ANTI-CORRUPTION REVIEW OF THE LAW ON ENVIRONMENT

Darko Avramovski and Emilija Spasovska

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INTRODUCTION

The Law on Environment establishes the basic framework that is regulated in detail by other laws relevant to the environment, such as those relating to ambient air quality, protection of water, forests and nature, urban greenery and similar. The framework sets out the basis for other regulations related to the development of society and the country, which may have an impact on the environment, such as: the Law on Mineral Resources, the Law on Energy, the Law on Urban Planning and other laws. In that regard, the Law on Environment regulates the rights and duties of the national government, local self-governments, as well as the rights and duties of legal entities and individuals in the provision of conditions for protection and promotion of the environment, as a special right of the citizens. However, having in mind that this is a horizontal regulation, and the fact that it is a general law (lex generalis), it cannot provide any protection in case any of the other laws are not harmonized with the Law on Environment. In any case, given that the Law sets out the basic framework, it also establishes the basis for granting various permits and approvals to legal entities and individuals, both those related to performing a certain profession and those related to performing infrastructural, industrial, manufacturing, service or other projects involving large investments that may have an impact on the environment. Hence, the main risks that are intrinsically part of this sector are precisely those related to the issuance of various permits and approvals, as well as the performance of inspection supervision. It is therefore very important to make an assessment of the risks of corruption and conflict of interest in the regulations pertaining to the environmental sector.

The Law on Environment was adopted in 2005 and has underwent 23 amendments so far.[1] In other words, this Law was subject to changes every 7 months (on average) by the legislature. This situation alludes to the fact that there are many challenges and problems in terms of how to establish the environmental rules, and indicator of the inability to adopt long-term and sustainable legal solutions – and this requires frequent interventions in this Law. On the other hand, the large number of changes and amendments to any regulation often results in poor visibility of the actual norms, and often results in contradictions between the provisions, or in a conflict of provisions with other regulations, including legal gaps and unregulated legal issues relevant to the promotion and preservation of the environment. It goes without saying that frequent change of laws are in itself a risk factor for emergence of corruption and conflict of interest, but it can also be an indicator of corrupt behavior, according to which a specific regulation is intentionally changed, where certain legal entity or a natural person does not have to adapt to the regulation, but the regulation is adopted to the practical actions of that person or entity.

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[1] Law on Environment, Official Gazette of the Republic of Macedonia No. 53/2005; 81/2005; 79/2006; 101/2006; 109/2006; 24/2007; 159/2008; 83/2009; 161/2009; 1/2010; 48/2010; 124/2010; 51/2011; 123/2012; 93/2013; 187/2013; 42/2014; 44/2015; 129/2015; 192/2015; 39/2016; 28/2018; 65/2018; 99/2018;

CORRUPTION RISKS IN THE LAW ON ENVIRONMENT

This anti-corruption review identifies and considers several types of risks that occur due to imprecise definitions, involvement of several entities in decision-making and shared competencies, issuance of licenses, discretionary powers, financing, election and dismissal of directors, inspection supervision. For the purposes of this document, the Methodology for anti-corruption review of the legislation of the State Commission for Prevention of Corruption was used,[2] as well as the Comparative Analysis and Methodology of the Regional Cooperation Council for South East Europe and the Regional Anti-Corruption Initiative[3].

Risks due to imprecise definitions

In the first chapter, the Law sets out the basic principles for regulation of the environmental sector, including definitions of the key terms, and sets out the objectives of the Law. Although the principles, **definitions and objectives** are well defined, they can be improved, especially in terms of harmonization of domestic legislation with the European legislation. In practice, it is difficult to prove when a certain principle has been violated, which is why it is very important for these principles to be thoroughly and properly placed, and this would establish a solid framework for protection of the environment.

It would be also proper to improve the legal text when it comes to the definitions included in the Law, primarily by defining the **competent bodies** and precisely determine the competent ministry, which would prevent impact or influence of other laws on the Law on Environment. In addition, it should be borne in mind that the precise definition of *competent authorities* contributes to elimination of the need for the citizens to be in permanent and direct contact with government agencies and officials, which further eliminates the risks of abuse of office and corruption. In this regard, it is especially important for the Law to have clear and precise provisions that identify all the bodies and organizational units, including precise mapping of their mutual relations and competencies.

In view of the above, special attention should be paid in this part to the professional body within the Ministry of Environment which is responsible for performing professional work in the field of environment and has a number of competencies in the procedures for obtaining permits and licenses. In this context, in accordance with the Law on Environment and for the purpose of performing professional activities related to the environmental media and areas of the environment, the **Environmental Directorate** is established, as a body responsible for performing professional activities in the field of environment, located within the body of the state administration responsible for environmental affairs i.e. the Ministry of Environment. On the other hand, in accordance with the Law on Organization and Work of the State Administration Bodies (ZORODU), an **Environmental Service**

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[2] https://www.dksk.mk/fileadmin/PDF/Metodologija_za_antikorupciska_proverka_na_legislativata.pdf
[3] http://rai-see.org/wp-content/uploads/2015/06/Comparative_Study-Methodology_on_Anti-corruption_Assessment_of_Laws.pdf

is envisaged as a body within the Ministry of Environment and Physical Planning. This non-harmonization between the legal regulations may cause confusion as to whether these are two different bodies, with different competencies, which are part of the Ministry of Environment (service and administration), and are established by different legal regulations, or it is a matter of overlapping of legal provisions with different terminology that is used to refer to the same body. All this in itself significantly reduces the legal certainty and predictability and increases the risks of corruption and conflict of interest.

