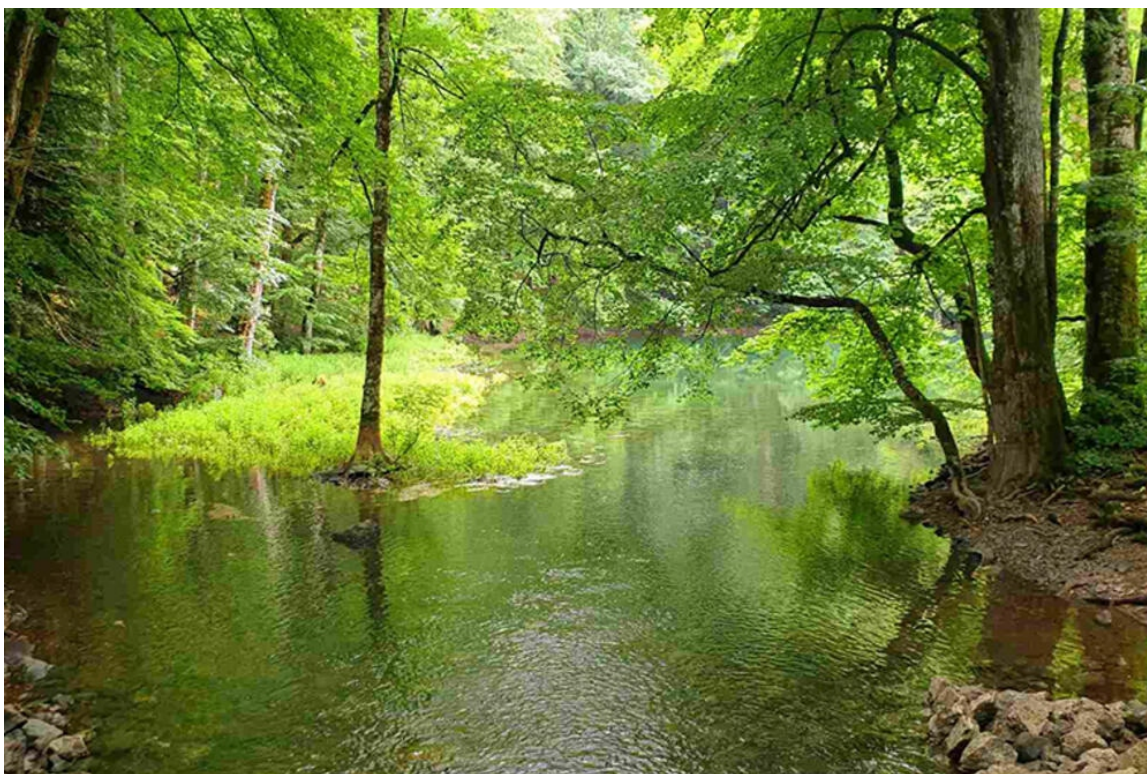




AKCIJA ZA SOCIJALNU PRAVDU

Many more steps to be taken towards EU directives



Crna Gora
Ministarstvo javne uprave

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2. ABSTRACT

In 2012, Montenegro opened accession negotiations with the European Union, with the aim of becoming its member. Since then, **Montenegro** has been trying to fulfill all the rights and obligations on which the European Union and its institutional framework are based, which is marked by the legal acquis. Until the entry into the European Union, each member **is obliged to take over the entire legal acquis** and be ready for its application. The most important elements of the legal acquis are founding agreements, as primary legislation, then secondary legislation, which includes decrees, directives, decisions, recommendations and opinions, as well as other sources of law, such as judgments of the European Court of Justice or general legal principles, but also other acts, such as which are resolutions, guidelines and the like. The acquis is divided into 35 chapters, and Montenegro is negotiating within 33 chapters of the acquis.

Chapter 27 relates to the Environment and Climate Change and was opened in 2018. The goal of this policy is based on sustainable development and environmental protection, which is achieved through the application of a number of principles, such as preventive action, the polluter pays principle, suppression of damage to the environment, and preservation of biological balance. The Environment and Climate Change chapter **has ten areas:** 1) horizontal legislation, 2) water quality, 3) air quality, 4) waste management, 5) nature protection, 6) industrial pollution control and risk management, 7) chemicals, 8) noise, 9) civil protection, 10) climate change. It is expected that the transfer and application of European regulations in environmental protection will not only fulfill the obligations from the accession process, but also improve the state of the environment.

