though you prove “direct legal interest” you may file a claim with an administrative court for maladministration/inaction or omission pursuant to the Law on Administrative Disputes.

➔ REMEMBER ➔

- The construction permit is issued by cantonal ministries or municipalities
- The construction permit is valid for 1 or 2 years depending on a particular canton
- Construction permitting process is not open to public but civil society may get involved as an intervener if it proves “direct legal interest”
- The construction permit may be appealed
- You may initiate lawsuit for maladministration, omission, or inaction with administrative court if authorities ignore/obstruct your participation as an “intervener”

Construction permitting process in FBiH

Requests for construction permit should be submitted to the FBiH ministry only if that ministry issued urban permit. Once the urban permit was obtained, a request for issuance of construction permit must be submitted within one year to the ministry.¹²⁴

Application for construction permit

Upon submission, the Ministry will review request for the construction permit for completeness and if the request and accompanying documents are in order, the construction permit will be issued within 30 days from the day the request was received.¹²⁵

Construction permit and its validity

The construction permit will be valid for one (1) year from the date of the decision to grant it. The deadline may be extended for one additional year if the conditions for which the permit was issued did not change and in those cases where “justified reasons” exist for granting an extension.¹²⁶

Once issued the construction permit cannot be appealed but an administrative lawsuit may be initiated before appropriate canton court within 30 days from the date of receipt of the construction permit.¹²⁷

At least eight (8) days before the planned groundbreaking developer shall inform the FBiH Ministry of the commencement of construction work.¹²⁸

Similarly as in Cantons/municipalities the public may participate in the construction permitting process in FBiH as an “intervener”. For details on the “intervener” status and legal remedies for authorities obstructing participation as an intervener, see above in subchapter on construction permitting process in Cantons/municipalities of FBiH.

¹²⁴ USAID SPIRA/Chemonics International Inc., Investors Reference Manual, Construction Regulations in Bosnia and Herzegovina, 2009, p. 34. [http://www.mvteo.gov.ba/vijesti/posljednje_vijesti/default.aspx?id=1189&langTag=bs-BA].

¹²⁵ USAID SPIRA/Chemonics International Inc., Investors Reference Manual, Construction Regulations in Bosnia and Herzegovina, 2009, p. 34-35. [http://www.mvteo.gov.ba/vijesti/posljednje_vijesti/default.aspx?id=1189&langTag=bs-BA].

¹²⁶ USAID SPIRA/Chemonics International Inc., Investors Reference Manual, Construction Regulations in Bosnia and Herzegovina, 2009, p. 35. [http://www.mvteo.gov.ba/vijesti/posljednje_vijesti/default.aspx?id=1189&langTag=bs-BA].

¹²⁷ USAID SPIRA/Chemonics International Inc., Investors Reference Manual, Construction Regulations in Bosnia and Herzegovina, 2009, p. 35. [http://www.mvteo.gov.ba/vijesti/posljednje_vijesti/default.aspx?id=1189&langTag=bs-BA].

¹²⁸ USAID SPIRA/Chemonics International Inc., Investors Reference Manual, Construction Regulations in Bosnia and Herzegovina, 2009, p. 34. [http://www.mvteo.gov.ba/vijesti/posljednje_vijesti/default.aspx?id=1189&langTag=bs-BA].

→ REMEMBER ←

- The construction permit in FBiH Entity is issued by ministries
- Construction permitting process in FBiH is not open to public but civil society may get involved as an intervener if it proves “direct legal interest”
- The construction permit is valid for 1 year
- The construction permit may be appealed

Construction permitting process in RS

The process of obtaining construction (and use permits) in RS is very similar to the process in FBiH, with one major difference: the developer interacts exclusively with municipal authorities except for big infrastructure projects where it deals with a ministry.¹²⁹ In other words, once developer submits the application for a permit, the municipality will determine if approving a construction is within its jurisdiction or not. If not, the municipality will submit the application officially to entity ministry (as there are no cantons in the RS).¹³⁰

Application for construction permit

In RS, the request for construction permit is submitted to the same institution, which issued urban permit. For example, if the Banja Luka municipality issued the urban permit the developer shall submit application to the municipality directly.¹³¹

Upon submission, the request for construction permit is reviewed for completeness and if all documents are in order, the construction permit has to be issued within 30 days from the day of filing.¹³²

Appealing the construction permit

Construction permit issued by municipal administrative body can be appealed within 15 days from the date of the received construction permit to the RS Ministry for Spatial Planning. Construction permit issued by the RS Ministry cannot be appealed but an administrative dispute may be initiated by the lawsuit submitted with the responsible court within 30 days from the date of receipt of the construction permit.¹³³

Construction permit's validity

The construction permit will cease to be valid if the construction work does not take place within the deadlines provided in the construction permit. This deadline cannot be less than 6 months, no longer than 2 years.¹³⁴

Participation as an “intervener”

Similarly as in FBiH the public may participate in the construction permitting process in RS as an “intervener” (see above in subchapter on construction permitting process in FBiH).

→ REMEMBER ←

- The construction permit in RS Entity is issued by ministries
- Construction permitting process in RS is not open to public but a civil society may get involved as an intervener if it proves “direct legal interest”

Construction permitting process in Brčko District

As stated before, Brčko is a separate administrative district. As such, it has a different set of rules and procedures, which

¹²⁹ See Article 60 (2) of the Law on Construction.

¹³⁰ USAID SPIRA/Chemonics International Inc., Investors Reference Manual, Construction Regulations in Bosnia and Herzegovina, 2009, p. 40. [http://www.mvteo.gov.ba/vijesti/posljednje_vijesti/default.aspx?id=1189&langTag=bs-BA].