In this context, if we look at Article 223 of the Law on Environment, we can conclude that the Environment Service has been transformed into the Environmental Directorate, but not by amending the Law on ZORODU, but by amending the Law on Environment, while the body text of the ZORODU remains the same and is thus contradictory to Law on Environment. In accordance with Article 223 of the Law on Environment: *"with the establishment of the Environmental Directorate, the assets, inventory, archives and documentation and other property of the Environmental Service shall be transferred to the Environmental Directorate. The employees of the Environmental Service will be allocated in accordance with the Job Systematization Act of the state administration body responsible for environmental affairs."* Here we can see, through a practical example, that it is extremely important for the definitions in the laws to be precise, especially when defining competent authorities, in order to avoid loose definitions which are many in this Law, as is the often use: "body responsible for performing of activities in the relevant area".

In addition to the risks mentioned above that refer to the professional body within the Ministry, if we look at the map of bodies within the Ministries, the Directorate is designated as a body within the Ministry of Environment and Physical Planning, competent to implement policies and submits report to the Government. This refers to the fact that the Directorate is accountable to the Macedonian Government. This is also supported by Article 161-a of the Law on Environment, according to which *"the Director is accountable to the Government of the Republic of Macedonia for his work and for the work of the Environmental Directorate"*[4]. On the other hand, in accordance with Article 41, Paragraphs 2 and 3 of the Law on ZORODU, the supervision over the work of the bodies within the ministries is performed by the ministries, and the work of other bodies of the state administration is supervised by the ministry responsible for the administrative area for which that state administration body is established. Supervision over the work of the administrative organizations is performed by the ministry who is in charge of the administrative area for which the administrative organization is established.[5] Hence, such a collision of the legal provisions that define the professional body, envisage its competencies and define supervision over its work, inevitably contributes to the emergence of greater risks of corruption and conflict of interest, but also challenges in terms of any other practical implementation of these provisions.

Furthermore, in terms of competencies of the Environmental Directorate i.e. of the body in charge of performing professional activities in the field of environment, it is unclear whether the Directorate creates, implements or supervises environmental policies. Article 161 of the Law on Environment stipulates that the Environmental Directorate:

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[4] Article 161-a, Paragraph 3, Law on Environment, Official Gazette of Republic of Macedonia 53/2005, 81/2005; 101/2006; 79/2006; 109/2006; 24/2007; 159/2008; 83/2009; 161/2009; 1/2010; 48/2010; 124/2010; 51/2011; 123/2012; 93/2013; 187/2013; 42/2014; 44/2015; 129/2015; 192/2015; 39/2016; 28/2018; 65/2018; 99/2018

[5] Law on Organization and Work of the State Administration Bodies, Official Gazette of Republic of Macedonia 58/2000, 44/2002; 13/2006; 82/2008; 167/2010; 36/2011; 51/2011; and Official Gazette of Republic of North Macedonia 96/2019; 110/2019; 154/2019;

1) Performs professional activities in protection of nature;
2) Performs professional activities in management of waste, air, chemicals, noise and other areas of the environment;
3) Performs professional activities for protection of water and soil from pollution;
4) Performs professional activities in the procedure for environmental impact assessment procedure of certain projects and in the procedure for issuing integrated environmental permits as well as permits for compliance with the operational plan;
5) Maintains the Environmental Cadaster and the Register of pollutants and substances and of their characteristics;
6) Conducts environmental monitoring; and
7) Performs other activities determined by this and other law.

Given the fact that the Law includes only one article that lists the general areas in which the Directorate is competent, without elaborating them in more details, no appropriate definition of the competencies has not been made i.e. they are too broad. Given also that other articles in this Law define important powers that the Directorate has, such as supervising of the facilities for which an application has been submitted for obtaining an integrated environmental permit, approval of elaborates, participation in the implementation of extraordinary and regular continuous supervision of the facilities, performing of professional-administrative work of the inter-institutional body, communication with the operators, etc., the absence of precisely defined competencies of the Directorate, as well as an undefined structure for accountability and responsibility of this body can be considered a serious risk for corruption and conflict of interest.

When analyzing the Law we can see that in many places the term **authorized person** is used, who is appointed by the Minister who manages the body of the state administration responsible for environmental affairs. These persons authorized by the Minister have the authority to determine whether certain conditions are met for obtaining certain licenses for dealing with hazardous substances, or for taking a professional exam in the field of environment, or for preparing a report on the appropriateness of the environmental impact assessment study. However, no precise description can be found in the legal text of who can be an authorized legal entity i.e. what are the criteria and conditions for acquiring the status of authorized legal entity, while in certain cases it is left to full discretion of the Minister in charge of the body of the state administration responsible for environmental affairs. An example of this is Article 43 where the Minister prescribes in more detail the conditions and the procedure for authorizing legal entities to prepare the Register of Polluters and the Environmental Cadastre.