According to the latest Report of the European Commission on the progress of Montenegro in the process of accession to the European Union for 2023, it was emphasized that Montenegro has achieved a certain level of readiness in the field of environment and climate change. "Limited progress has been achieved in further harmonizing national legislation with the acquis of the European Union on water, nature protection and climate change." Significant efforts are still needed when it comes to implementation and enforcement, especially in the field of waste management, water and air quality, nature protection and climate change. "Montenegro needs to significantly strengthen and speed up its ambitions with regard to the green transition," the Report pointed out.

This analysis focuses on the assessment of compliance of ten domestic environmental laws with the most important European directives in specific areas and their harmonization, which existed in the first part of 2024. emphasis is placed on the extent to which legal provisions are consistently or inconsistently incorporated, or are not transferred from the most important European directives, excluding the evaluation of whether Montenegro simultaneously fulfilled its obligation to adopt related strategic documents, which derive from those laws, or part of them application of legal norms in practice. The analysis showed that **part of the national laws achieves significant compliance with European directives**, whereby this compliance is achieved either directly through legal provisions, or through appropriate by-laws. It is also noticeable that certain norms are not transferred in a consistent manner, i.e. in the spirit of European regulations, which leaves room for different interpretations. The Law on the Environment, as an umbrella law in environmental protection, is almost completely harmonized with one of the most important European directives in that area, the Law on Nature Protection is largely harmonized with the umbrella European directives, the protection of national parks is subject to harmonization with European law of

the Law on Nature Protection, while **the issue of waste management remains one of the major challenges** for further legal harmonization, even though the new Law on Waste Management was adopted in 2024. **The Law on Forests is also a challenge**, which needs to be harmonized to a greater extent with the European regulations on forest monitoring and the obligations of economic entities.

The **Law on Waters** is largely harmonized with the basic directives of the European Union, while part of the norms remains unharmonized. The **Law on the Protection of the Marine Environment** is aligned with the Marine Strategy Framework Directive, but currently at least one provision appears to be non-transferable. The **Law on Strategic Environmental Impact Assessment** is harmonized with the European Union Directive in this area, which created the basis for the application of European principles when preparing strategic environmental impact assessments. The Montenegrin **Law on Air Protection is harmonized with the most important Directive** of the European Union on the quality of ambient air and cleaner air in Europe, whereby a significant part of the compliance is achieved through a secondary legal act. However, with the ever-increasing and pronounced problem of **climate change, other directives are being adopted**, which are related to air protection.

In the middle of 2021, the European Union adopted the Law on Climate, which foresees the achievement of climate neutrality by 2050 for the member states. The Climate Act sets a binding climate target for the European Union to reduce net greenhouse gas emissions by at least 55 percent by 2030 compared to 1990. **Montenegro also needs to harmonize its legal regulations on climate with European regulations**, and the biggest challenge in achieving the goals is currently the Thermal Power Plant in Pljevlja. In this sense, **Montenegro is already seriously late with the adoption of the National Energy and Climate Plan**, which should determine the further fate of the operation of this energy plant and future energy and climate development in general.

Quality misdemeanor and penal policy in the field of the environment play a very important role in prevention and better protection of the environment. **The legal framework in Montenegro provides a satisfactory basis for the application of misdemeanor and punitive measures** in this area, but it seems that all available legal mechanisms are insufficiently used in practice. In support of this is the fact that the water management inspection collected only 410 thousand euros in fines during the decade, although numerous examples of devastation and exploitation of rivers in the country are present almost every day.

In relation to each individual law, **the analysis offers recommendations for the improvement of public policies in this area** and the necessity of faster harmonization of the most important national laws in the field of environmental protection and climate change with European regulations. The need for faster harmonization was not dictated by the adoption of European standards alone, which should contribute to the improvement of the environmental situation, but also came into effect when it was announced in the first part of 2024 that Montenegro could receive a Report on temporary benchmarks in the middle of the same year. That step is marked as extremely important in the further European integration of the country.

3. INTRODUCTION

The basic task of the analysis was to **assess the compliance of ten domestic laws** in the field of environmental protection and climate change **with the most important European directives** in specific areas and to what extent in the first part of 2024 they were harmonized with European law, i.e. to what extent in the continuation of the European integration process in this area, more work is needed to harmonize national regulations with European law.