¹³¹ USAID SPIRA/Chemonics International Inc., Investors Reference Manual, Construction Regulations in Bosnia and Herzegovina, 2009, p. 45. [http://www.mvteo.gov.ba/vijesti/posljednje_vijesti/default.aspx?id=1189&langTag=bs-BA].

¹³² USAID SPIRA/Chemonics International Inc., Investors Reference Manual, Construction Regulations in Bosnia and Herzegovina, 2009, p. 45. [http://www.mvteo.gov.ba/vijesti/posljednje_vijesti/default.aspx?id=1189&langTag=bs-BA].

¹³³ USAID SPIRA/Chemonics International Inc., Investors Reference Manual, Construction Regulations in Bosnia and Herzegovina, 2009, p. 45. [http://www.mvteo.gov.ba/vijesti/posljednje_vijesti/default.aspx?id=1189&langTag=bs-BA].

¹³⁴ USAID SPIRA/Chemonics International Inc., Investors Reference Manual, Construction Regulations in Bosnia and Herzegovina, 2009, p. 46. [http://www.mvteo.gov.ba/vijesti/posljednje_vijesti/default.aspx?id=1189&langTag=bs-BA].

regulate not only construction but every aspect of doing business. While the laws regulating construction permitting are similar to those in the rest of the country, there are some differences.¹³⁵

In Brčko District, requests for construction permits are submitted to the Department for Public Safety. The request is reviewed and construction permit has to be issued within 30 days from the date of receipt of request. A copy of construction permit is published on the web page of the Brčko District Government and the web page of the Department at least 15 days after the issuance.¹³⁶

Appealing the construction permit

The Construction permit can be appealed 15 days from the receipt date. The appeal is submitted to the Appellate Commission, which consists of five members and the chairman of the Commission is head of the Brčko District Government Department for Administrative Affairs.¹³⁷

Permit's validity

The permit is valid for one year. Construction permit will cease to be valid if construction does not take place within one (1) year of the effective date. This deadline may be extended for one (1) additional year, if the conditions used in deliberation of permit issuance decision have not changed.¹³⁸

Participation as an "intervener"

Similarly as in FBiH and RS the public may participate in the construction permitting process in Brčko District as an "intervener". See above in subchapters on construction permitting process in FBiH and RS.

➔ REMEMBER ➔

- The construction permit in Brčko District is issued by the Department for Public Safety
- The permit is valid for 1 year

When the construction is complete, developer will need the use permit to be able to use the construction for the desired purpose. Note that the use permitting process is not open for public participation.

Table 11 - Overview of processes, public participation and legal remedies

Process	Public participation	Legal remedies/civil initiatives
Spatial planning	Open for public participation	<ul style="list-style-type: none"> • Administrative claim before administrative court for authorities omission/inaction • Request for extraordinary review of court judgment before the Supreme court
Urban permitting	Not open for public participation (not even as an intervener)	No legal remedies for the public
EIA	Open for public participation	<ul style="list-style-type: none"> • Administrative claim before administrative court for authorities omission/inaction • Request for extraordinary review of court judgment before the Supreme court
Environmental permitting	Open for public participation	
Construction permitting	The public can participate only as an "intervener"	
Use permitting	Not open for public participation (not even as an intervener)	No legal remedies for the public

¹³⁵ USAID SPIRA/Chemonics International Inc., Investors Reference Manual, Construction Regulations in Bosnia and Herzegovina, 2009, p. 50. [http://www.mvteo.gov.ba/vijesti/posljednje_vijesti/default.aspx?id=1189&langTag=bs-BA].

¹³⁶ USAID SPIRA/Chemonics International Inc., Investors Reference Manual, Construction Regulations in Bosnia and Herzegovina, 2009, p. 53. [http://www.mvteo.gov.ba/vijesti/posljednje_vijesti/default.aspx?id=1189&langTag=bs-BA].

¹³⁷ USAID SPIRA/Chemonics International Inc., Investors Reference Manual, Construction Regulations in Bosnia and Herzegovina, 2009, p. 53. [http://www.mvteo.gov.ba/vijesti/posljednje_vijesti/default.aspx?id=1189&langTag=bs-BA].

¹³⁸ USAID SPIRA/Chemonics International Inc., Investors Reference Manual, Construction Regulations in Bosnia and Herzegovina, 2009, p. 47. [http://www.mvteo.gov.ba/vijesti/posljednje_vijesti/default.aspx?id=1189&langTag=bs-BA].

4. LEGISLATIVE AND POLICY-MAKING PROCESSES

In addition to the processes described above, the public has also the right to participate in legislative and policy-making processes in BiH.

Jurisdiction in environmental matters

Note that according to the BiH constitution, jurisdiction in environmental matters is not given to the State of BiH, but is split between the Entities level (Brčko District) and the Cantons/Municipal level.¹³⁹ Although the State-level Ministry of Foreign Trade and Economic Relations was given the authority¹⁴⁰ to create (environmental) policies, coordinate policymaking activities of entities and their institutions, and to report on the implementation of international treaties,¹⁴¹ given the continuous efforts of the Entities to keep the powers of the State limited, this ministry retains formal, (but not actual) powers to formulate environmental policy and legislation.¹⁴²

Entity-level policy documents

At the Entity level, environmental matters are dispersed among various ministries. In FBiH, there are currently three ministries with environmental (policy) agenda:

- Ministry of Spatial Planning,
- Ministry of Agriculture, Water Management and Forestry, and
- Ministry of Environment and Tourism.¹⁴³

In RS, environmental matters are split between two ministries:

- Ministry of Physical Planning, Civil Engineering and Ecology, and
- Ministry of Agriculture, Forestry, and Water Resources.¹⁴⁴

In Brčko District, a single authority – Department of Spatial Planning and Proprietary Rights – handles environmental matters.