Risks due to insufficiently defined issues

Article 23 of the Law prescribes the possibility for accreditation of a legal entity and a natural person for assessment of the technology, technological line, products, semi-finished products or raw materials, if there is certain knowledge that points out to their negative impacts on the environment. However, there is no information on the existence of an appropriate bylaw (rulebook) that prescribes the more detailed **requirements** in terms of technical conditions and assets, equipment and premises that must be met by legal entities and natural persons in order to be accredited to perform the works, as well as **the procedure for selection of an accredited legal entity and natural person that will assess the technology, technological line, products, semi-finished products or raw materials.** Therefore, the absence of minimum standards in this Law poses a risk of corruption or conflict of interest when it comes to adoption and enactment of a bylaw required to regulate in more detail the procedure for selecting a person who will evaluate the technology, products or the raw materials.

Article 27 of the Law sets the basis for declaring ecologically clean areas, but the Law does not regulate, and no acts have been adopted to prescribe the manner and **procedure for declaring ecologically clean area, as well as the manner of maintaining records** of areas declared as ecologically clean and their content. This is a legal gap that needs to be reconsidered because it leaves room for different application of the legal provisions, which inevitably reduces the legal predictability of the procedures and thus increases the risk of corruption and conflict of interest.

Risks related to the involvement of multiple entities in decision-making and shared competencies

In the second chapter, the Law sets out the general obligations that must be observed when undertaking various activities that may pollute or endanger the environment. In this part, Article 22 of the Law on Environment stipulates that *"for the purpose of protection of life and health of people and the environment, the Minister managing the body of the state administration responsible for environmental affairs, in agreement with the Minister managing the body of the state administration responsible for economic affairs, the Minister managing the body of the state administration responsible for affairs related to agriculture, forestry and water economy, and the Minister managing the body of the state administration responsible for health affairs,* ***shall restrict or prohibit the import and export of hazardous substances, hazardous substances and products*** *in/ from/ throughout the Republic of Macedonia"*[6]. Defining the procedure in this manner certainly reduces the risk of corruption due to the prevalence and involvement of several bodies in deciding on the prohibition of import and export of hazardous substances, but in this case it is a matter of issuing a prohibition on import, export or transport of substances that are harmful to the environment, in which case the competence shared between several institutions may turn out to be inefficient. Considering that, in order for a prohibition to be imposed,

[6] Law on Environment, Official Gazette of Republic of Macedonia 53/2005, 81/2005; 79/2006;101/2006; 109/2006; 24/2007; 159/2008; 83/2009; 161/2009; 1/2010; 48/2010; 124/2010; 51/2011; 123/2012; 93/2013; 187/2013; 42/2014; 44/2015; 129/2015; 192/2015; 39/2016; 28/2018; 65/2018; 99/2018

- consent of all entities that are cumulatively listed in the Law is required, and it is sufficient for corruption or conflict of interest to occur in any of the entities along the chain and the prohibition or restriction for import or export of hazardous substances would not be imposed. In this respect, since several entities are involved in this situation, although the risk of an arbitrary prohibition is reduced, still, given the financial dimension of dealing with hazardous substances, the risk of corruption or conflict of interest may be even greater in terms of non-adoption of a prohibition or restriction on the import or export of hazardous substances.

A similar example is Article 148, Paragraph 4 which also provides for obtaining a preliminary opinion from the state administration body responsible for protection and rescue, the state administration body responsible for health affairs, the state administration body responsible for affairs in the field of labor, the body of the state administration responsible for the economic affairs and the body of the state administration responsible for internal affairs - in order to be able to prepare a conclusion regarding the report on security measures of the operator which has a system that involves presence of hazardous substances, as well as other opinions, necessary to determine the effect of a particular project on the environment. This type of implementation can take quite a long time in practice because all these different bodies need to review the matter and give their opinion, which in itself leaves room for exercising of pressure and offering/requesting corruption. In this regard, the Law does not provide for specific deadlines within which these bodies must give their opinion, nor it is clearly provided whether and to what extent their opinion is binding on the body responsible for environmental affairs. This further increases the risks of corruption or conflict of interest in the procedures for evaluating the safety measures of the systems where there is a presence of hazardous substances.

Risks related to publicity, transparency and inclusiveness

There are special 'packages' of corruption risks that might happen due to the absence of appropriate provisions in the Law that regulate the **public involvement in the procedures,** and informing the public of those procedures. According to Article 58, Paragraph 2 related to obtaining public character information, some entities are obliged to pay a fee in certain cases in order to obtain **public character information.** It does not specify what are these situations exactly and what are those certain cases when a payment should be made - something that is left to the discretion of the Government following a proposal initially submitted by the Minister managing the state administration body responsible for environmental affairs. The Law, however, stipulates that the amount of the fee should be in accordance with the actual costs incurred by the authority for providing the information, but again the legal text does not explain what those real costs would be and how the amount of these costs is determined in general, thus leaving it to be regulated by bylaws.