In this sense, **the following national laws were analyzed:** Law on the Environment, Law on Nature Protection, Law on National Parks, Law on Waste Management, Law on Forests, Law on Waters, Law on Protection of the Marine Environment, Law on Air Protection, Law on integrated prevention and control of environmental pollution, which ceased to be valid and was replaced by the new Law on Industrial Emissions, and the Law on Strategic Environmental Impact Assessment. In relation to each law, the most important relevant European directives in the field of environmental protection and climate change were analyzed.

After the "contents" and "summary", in which the key findings and findings obtained by working on this topic are sublimated, and the "introduction" chapter, where the task and content of this analysis are explained, follows the **key chapter on the harmonization of ten national laws** from areas of environmental protection and climate change with European directives.

In the part of the chapter on the compliance of national laws with European directives, all ten laws are individually **processed and presented through separate units**. Along with the explanation of the basic legal provisions and the content of the most important European directives in the targeted area, and with the aim of a better and simpler understanding of the topic for the reader, for each individual law the basic (non) compliance with European law is pointed out and the key findings reached are shown. In addition, at the end of special units, and where justified, recommendations were given for the improvement and acceleration of the process of legal harmonization with European regulations.

A special chapter refers to misdemeanor and penal policy in the field of environmental protection and climate change. In this chapter, the basic terms and possible legal procedures are listed, which are defined by the Law on Liability for Environmental Damage, the Criminal Code of Montenegro and the Law on Inspection Supervision. It was also indicated that there is a sufficient legal basis in these laws for taking misdemeanor and punitive measures for better environmental protection, but it is questionable how much these mechanisms are used in practice. Recommendations for the improvement of public policies are also given in this part.

The analysis **proposes a total of 23 recommendations for improvement**, and in relation to what was the targeted task in its preparation.

4. COMPLIANCE OF TEN LAWS WITH EU DIRECTIVES

Part of the national laws achieves significant compliance with European directives, whereby this compliance is achieved either directly through legal provisions, or through appropriate by-laws. It is also noticeable that certain norms are not transferred in a consistent manner, i.e. in the spirit of European regulations, which leaves room for different interpretations. The Law on the Environment, as an umbrella law in environmental protection, is almost completely harmonized with one of the most important European directives in that area, the Law on Nature Protection is largely harmonized with the umbrella European directives, the protection of national parks is subject to harmonization with European law of the Law on Nature Protection, while **the issue of waste management remains one of the major challenges** for further legal harmonization, even though the new Law on Waste Management was adopted in 2024. **The Law on Forests is also a challenge**, which needs to be harmonized to a greater extent with the European regulations on forest monitoring and the obligations of economic entities.

The **Law on Waters** is largely harmonized with the basic directives of the European Union, while part of the norms remains unharmonized. The **Law on the Protection of the Marine Environment** is aligned with the Marine Strategy Framework Directive, but currently at least one provision appears to be non-transferable. The **Law on Strategic Environmental Impact Assessment** is harmonized with the European Union Directive in this area, which created the basis for the application of European principles when preparing strategic environmental impact assessments. The Montenegrin **Law on Air Protection is harmonized with the most important Directive** of the European Union on the quality of ambient air and cleaner air in Europe, whereby a significant part of the compliance is achieved through a secondary legal act. However, with the ever-increasing and pronounced problem of **climate change**, **other directives are being adopted**, which are related to air protection.

In the middle of 2021, the European Union adopted the Law on Climate, which foresees the achievement of climate neutrality by 2050 for the member states. The Climate Act sets a binding climate target for the European Union to reduce net greenhouse gas emissions by at least 55 percent by 2030 compared to 1990. **Montenegro also needs to harmonize its legal regulations on climate with European regulations**, and the biggest challenge in achieving the goals is currently the Thermal Power Plant in Pljevlja. In this sense, **Montenegro is already seriously late with the adoption of the National Energy and Climate Plan**, which should determine the further fate of the operation of this energy plant and future energy and climate development in general.

In relation to each individual law, **the analysis offers recommendations for the improvement of public policies in this area** and the necessity of faster harmonization of the most important national laws in the field of environmental protection and climate change with European regulations. The need for faster harmonization was not dictated by the adoption of European standards alone, which should contribute to the improvement of the environmental situation, but also came into effect when it was announced in the first part of 2024 that Montenegro could receive a Report on temporary benchmarks in the middle of the same year. That step is marked as extremely important in the further European integration of the country.