These ministries define and draft policies, principles, and strategic documents related to the protection of environment and use of natural resources.¹⁴⁵ Drafts of these documents are discussed and sent internally for comments to other relevant departments. This process is not formally open to public. Some of these documents are occasionally published on websites of respective ministries. The public can request and access them on the basis of the Law on Freedom of Access to Information.

State-level policy documents

Strategic nation-wide environmental documents such as the National Emission Reduction Plan of BiH (NERP) are not adopted by Entity-level ministries, but the Council of Ministers as an executive body of the government of BiH consisting of a chairman and State-level ministries.¹⁴⁶ The Council of Ministers works and takes decisions in sessions.¹⁴⁷ While the sessions are not formally open to public, the General Secretariat of the Council of Ministers shall inform the public about

¹³⁹ Article III 3 (a) of the Constitution states that “All governmental functions and powers not expressly assigned by the Constitution to the institutions of BiH shall be those of the Entities.”; The situation is, in fact, even more complex with the constitution enabling to exercise jurisdiction over environmental issues either jointly or separately, while Cantons require certain degree of coordination by the FBiH; European Environment Agency, Bosnia and Herzegovina (April 2015) [<http://www.eea.europa.eu/soer-2015/countries/bosnia-and-herzegovina>].

¹⁴⁰ The authority was given through the Law on Ministries and other Bodies of Administration of BiH of 2003 (Official Gazette of BiH, No. 5/2003).

¹⁴¹ Ministry of Foreign Trade and Economic Relations, State of the Environment Report of Bosnia and Herzegovina (2012), page 38 [http://apps.unep.org/publications/pmtdocuments/-State_of_the_Environment_Report_for_Bosnia_and_Herzegovina-2012SoEReport_BosniaandHerzego.pdf].

¹⁴² United Nations Economic Commission for Europe, 2nd Environmental Performance Review, Bosnia and Herzegovina (2011), page 14 [http://www.unece.org/fileadmin/DAM/env/epr/epr_studies/bosnia_and_herzegovina%20II.pdf].

¹⁴³ United Nations Economic Commission for Europe, 2nd Environmental Performance Review, Bosnia and Herzegovina (2011), page 46 [http://www.unece.org/fileadmin/DAM/env/epr/epr_studies/bosnia_and_herzegovina%20II.pdf].

¹⁴⁴ United Nations Economic Commission for Europe, 2nd Environmental Performance Review, Bosnia and Herzegovina (2011), page 17 [http://www.unece.org/fileadmin/DAM/env/epr/epr_studies/bosnia_and_herzegovina%20II.pdf].

¹⁴⁵ Council of Ministers of Bosnia and Herzegovina, Ministries, 2012 [http://www.vijeceministara.gov.ba/ministarstva/vanjska_trgovina_i_ekonomski_odnosi/default.aspx?id=136&langTag=en-US].

¹⁴⁶ Council of Ministers of Bosnia and Herzegovina, Background on the Council of Ministers, 2012 [http://www.vijeceministara.gov.ba/o_vijecu_ministara/default.aspx?id=1752&langTag=en-US].

¹⁴⁷ See Article 16 of the Law on the Council of Ministers of Bosnia and Herzegovina, Official Gazette of BiH No. 38/02.

its work and decisions it adopts. The decisions of the Council of Ministers are published in the Official Gazette of BiH.¹⁴⁸

Note that the fragmented environmental agenda and inefficient coordination between various sectors at the State and Entity level prevent formulation of a coherent environmental policy framework and strategy for sustainable development.¹⁴⁹ No nationwide, comprehensive (covering the pollution of air, water, and soil) environmental policy exists to date. You will be able to find only fragmented State and Entity-level policies.

➔ REMEMBER ⬅

- Jurisdiction in environmental matters is not with the State of BiH but Entities/Cantons/municipalities
- Entity-level policy documents – adopted by ministries – process is not open for public – you can request documents under the Law on Freedom of Access to Information
- State level strategic documents – adopted by the Council of Ministries – process is not open for public – the Council's decisions are published in Official Gazettes

4.1. Legislative Process in the State of BiH

Laws of the State of BiH are adopted in the Parliamentary Assembly of BiH as the highest legislative body in BiH consisting of the House of Representatives and the House of Peoples. The process to enact State level legislation is stipulated in the Rules of Procedures of the BiH House of Representatives and the Rules of Procedure of the House of Peoples (the "Rules"). According to the Rules, the laws introduced to the Parliamentary Assembly of BiH could be considered in three procedures:

- Basic procedure
- Summary procedure – the same as basic procedure but all the terms from the regular legislative procedure shall be reduced to half;
- Emergency procedure – may be employed when the draft law is given high emergency status, i.e. is not so complex that it could be either adopted or rejected. The proposed draft law shall not be considered by the Houses, and there shall be no options for amendments.¹⁵⁰

The legislative process involves the following steps:

Draft law introduction

A proposed draft law may be introduced by any representative, or a delegate, committee of the House, joint committee of both Houses, the Houses, as well as the BiH Presidency and the BiH Council of Ministers within the scope of their respective competencies.¹⁵¹