This legal solution is identical to the solution that exists in the Law on Free Access to Public Character Information, and it is therefore unclear why the Law on Environment regulates the same issue in parallel and in an identical manner, instead of simply referring to the provisions of the Law on Free Access to Public Character Information. At the same time, a change in one of these laws can lead to a similar situation as the one discussed above with the professional body in the field of environment, that is, a collision of legal provisions of two laws

that simultaneously regulate the same issue. On the basis of the Law on Environment, a bylaw was adopted by the Ministry of Environment - Rulebook on the manner and procedure of providing access to environmental information[7] in 2007, which regulates in more detail the issue of access to data. However, it is interesting that this bylaw was adopted almost 15 years ago and it has not underwent any changes, which raises the question of whether it is in line with the standards applicable today, related to transparency and good governance.

Additionally, the main advantage of regulating certain issues with bylaws is the possibility for fast and flexible intervention in the provisions of the act, but in this case the Law itself has been changed almost twice a year, while the bylaw has not been changed at all since its adoption in 2007. Finally, the Rulebook includes only 7 articles and offers only the basic standards and rules of conduct, which are already included in the Law on Free Access to Public Character Information. In other words, the Rulebook does not include any additional detailed provisions on which data and how they should be made available to the public, so the same provisions can be incorporated into the legal text itself. This is especially important if we take into account the fact that the procedure for adoption of a bylaw is by its nature not that transparent and inclusive as the procedure for adoption of a law, but also due to the fact that the bylaw, in this case, is adopted by the same body that is concerned by the situation.

On the other hand, the issue of the fee for obtaining public information is regulated by a bylaw adopted by the Government - Decision on determining the fee for material costs for the information provided by the information holders. Again in this situation we can see that the bylaw was adopted in 2006 and has undergone only one change in 2017, which is why we can again discuss the rationale (justification) for such issues to be regulated by bylaws. This is primarily due to the fact that the bylaws that regulate these issues in more detail are very short, and also due to the fact that they are changed much less frequently than the legal text. Given that the regulation of these issues is left to the executive, with adoption of bylaws, while the legal provisions do not offer the minimum guarantees, there is room for risk of corruption and conflict of interest, by eventual abuse of the provisions in order to limit the access to public character information, so it is very important for the Law on Environment to set out specific restrictions and guidelines, and maybe even fully foresee the situations in which such fee may be requested.

Furthermore, the public participation cannot be seen only through the lens of possibility for the interested parties to submit a request for access to information, and in this regard, the Law again lacks sufficient provisions regarding publicity and transparency of the competent authorities i.e. their duty to independently publish environmental data and information, the volume and quality of that data, the manner of their publication, etc. This is even more relevant if we take into account the fact that the Law does not include provisions that would provide some consequence if the competent authorities do not act in accordance with the standards and criteria for public disclosure of data. In this regard, Article 90 foresees that the state administration body in charge of environmental affairs is required to organize a public hearing in relation to the environmental impact assessment study of the projects, to provide availability of information the public needs in order to participate in the public debate, as well as to inform the civic associations established for protection and improvement of the environment in the area where the project is implemented. However, the Law does not provide sufficient

[7] Rulebook on the manner and procedure for providing access to environmental information, Official Gazette of Republic of Macedonia 93/2007

- provisions as to **which civic associations should be notified by the competent ministry, nor how the public presence at these hearings shall be ensured.** More importantly, the Law does not provide for a consequence for the body if it has not acted in accordance with these provisions for ensuring publicity and inclusiveness, but only provides for the possibility of appealing the decision in a situation where it has not been acted in accordance with these provisions. The regulation of these issues is again left to bylaws, and in this regard the Government has adopted the Decree on public participation during the preparation of regulations and other acts, as well as plans and programs in the field of environment.[8] Almost identical with the aforementioned bylaws, this Decree was adopted in 2008 and has underwent only one amendment in 2011, again raising the same question as to whether this Decree is obsolete, especially given all the steps and efforts that have been taken in the past 10 years in order to intensify public participation and to increase the inclusion and participation of the stakeholders, especially in areas of great public interest, such as the environment, and whether it is really necessary to address these issues with bylaw, when in practice it proves to be a less flexible regulation than the law itself and the procedure for its adoption is much more non-transparent and less inclusive. These questions are even more relevant if we analyze the text of the Decree, which sets out minimum standards that should be included in the legal text. What is particularly important is that the **Decree does not provide more detailed solutions on how the stakeholders in the proceedings are identified and which civil society organizations can be considered as stakeholders in these proceedings**, and whether there are guarantee mechanisms that would challenge the analysis that has identified all stakeholders. At the same time, Article 10 of the Decree stipulates that the competent authority should submit an **individual or summary response** to all received remarks, opinions and proposals on the regulation and/ or planning document, but there are no provisions that will say what will happen if no response is given to some of the remarks, and the fact that the body can submit a summary response to several or to all of the received remarks leaves room for harassment and restriction of the effective participation of the public in the procedures related to environment.

Finally, neither the Law nor the Decree provide for ways that enable participation of public and stakeholders from another country, in cases where the cross-border impact of a project implemented on the territory of the Republic of North Macedonia is identified. This is especially important if we consider that, in accordance with the Decree, the public is informed through daily newspapers and the website of the body conducting the procedure hence it is impossible to inform the population in another country about the implementation of projects cross-border impact.

Given that the Decree has only 10 articles that offer **general and minimum standards** for involvement of the public, these provisions can be mirrored into the legal text and the Decree should elaborate them in more details, especially with regard to the manner of organizing public hearings and ensuring presence of marginalized groups, or enabling greater public participation even in extraordinary circumstances where physical presence may be hampered, such as the COVID-19 pandemic, foreseeing alternative means of inclusion and participation as well as opportunity for protection of the right of participation of individuals or groups with clearly established procedures.

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[8] Decree on public participation during the preparation of regulations and other acts, as well as plans and programs in the field of environment. Official Gazette 147/2008; 45/2011;

Special protection mechanisms provided by the Law and which can be used by citizens or civic associations are: (i) a complaint that can be filed to the State Commission for Deciding in Administrative Procedure and Labor Relation Procedure in Second Instance against decisions that approve or reject implementation of a certain project; (ii) possibility to submit a request to a competent court for imposing temporary measure for prohibition of implementation of the project. However, the lack of definitions of which persons can be considered as stakeholders who should have been informed in these cases may lead to a situation of different interpretations of these provisions in practice, and to a risks of corruption and conflict of interests.

Similar provisions are included in Article 99, Paragraph 3 where the body of the state administration responsible for environmental affairs is obliged to provide the public with access to **the available and relevant information needed to form an opinion**, but there are no specific guidelines on how to ensure access to that information for the public, other than the data obtained by filing a request for access to public character information. There are also no provisions according to which it could be unequivocally determined which information must be considered as available and relevant for forming an opinion regarding the environmental impact, and whether the protection mechanisms discussed before also refer to this Article. In this regard, the Law on Environment does not include sufficient provisions on which data should be made publically available and in what way that should be made possible by the competent authority – either to be published or in some other way presented to the public, without the public having to rely on requesting for this data in accordance with the Law on Free Access to Public Character Information.

The situation is similar with the procedures aimed at **harmonization with operational plans**, covered in Chapter Fourteen of the Law, where we can again see incomplete provisions on regulating public participation, as well as large discretionary powers of the Ministry of Environment and Physical Planning. Specifically, Article 136, Paragraph 4 stipulates that a **public hearing must be organized if such hearing is requested by at least one association of citizens for protection and promotion of the environment**, but the Law does not specify which civil associations may be eligible to request a public hearing and to file appeals against the decisions adopted in environmental procedures.

Risks related to issuing of permits

In recent years, the Sector of Environmental Protection has gained importance due to the introduction of various environmental and other permits that business entities need to have in order to be able to start/ perform their operational activities. Infrastructure projects could not start without an environmental impact assessment and appropriate environmental permits. In that sense, the risks of corruption in the environmental protection sector is mainly related to the issuance of various permits, especially the integrated A and B environmental permits.

If we look at the legal provisions regarding the **issuance of A and B integrated environmental permits** (Article 95 to Article 129) it is obvious that the procedures for their issuance take a long time, with longer deadlines, and

- the process of issuing permits involves the central and/ or local government with relatively large discretionary powers. According to the European Commission Progress Report on the Republic of North Macedonia 2019, Chapter 27, the administrative capacity at central and local level is weak and insufficient, which is reflected in the procedures for issuing permits and other documents by the MoEPP and other institutions. This inertia in the actions and the long duration of the procedures, as well as the insufficient coordination in some of the institutions involved in the permits issuing process, where a number of documents have to be collected from different institutions, further slows down the procedure and creates an environment for putting pressure and offering/ seeking corruption.

The procedures for issuing integrated environmental permits require from the Ministry to obtain an opinion from the local self-government unit on the territory of which the facility will be built. In accordance with Article 100, the mayor of the municipality and the mayor of the city of Skopje are required, within 30 days from the receipt of the request for providing an opinion submitted by the state administration body with regards to a request for issuing of A-integrated environmental permit, to submit an opinion in writing regarding the statements included in that request. The state administration body responsible for environmental affairs is required, based on a written request, to submit or make available to the mayor of the municipality and the mayor of the city of Skopje, within 15 days, all the information necessary for making an opinion. **If the mayors do not submit the written opinions within the established deadline, it shall be considered that they have no objections to the request.** In this part, the Law is not clear enough regarding the calculation of the deadlines. It is not properly defined whether the 30-day deadline for submission of opinion by the local self-government units is on hold during the 15-day deadline for provision of relevant data by the specific body to the local self-government unit. In practice, this may lead to inconsistent implementation, unpredictability of procedures, as well as complete abuse of the deadlines, which in itself is a special risk of corruption and conflict of interest.