Afterwards, the Collegium of each House shall submit the proposed draft law to the appropriate Constitutional – Legal Committee and a responsible committee for their opinions about the proposed law. Note that this is an "internal" consultation that is not yet open for public.¹⁵²

First committee stage

In the first stage, each proposed draft law shall be considered (i) by the Constitutional – Legal Committee on whether it is harmonized with the BiH Constitution and the legal system and (ii) responsible committee on the principles, on which the proposed draft law is grounded. Both positive and negative opinions are submitted to the House for further action.¹⁵³

First reading – House

After receiving the opinions by the Constitutional – Legal Committee and the responsible committee, the House shall vote on the proposed draft law in the first reading. If the opinions are positive, the House shall adopt proposed draft

¹⁴⁸ See Article 24 of the Law on the Council of Ministers of Bosnia and Herzegovina, Official Gazette of BiH No. 38/02.

¹⁴⁹ Ministry of Foreign Trade and Economic Relations, State of the Environment Report of Bosnia and Herzegovina (2012), page 206 [http://apps.unep.org/publications/pmtdocuments/-State_of_the_Environment_Report_for_Bosnia_and_Herzegovina-2012SoEReport_BosniaandHerzegov.pdf].

¹⁵⁰ Parliamentary Assembly of Bosnia and Herzegovina, Laws and other Acts, About Legislative Procedure, not dated [<http://www.parlament.ba/Content/Read/92?title=Ozakonodavnojproceduri>].

¹⁵¹ Parliamentary Assembly of Bosnia and Herzegovina, Laws and other Acts, About Legislative Procedure, not dated [<http://www.parlament.ba/Content/Read/92?title=Ozakonodavnojproceduri>].

¹⁵² Parliamentary Assembly of Bosnia and Herzegovina, Laws and other Acts, About Legislative Procedure, not dated [<http://www.parlament.ba/Content/Read/92?title=Ozakonodavnojproceduri>].

¹⁵³ Parliamentary Assembly of Bosnia and Herzegovina, Laws and other Acts, About Legislative Procedure, not dated [<http://www.parlament.ba/Content/Read/92?title=Ozakonodavnojproceduri>].

law in the first reading. If the opinions are negative, the House shall vote on submitted opinions. If the House adopts the negative opinions, the proposed draft law shall be considered rejected. If the House rejects negative opinions, the proposed draft law shall be returned for reconsideration to the committee, which provided negative opinion.¹⁵⁴

Public Hearing

Prior to submitting of the proposed draft law into second committee phase, the responsible committees may decide to conduct public hearings on the draft law, which would involve all interested parties, professional institutions, and individuals. A public hearing shall last no longer than fifteen days. Invited individuals and representatives of the bodies and institutions shall provide their opinions on issues related to the draft law, if so requested by the Committee. The Committee shall include in its report the conclusions and the results of the public hearing, and attach in annex the papers and materials submitted in the course of hearing. The transcript of the hearing, if any, shall be also attached.¹⁵⁵

Second committee stage

The responsible committee considers the text of the proposed draft law and submits its report (positive or negative depending on whether the text of the proposed draft law was adopted or rejected) to the House.

Second Reading House

After receiving a positive committee report on the text of the proposed draft law, the House shall consider its text and possible amendments. If the report by the committee is negative, the House shall consider the committee report. If the House adopts a negative report by the responsible committee, the proposed draft law shall be considered rejected. If the House rejects a negative report by the responsible committee, the proposed draft law shall be returned to the responsible committee.¹⁵⁶

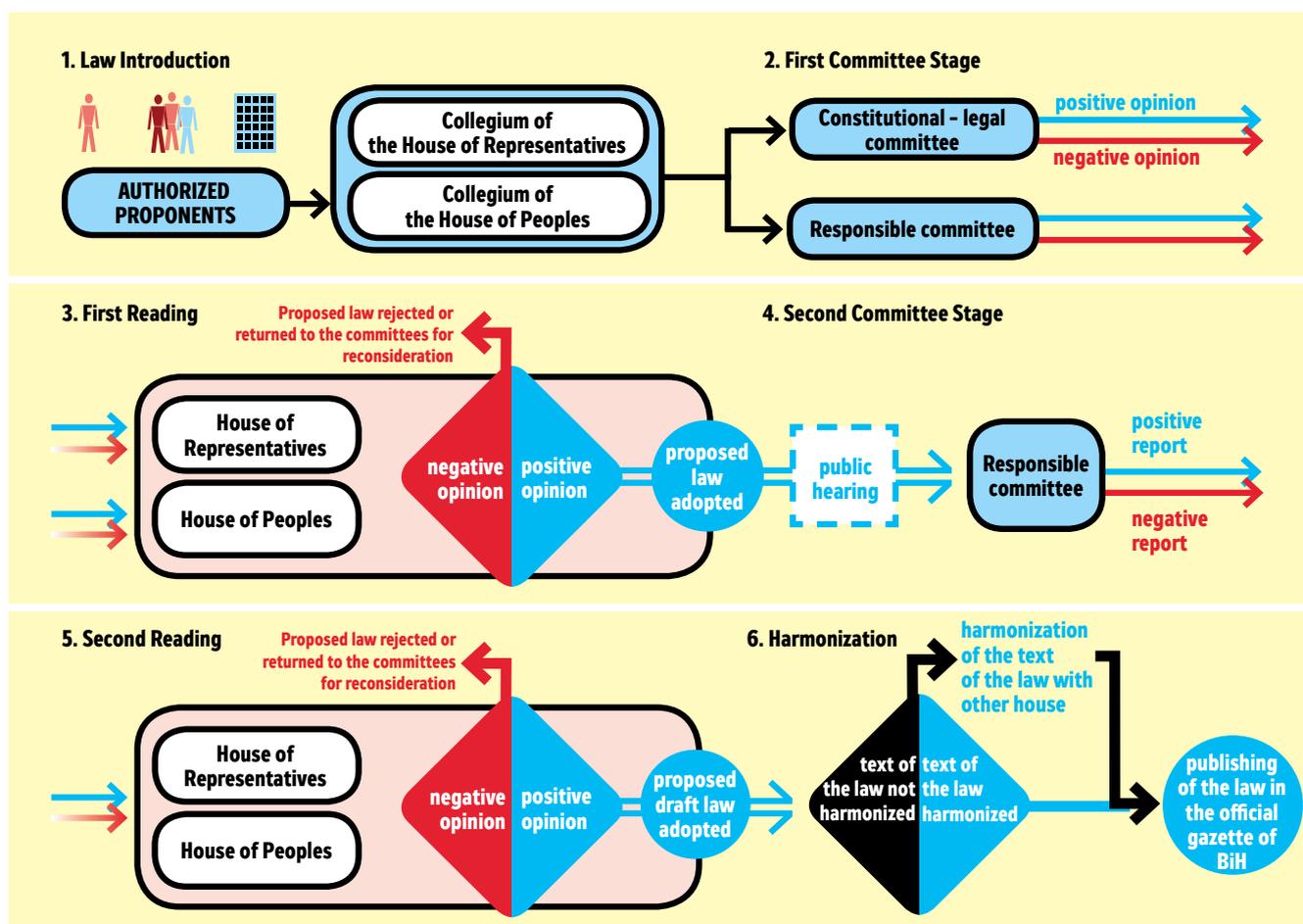
Adopted text of the law shall be harmonized with the text from the House. If both texts are identical, the text of the law shall be published in the Official Gazette of BiH. The legislative procedure shall thus be completed. If texts of the law are not identical, they shall be harmonized and then published in the Official Gazette of BiH.

¹⁵⁴ Parliamentary Assembly of Bosnia and Herzegovina, Laws and other Acts, About Legislative Procedure, not dated [<http://www.parlament.ba/Content/Read/92?title=Ozakonodavnojproceduri>].

¹⁵⁵ Parliamentary Assembly of Bosnia and Herzegovina, Laws and other Acts, About Legislative Procedure, not dated [<http://www.parlament.ba/Content/Read/92?title=Ozakonodavnojproceduri>].

¹⁵⁶ Parliamentary Assembly of Bosnia and Herzegovina, Laws and other Acts, About Legislative Procedure, not dated [<http://www.parlament.ba/Content/Read/92?title=Ozakonodavnojproceduri>].

Chart 8 – Legislative process in BiH



4.2. Legislative Process in the Entities

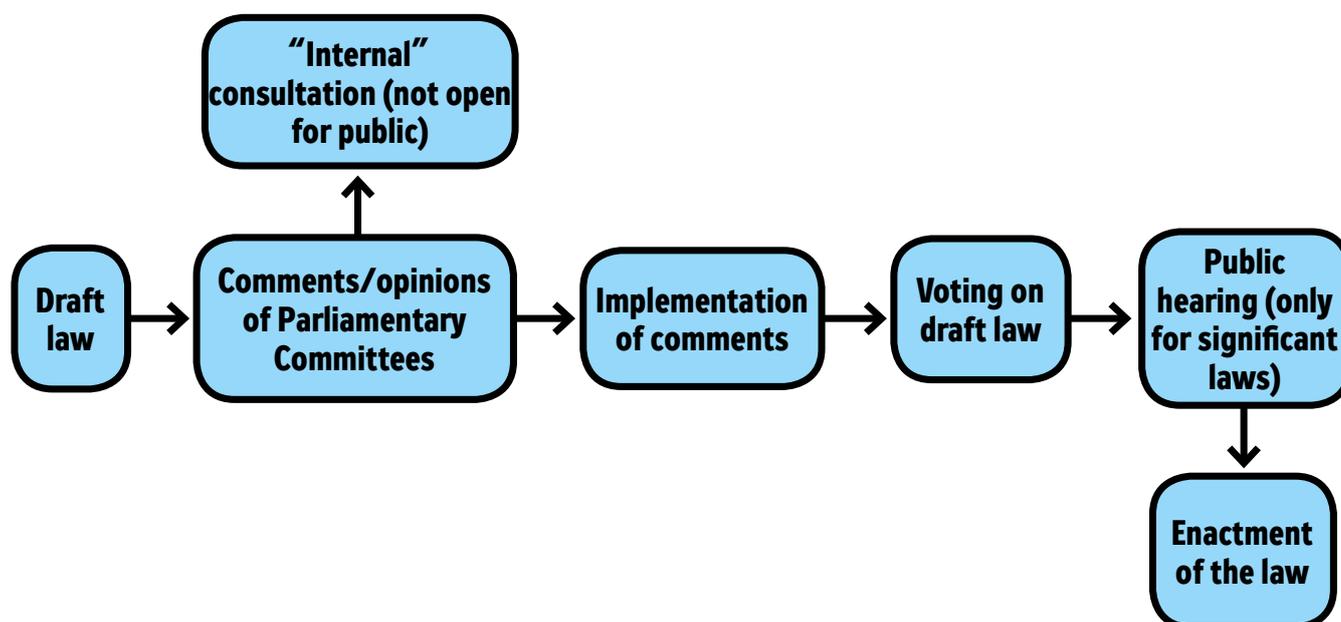
The FBiH parliament consists of two chambers: the House of Representatives and the House of Peoples. In order for the law to be enacted, an identical text needs to be adopted in both chambers. Note that the RS parliament has only one chamber (National Assembly).