Furthermore, the Law does not provide for any consequences if the state administration body responsible for environmental affairs **does not submit the necessary data to the local self-government unit, or if it submits incorrect or incomplete data together with the request for opinion submitted to the local self-government unit.** Because of this, the self-government unit will not be able to submit an opinion within the stated deadline, or will submit an opinion based on an incorrect or incomplete factual situation due to incomplete or erroneous data. In addition to the fact that this poses a risk of exclusion of the local self-government units from these decision-making processes, it also poses a risk of corruption due to the possibility of delaying or extending the 15-day period in which the state administration body in charge of environmental affairs is required to submit the necessary information, and thus of the entire procedure.

Based on the provisions of the Law, the Rulebook on the procedure for obtaining an A-integrated environmental permit was adopted in 2006, which was amended in 2014 and 2016, as well as the Rulebook on the procedure for obtaining a B-integrated environmental permit, adopted in 2014 and amended in 2016. Here once again we can notice a paradoxical situation where the bylaws have been changed much less times than the Law itself, although the bylaws should be more detailed and more flexible to the new conditions – they should be used to constantly improve the practical implementation of the legal provisions. This situation, with the existence

of rather strong bylaws, in a situation where the Law is being changed several times a year, is indicative of the existence of large discretionary powers of the executive in regulating licensing procedures, public participation and access to data, because the frequent changes in the Law have no influence at the bylaws adopted by the Government and the Ministry of Environment. Given the rare occasions when these rulebooks were changed, they do not include answers to the above-mentioned hypothetical situations and therefore the risk of inconsistent implementation of the Law is even more evident, including the risks of corruption and conflict of interest.

Article 103 of the Law stipulates that the public can submit its opinions within 30 days from the publication of the application for issuing of A-integrated environmental permit. The body of the state administration responsible for environmental affairs is not obliged to take into account the opinions that have been submitted after the expiration of this deadline. The body of the state administration responsible for environmental affairs is obliged to mention in the elaboration of the A-integrated environmental permit which of the **opinions and views submitted by the public** are taken into consideration, and which are not, as well as the reasons for that. However, the Law does not provide for the possibility of appealing the permits which would not elaborate the reasons on which opinions were not taken into account and why. In that regard, given that the body of the state administration responsible for environmental affairs has full discretion as to which opinions to accept, without the possibility to appeal that decision, the body itself carries a risk of corruption and conflict of interest. Additionally, this Article stipulates that, **at the request of the public concerned, the investor is required to organize a public hearing** within ten days after the expiration of the 30-day period, while the Minister managing the state administration body responsible for environmental affairs prescribes the manner and procedure for organizing such public hearing. However, the Law does not stipulate how the public concerned can request a public hearing, nor who can be considered as a concerned public – this, together with the absence of provisions regarding the manner and procedure of organizing the public hearing and leaving it in fully in the hands of the Ministry, poses an increased risk of corruption and conflict of interest. This is especially important if we take into account that bylaws are adopted in a far less inclusive and transparent procedure than legal regulations, and this causes additional obstacles to public participation and representation of the public interest in processes related to environment.

However, what is most striking is that in these cases the public hearing is organized only if there is a request for it from the public concerned, so the publicity of the procedures for issuing integrated environmental permits for facilities that have an impact on the environment is set as an exception, not as a rule.

If there is a request from the public concerned, in accordance with the Rulebook on the procedure for obtaining A-integrated environmental permit, the investor is required to inform the public concerned by publishing and advertisement in one daily newspaper with nation-wide circulation, through the bulletin board of the local government unit where the facility is to be built and on the website of the state administration body. As an exception, the investor is also required to invite the stakeholders in writing, but the situations in which this exception is applied i.e. when the investor is required to submit written invitations are not defined. The state administration body is in charge of assessing whether the conditions for holding a public hearing are met,

- which means that the executive has again the discretionary power to decide whether such a public hearing will be held or not. In this way, and in the absence of definitions for what is considered as a concerned public and in the absence of a register of authorized civil associations, there is an additional risk of corruption and conflict of interest.

Risks related to discretionary powers

In terms of **establishment of various types of commissions** throughout the legal text, it is obvious that this is left entirely at the discretion of the minister who manages the body of the state administration responsible for environmental affairs. In Article 22-e, the Commission that verifies the questions used for taking the professional exam for handling cooling devices and/ or products containing coolants, is consisted of two representatives and their deputies of the body of the state administration responsible for environmental affairs, who are appointed by the Minister managing the state administration body responsible for environmental affairs, and three representatives and their deputies from the ranks of experts and professors in the respective field who have at least ten years of work experience in the field of cooling equipment. The same also applies to the persons taking the professional exam for enrollment in a list of experts for strategic environmental assessment. Furthermore, in accordance with Article 29, the Commission for Environmental Label is established by the Minister managing the state administration body in charge of environmental affairs, and in accordance with Article 104, the Minister establishes a Scientific-Technical Commission for the best available techniques in order to identify the best available techniques in the A-integrated environmental permits.

Without disputing the discretion of the Minister of Environment, the risk of corruption is detected in the fact that the Law does not establish a procedure for election of the commission members, and it also does not set out the conditions and criteria for their election. Additionally, the Law stipulates as the only condition for the experts to be distinguished individuals in the fields of technology, economy and environment, which inevitably reminds of the definition of a prominent lawyer, and of the problems it causes in practice.