Initiative to propose legislation is with assemblies (council) of municipalities, MEPs of Entity parliaments, political parties, civil society organizations, private individuals and business entities. The legislative process in both Entities is essentially the same except that in FBiH the draft law needs to pass both chambers, while in RS it passes only through one. The government submits the draft law or amendment of the existing law to the Entity's parliament. It is then submitted for comments and opinions to respective committees (e.g. law, labor, or social policy). Note that this is an internal consultation and is not open to public. When the comments are implemented, the parliament votes on the draft law and organizes public hearing. The public hearing is not obligatory for every law; it usually takes place when laws of major importance such as labor, environment, are enacted. Following the public hearing, if any, the comments are implemented and the proposal of the law is sent for enactment in the parliament. The legislative process in the Cantons is virtually the same as that in the Entities.

→ REMEMBER ←

- Legislative process in the State of BiH and Entities involves public hearing where you can comment on the draft law
- Draft law passed two chambers of the parliament in the State of BiH and FBiH and one chamber in RS

Chart 9 – Legislative process in the Entities



5. CASE STUDIES: LESSONS LEARNT IN BIH

Some of the issues that you might encounter in the course of the environmental-administrative processes are best exemplified by practical experience of permitting an operation and construction of industrial facilities or adoption/amendment of spatial plans. In the first case study, we have selected several hydropower plants in BiH (Novakovići, Zapeće, Ilomska and Buna) to illustrate the challenges of participating in environmental permitting process and the fact that authorities might tolerate the construction of many industrial facilities that does not conform to the requirements of EIA and environmental permits issued for them. The second case study on Borik is to illustrate the challenges of participating in adoption/amendments of spatial and other land-use plans.

5.1. Case study 1: Hydropower plants Novakovići, Zapeće, Ilomska and Buna

Novakovići: Overview of procedure

In 2006, the company Elis inženjering d.o.o. Teslić obtained the concession permit for the construction of a small hydropower plant Novakovići on the river Ugar. EHE d.o.o. Banja Luka – a company, which later acquired it – changed the installed capacity of 2.5 MW to 4.9 MW. In February 2012, EHE d.o.o. obtained permit¹⁵⁷ from Banja Luka for the construction of Novakovići power plant with an installed capacity of 4.9 MW.

Shortly thereafter, the Ministry of Spatial Planning, Construction, and Ecology of Republika Srpska issued environmental permit¹⁵⁸ for the construction of Novakovići based on a decision approving EIA study.¹⁵⁹ In further process, the investor obtained a building permit¹⁶⁰ and eventually use permit¹⁶¹, on the basis of which the Regulatory Commission for Energy of Republika Srpska issued a certificate for electricity production.¹⁶²

¹⁵⁷ File no. 15.02-364-486/11.

¹⁵⁸ File no. 15.04-96-32/12.

¹⁵⁹ File no. 15.04-96-30/12, dated 24 February 2012.

¹⁶⁰ File no. 15.03-360-29/12, effective as of 23 May 2012.

¹⁶¹ File no. 15.03-361-380/12, effective as of 29 October 2012.

¹⁶² File no. 01-318-04-1/SPP-5/13 dated 24 January 2013.



Dry river bed under the dam in Novakovići. The construction works had not been carried out in compliance with the environmental permit.



Fish ladders are built according to current technologies but are useless since there is no water and, thus, no fish in the stream.

Novakovići: Procedural irregularities

Although the construction works had not been carried out in compliance with the environmental permit, the Regulatory Commission issued a certificate for the capacity of 5.77 MW, despite the fact that all the supporting documents were for a hydroelectric power plant with an installed capacity of 4.9 MW. The Regulatory Commission subsequently issued a decision on issuing a permit for electricity production¹⁶³ and authorized electricity production in Novakovići.¹⁶⁴

The example of Novakovići shows that decisions to issue construction permits are often not supported by sufficient and accurate documentation according to the law. Even more compelling concern is that construction works are frequently carried out in breach of the requirements set in environmental permits and the license holders play with the rules of operation (arbitrarily increase voltage capacity without amending the concession permit and EIA).

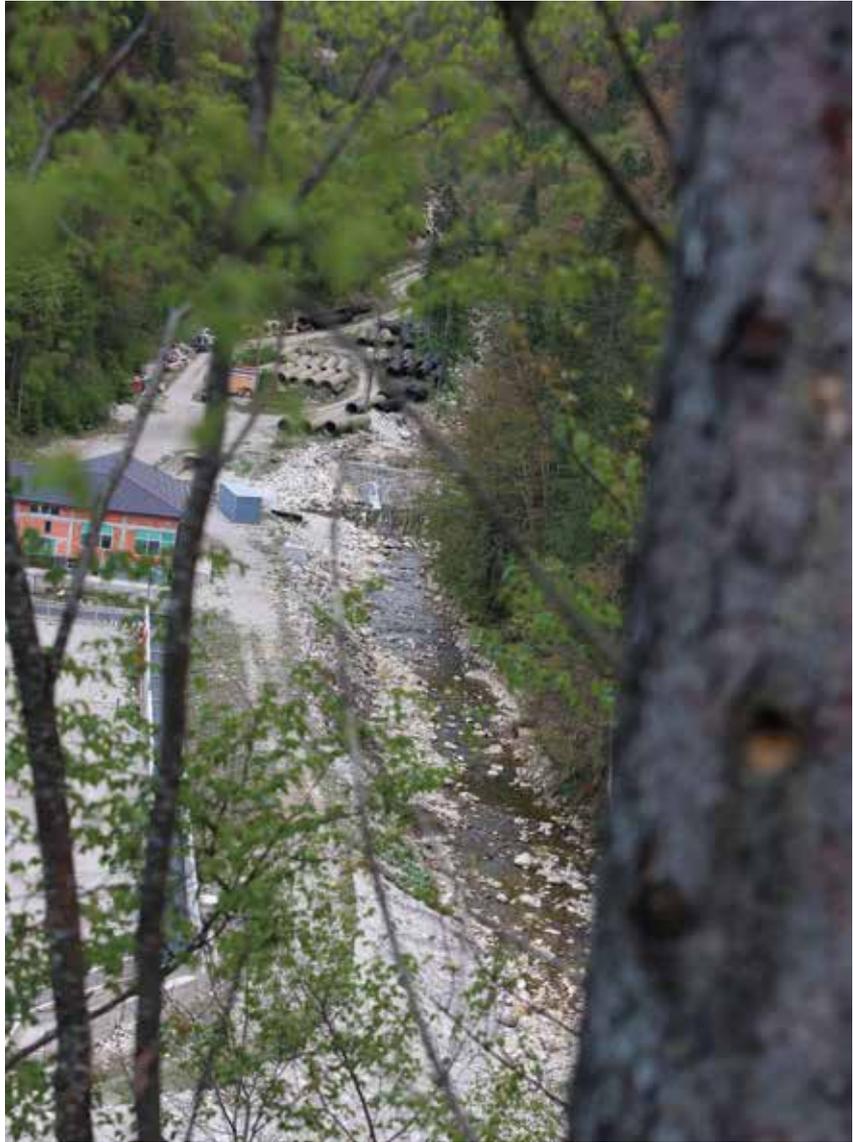
Zapeće

In case of hydropower plant Zapeće NGO Centre for Environment attempted to participate as an intervener (“umješač”) in the construction permitting process for the construction of small hydropower plant Zapeće at the Ugar river. In November 2015, the Regulatory Commission for Energy of the Republic of Srpska rejected the request, arguing the procedure to issue permits had been already completed in October 2014¹⁶⁵ and becoming an intervener is, thus, unfounded. The example of Zapeće demonstrates a frequent practice of construction permit authorities postponing admitting participants to the proceedings until they are completed and it is too late to exercise the rights of a participant/intervener.

Ilomska

At the end of 2010, the company Eling Engineering d.o.o. Teslić signed a concession contract for the construction of a small hydropower plant with an output of 0.22 MW on the Ilomska river. At the beginning of 2014, amendment to the concession contract increased the installed capacity to 4.8 MW, which was 22 times higher than originally agreed. The Association for the Conservation of Nature and Natural Reserves Kneževo filed a lawsuit against the decision¹⁶⁶ issued by the Ministry of Spatial Planning, Construction, and Ecology of Republika Srpska, by which an environmental permit for “Eling small hydropower plants” doo Teslić was granted. The court eventually repealed the contested decision.

The example of Ilomska power plant illustrates that, since the requirements of decisions and permits issued for the construction of facilities are frequently not implemented during the actual construction, it is possible to enforce the conditions prescribed by permits and parameters needed for a particular type of equipment to be functional by resorting to judicial review.



Construction field of Ilomska hydropower plant. Every technical construction adversely affects the canyon of a virgin river.

¹⁶³ File no. 01-385-11/14/P-95-300, dated 27 November 2014.

¹⁶⁴ File no. 01-385-04-1/43 -1/14, dated 30 November 2014.

¹⁶⁵ File no. 01-311-22/14/P92-258.

¹⁶⁶ File no. 15.04-96-18/15.

Buna 1 and 2: Overview of procedure

In November 2014, the government of the Herzegovinian Neretva Canton (HNC) granted a concession for the construction of small hydropower plants Buna 1 and Buna 2 with the performance of maximum 5 MW. The concession agreement was signed in March 2015 between the Ministry of Agriculture, Forestry, and Water Management of HNC and investor ("Herzegovina građevinsko zanatstvo" d.o.o). Shortly thereafter, the EIA study was conducted and the Minister of Environment and Tourism of FBiH issued decision on the appointment of an expert commission for EIA, under which it issued an official report and declared the study to be valid.

In July 2015, public hearing on the EIA study was held in the village of Buna. The hearing was interrupted without any record made thereof. In September 2015, the Ministry of Trade, Tourism and Environmental Protection of HNC issued an opinion on the EIA study without objections; the opinion stated the Ministry was convinced that the study covered all important aspects of environmental and nature protection.

In October 2015, NGO WWF Adria organized an official meeting at the Ministry of Agriculture, Forestry and Water Management with representatives of NGO "Majski Cvijet" relating to the concerns raised to the EIA study. Two minutes of this meeting exist – one in the possession of "Majski Cvijet" and another one, which was forwarded to the Ministry of Environment and Tourism of FBiH and states that nobody present at the public hearing opposed the construction of hydropower plants.

In November 2015, the Ministry of Environment and Tourism of FBiH issued an environmental permit for the construction of a small power plant Buna 1 and Buna 2 and published it in the list of environmental permits on its website.¹⁶⁷ Due to the issues with the EIA study and the public hearing, the Association for the Protection of rivers Buna, Bunica and Neretva filed in March 2016 a complaint to the Federal Ministry of Justice. In April 2016, "Majski Cvijet" filed legal action against the Ministry of Environment and Tourism of FBiH to revoke the decision granting the environmental permit.