Hence, it can be concluded that the establishment of these commissions is a risk of corruption and conflict of interest because the appointment of the representatives of the Ministry of Environment in these commissions may be subjective because there are no prescribed conditions and criteria for candidates, especially taking into account the fact that some of them are also entitled to financial compensation as members of the commissions.

Risks related to financing of activities

In terms of **financing and realization of the activities in the field of environment**, more specifically the manner in which the funds are awarded to the users, this is defined in Article 175 which sets out that a **public competition** is announced and implemented by the state administration body responsible for environmental affairs. The legal text does not stipulate the manner of conducting this public competition, nor who will decide on the awarding of funds to the users i.e. whether it will be a commission or some other authorized person, etc. This means that this procedure is left entirely to the state administration body – to allocate funds to beneficiaries without having a detailed procedure for that, which again leads to a risk of corruption.

Risks related to election and dismissal of directors

The manner in which the Director of the State Environmental Inspectorate is elected is not prescribed. Article 194-b stipulates what conditions a person must meet in order to be elected as Director of the State Inspectorate of Environment, but in terms of how the selection from the candidates who have applied is done and the way in which he/ she will be elected is not specifically stated, which alludes to the fact that this is left at the free will of the executive. Additionally, the Law sets out only general conditions for election of a Director, such as Macedonian citizenship, no prohibition on practicing the profession, knowledge of English, possession of a diploma with at least 240 ECTS credits and 5 years of work experience, but does not provide any more detailed or special conditions in terms of expertise and competencies of the person which is to be elected as Director. This situation poses a serious risk of corruption and conflict of interest, and it is further complicated by the fact that there are no explanations of the manner in which the Director is dismissed, the conditions under which the Director can be dismissed before the end of his/ her term, nor explanation of the procedure for his/ her dismissal and the legal remedies available to him/ her.

An identical situation exists when it comes to election and dismissal of the Director of the Environment Directorate i.e. of the professional body in charge of performing activities in the field of environment. Article 161-b sets out the same minimum requirements for election like those for the Director of the State Environmental Inspectorate, and also lacks any provisions about the implementation the selection procedure, the conditions for dismissal, as well as the procedure for dismissal of the Director of the Environment Directorate. In this context, we have already witnessed an example in practice where the Director of the State Environmental Inspectorate was dismissed by the Government without any discussion and without giving a credible and thorough explanation for such action. This emphasizes the importance of specifying and improving these provisions in the Law, which would prevent manipulation of the provisions, especially of the large discretionary powers of the executive, and thus the emergence of risks of corruption and conflict of interest.

Risks related to inspection supervision

A situation similar with the one applicable to the Director of the State Inspectorate can be also seen with the **state inspectors**. If we take into account the fact that Article 196 which sets out the conditions to be met by inspectors had seven changes so far, we can conclude that there is a problem in identifying the conditions that the inspectors have to meet, and the legal solutions that are adopted are not long-term and sustainable. On the other hand, the frequent change of these provisions and the use of inaccurate and incomplete definitions of the conditions and procedures for election can be considered as a special risk of corruption and conflict of interest, including the intentional creation of legal solutions aimed at facilitating easier circumvention of the legal provisions when implementing projects in the field of environment.

To this end, a Draft Law on Senior Management Service was adopted in 2021, with aim to establish a consistent procedure for appointment to managerial positions, professionalization of managerial positions - separate from political management, with political responsibility. This draft Law sets out the more detailed conditions that need to be met in order for a senior manager to be dismissed before the end of his/ her term, such as, for example, if he/ she is assessed with "unsatisfactory realization of the agreed goals" twice, during the regular evaluation and during the extraordinary evaluation in a period of 6 months; has been convicted of a crime with an sentence of imprisonment of at least six months; criminal proceedings have been initiated against him/ her or measures have been taken making him/ her inappropriate person to perform the function or preventing him/ her from performing the function; it was found to be disciplinary responsible for a disciplinary offense or was found to have given false information in the procedure for his/ her appointment.

This draft Law envisages a new way of election of directors of public institutions – they are elected by a specially established Commission for selection of the senior management service, whose members will go through the process of appointment that is similar to that of the current composition of the State Commission for Prevention of Corruption. This draft Law is expected to be adopted as soon as possible, and how it will work in practice and whether additional changes will be made will be seen after it is officially adopted as a law.

Regarding the inspection services, the fact that the existing legal solutions are ineffective is the reason that a new **Law on Environmental Inspection** has been in preparation for quite some time now. In accordance with the existing regulations, the inspection supervision in the field of environment is regulated at both central and local level. At the central level, inspection supervision is carried out by the State Environmental Inspectorate through the state environmental inspectors, state inspectors for nature and water management inspectors. At the local level, the inspection supervision is performed by authorized inspectors. There is a difference in the obligations for the central and local inspectors that arise from the Law on Inspection Supervision i.e. the obligations prescribed in the Law on Inspection Supervision for the state inspectors do not apply to local

inspectors, and conducting inspection supervision without proper coordination of the central and the local government, as well as the lack of a mechanism to monitor the implementation of the inspections at the local level, calls into question its effectiveness and its results. This remains to be regulated with the adoption of the Law on Environmental Inspection, which will enable the establishment of a more efficient system of environmental inspection on the territory of the Republic of North Macedonia, which will contribute to better implementation of the environmental legislation by the supervision entities, as well as meeting environmental standards in order to improve the situation in the environment.