Buna 1 and 2: Procedural irregularities

You can notice a number of irregularities in the Buna case. When the EIA study was prepared, the Minister of Environment and Tourism of FBiH had declared it valid before the public hearing even took place. When the public hearing was interrupted, the Ministry of Environment and Tourism of FBiH, collected signatures and e-mail addresses of the participants, promising they will submit the minutes of the public hearing, but it never happened. NGOs (e.g. "Majski Cvijeta") suspected that the minutes included nothing about local communities opposing the construction of Buna 1 and Buna 2, that the Ministry of Environment and Tourism of FBiH did not take the comments into consideration and that the minutes of the public meeting had been forged.

Note that the inconsistencies described in this case study, i.e., ignoring comments to the EIA study, intentionally altering the minutes of the public hearing, the failure to inform interested parties about the procedural steps (issuance of environmental permit) are quite frequent to encounter.

5.2. Case study 2: Regulatory Plan Amendment in Borik

Overview of procedure

In April 2014, the municipal council of Banja Luka decided to propose an amendment to the regulation plan to build an Orthodox church and related facilities on 1000 square meters of children playground and public greenery and announced the dates for public consultations of the proposed changes. In July 2015, NGO Centre for Environment addressed the Department of Spatial Planning of Banja Luka's municipal government in order to organize a public presentation on the regulation plan amendment. As the municipality refused to hold a presentation, the Center for Environment itself organized a public presentation in the district of Borik.

In August 2015, the Centre for Environment submitted comments and objections to the draft amendment to the municipality.¹⁶⁸ In September 2015, an official public hearing on the draft amendment was finally held. The hearing featured a large public turnout to witness the clash of arguments between the opposition and the Serbian Orthodox Church. In October 2015, with the support of the Centre for Environment a Citizens' Initiative for Borik (CioB) was established to reverse the decision of the municipal council of Banja Luka to amend the regulatory plan.¹⁶⁹ In accordance with the Law on Referendum and Citizens' Initiatives, CioB started collecting signatures for a petition and in seven days (maximum period provided by law) collected 5,110 signatures.¹⁷⁰

¹⁶⁷ The issuance of municipal permit for the construction of a small power plant Buna 1 and Buna 2 by the department of spatial planning and construction of the city of Mostar is currently underway.

¹⁶⁸ The comments referred to the loss of green space and decrease of children playgrounds by almost a half. The attention is drawn to the fact that within a radius of one kilometer there are three Orthodox churches and in accordance with applicable regulatory plans the construction of two other Orthodox churches in the same area were envisaged, and the related problems of noise and microclimate.

¹⁶⁹ Official Gazette of Banja Luka, No. 11/14.

¹⁷⁰ The CioB's reasons for the regulation plan change were following: non-compliance of the draft plan with strategic and planning documents of the city, ignoring the needs of children and youth, lack of parking space, the need to reduce noise, the need to adapt to a climate change, and a real need for a new church in Borik.



Large number of people opposing change of the regulation plan and construction of the church on a children playground showed up at public meeting held in September 2015.

In November 2015, at the meeting of the Banja Luka council the deputies discussed but did not accept the CloB draft. In December 2015, in accordance with the Law on Referendum and Citizens' Initiatives, CloB filed appeal to the Supreme Court of the Republika Srpska to reverse the assembly's decision.

In February 2016, the spatial planning department of the municipal bureau began to prepare survey analysis and evaluation of potential sites to propose the most suitable place for the construction of an Orthodox church (the process is still underway). However, under the pressure of CloB and the Supreme Court petition, in May 2016, the Banja Luka City Assembly unanimously adopted the decision to cancel the decision to amend the regulatory plan for the residential area Borik in Banja Luka.

Procedural irregularities

Even though mandatory by law, the Banja Luka municipal council kept unreasonably prolonging public hearing on and disregarding comments against the regulation plan amendment and construction of an Orthodox church. The authorities began to take the public comments seriously only after the CloB initiative had taken off.

This case study illustrates that the authorities frequently do not enable the public to participate in the environmental decision-making processes (regulatory plan amendment) in a way that conforms to national and international (Aarhus Convention) law. The public is often involved in decision-making only after resorting to legal remedies and/or exerting pressure on authorities.



Arnika – Citizens Support Centre (Czech Republic)

Established in 1996, non-governmental organization Arnika has many years of experience promoting information openness, supporting public participation in decision-making, and enforcing environmental justice. Its experts assist various civil society organizations, municipalities, and individuals in solving cases related to environmental pollution and its prevention throughout the Czech Republic. Arnika also participates in international projects focused on environmental protection and strengthening the implementation of the Aarhus Convention in Central and Eastern Europe, Caucasus, and Central Asia. Arnika is a member of the Green Circle – an association of ecological non-governmental organizations of the Czech Republic, European Environmental Bureau, and European ECO Forum.

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Centar za
životnu sredinu

Founded in 1999, the Center for Environment is a non-profit, non-governmental organization dedicated to the environmental protection and promotion of sustainable development through advocacy and civic initiatives. The Center promotes the implementation of Aarhus Convention, namely free access to information held by public authorities and greater public participation in environmental decision-making. It strives to affect relevant environmental policies, raise public awareness of environmental issues and achieve constructive dialogue and cooperation with stakeholders. It is active mainly in Bosnia and Herzegovina.

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