CONCLUSIONS AND RECOMMENDATIONS

Considering that the provisions related to the environment, whether directly or indirectly, extend through a number of laws and bylaws, and through a number of international documents that the country is required to transpose into its national legislation, primarily in terms of EU integration of the country, it is necessary to allocate adequate resources intended for assessment and monitoring of the occurrence of corruption risks in the entire sector, both in terms of the laws and bylaws, as well as in terms of their practical implementation. According to the EC 2020 Report, the country is at some level of preparedness in the field of environment. Limited progress has been made in the areas of nature protection, civil protection and climate change. However, implementation in all sectors is still lagging behind. That is why the country is encouraged to significantly strengthen its ambitions for a green transition, with particular need to improve the cross-sectoral coordination and increase financial resources in order to reduce the air pollution at local and national level; establish an integrated regional waste management system and implement the Paris Agreement, including development of a comprehensive climate strategy and legislation, in line with the EU 2030 framework, and to develop a National Energy and Climate Plan, in accordance with the obligations of the Energy Community. Therefore, in accordance with the NPAA, a new Law on Environment is envisaged, which will revise the existing Law on Environment through the transposition of a corpus of EU measures such as 32001L0042, 32003L0004, 32003L0035, 32004L0035, 32011L0092 and 32014L005. Improvements in SEA and EIA procedures are also provided for in the new Law on Environment.

In terms of the Law on Environment, as a general remark from the entire legal text, which is present in a several provisions, is that almost all procedures, requirements, manner and conditions for obtaining permits, as well as the deadlines - are all regulated with a full discretion of the Minister managing the state administration body responsible for environmental affairs, which has the disposition to determine them more closely and in more detail. This indicates the fact that the Minister has extensively large freedom in terms of creating the manner in which the procedures will be implemented, the format of the requests and the manner of issuing permits, the charging of fees and, in general, regulating the procedures provided by law, as well as making decisions in the procedures, which is essentially the main risk of corruption and conflict of interest identified in this Law, especially since these things are not precisely defined by the Law. Although this arrangement allows for greater flexibility thus resulting in more effective action, especially given the dynamic nature of the sector itself and its intertwining with other sectors, it should be borne in mind that most bylaws were adopted 8 or more years ago, while the legal text was changed at least once a year (on average). This indicates that the Law can offer more detailed and precise provisions that would not impede the flexibility and speed of action of the competent ministry and its bodies, and this would reduce the risks of corruption and conflict of interest due to large discretionary powers of the Minister.

In this context, it is necessary to introduce in the Law some minimum standards, rules of procedure, as well as other restrictions on the discretionary powers of the Minister, especially in terms of providing the basic criteria for the election of members of the commissions. A positive example of such regulation of legal provisions is the Law on Environmental Protection in the Republic of Slovenia, which covers the protection of land, water and air, flora and fauna and the use of natural resources. It sets out goals, principles and instruments for practical and

- effective protection of the environment and distributes the decision-making powers to the various authorities. The Law is based on the existing EU legislation and is the basis for all environmental provisions – all the provisions to be adopted will be on the basis of this law. Following the example of the Republic of Slovenia, the national law should make a clear distinction between the competencies and powers of the various bodies that are the main actors in the implementation of the Law on Environment. It is necessary to stipulate, in the very start, the principles on which the law is based and it should be clearly determined how the procedures will be implemented, instead of vesting the Ministry of Environment with full decision making power.

  It is necessary to improve the legal provisions that define the key terms, especially with regards to properly identifying the public concerned, as well as the civil society organizations for the purpose of improvement and protection of the environment. This will avoid possible manipulation with the definitions and with the eligibility of certain persons or civil society organizations to participate in the procedures in the field of environment. The law offers basic provisions regarding public participation, but they regulate it only superficially – they do provide for public participation in the processes, but there are no detailed provisions that would regulate the ways in which public participation is ensured and the responsibility for provision of such participation.

  The law does not include sufficiently precise provisions regarding obligations of other state bodies and local self-government units, including lack of criteria and standards one should adhere to when implementing infrastructural projects, especially those related to urban planning, as well as construction of power plants.
  It is necessary to improve the provisions regarding issuance of integrated environmental permits, especially with regard to introduction of safeguard mechanisms that would limit and prevent the possible abuse of discretionary powers of all entities involved in this process, above all the Ministry of Environment as well as the local self-government units.

  It is advisable to make interventions in the legal provisions related to the inspection and other supervision over the implementation of the law, which would increase the efficiency of the law in practice and the protection and improvement of the environment. In this context, it is particularly important to specify in which cases the parties concerned can initiate litigation, especially given the aforementioned inefficiency of the inspection services.