4.1. THE UMBRELLA LAW ESSENTIALLY FOLLOWS EU STANDARDS

The Law on Environment, as an umbrella law in environmental protection, is almost completely harmonized with the Directive on the control of the risk of major accidents, except for the determination on the interested public, which needs to be consistently transposed into domestic law. Compliance is also shown in relation to the Directive on public access to environmental information, the Directive on the prevention and reduction of environmental pollution with asbestos, the Directive on the availability of data for consumers on fuel economy and CO₂ emissions in connection with the sale of new passenger cars, as well as to the Directive on the establishment of a framework for the operation of marine environment protection policy.

However, compliance is mostly achieved through standardization in other domestic laws, while only certain provisions from these European directives are transferred to the Law on Environment. At the same time, the Directive on geological storage of carbon dioxide is very important in the European Union, but it is not applicable in Montenegro, because geological storage of carbon dioxide is prohibited on our territory.

4.1.1. The most important EU directives for environmental protection

Several European directives define various issues in the field of environmental protection, the most significant of which are on the control of the risk of major accidents, on public access to environmental information, on the prevention and reduction of environmental pollution with asbestos, on the availability of data for consumers on the economy of fuel consumption and emissions CO₂ in connection with the sale of new passenger cars, as well as the establishment of a framework for the operation of the marine property protection policy.

One of the most important European directives in environmental protection is the **Directive on the control of the risk of major accidents** involving hazardous substances¹. The aim of the Directive is to **limit the consequences** of major accidents **on human health and the environment**. Thus, the Directive defines which facilities pose a risk of major accidents, and which arise mainly from certain industrial activities, then the obligations of their operators, responsibilities, reporting, major accident prevention policy, emergency plans, space use planning, informing the public and its participation in decision-making, as well as access to justice. The special **Directive on public access to environmental information**² is also important for the issue of environmental protection, which aims to **guarantee the right to access environmental information** and enable such information to be as widely available to the public as possible. At the level of the European Union in environmental protection, the **Directive on prevention and reduction of environmental pollution with asbestos**³ is also **important**, which regulates environmental pollution with asbestos in order to protect human health and the environment as a whole. The **Directive on the availability of data for consumers on the fuel economy and CO₂ emissions** related to the sale of new passenger cars⁴ aims to provide consumers with the availability of data on the fuel economy and CO₂

¹Directive 2012/18/EU of July 4, 2012.

²Directive 2003/4/EC of January 28, 2003.

³Council Directive 87/217/EEC of March 19, 1987.

⁴Directive 2009/31/EC of April 23, 2009.

emissions of new passenger cars. The **Directive on the establishment of a framework for the operation of marine environment protection policy**⁵ aims to provide measures to achieve or maintain a good environmental condition in the marine environment.

4.1.1.1. Non-applicable Carbon Dioxide Storage Directive

The Directive on geological storage of carbon dioxide⁶ is not applicable in Montenegro because **geological storage of carbon dioxide is prohibited on the territory of Montenegro**. It was Montenegro that took advantage of the provision from this Directive that it is the right of the member states not to allow storage in their entire national territory or some parts of the national territory. In the Montenegrin Law on the Environment, **the definition of geological storage of carbon dioxide in an environmentally acceptable manner is the only thing taken from the Directive**, and then a special provision prescribes the prohibition of geological storage of carbon dioxide on its territory, which can exceptionally be carried out on the basis of a permit for quantities of less than 100 tons for the purpose research, development or testing of new technologies.

4.1.2. The principle of sustainable development dominates domestic law

The Law on the Environment in Montenegro defines environmental protection and related issues through 15 chapters in order to ensure the human right to a healthy environment.

The **Law on the Environment from 2016⁷ is in force in Montenegro**. This umbrella law in the field of environment and **lex generalis** is based on the principles of sustainable development, with the main goal of enabling the realization of the human right to life and development in a healthy environment, as well as a balanced relationship between economic development and the environment. The **Montenegrin law is divided into 15 chapters**, which **target the most important environmental protection issues**. These are the following chapters: 1) basic provisions, 2) subjects of environmental protection, 3) segments of the environment, 4) protection of the impact of environmental loads, 5) documents of sustainable development and environmental protection, 6) instruments of environmental protection, 7) special environmental protection measures, 8) environmental monitoring, 9) environmental reporting, 10) environmental protection information system, 11) public information, public participation and access to justice in environmental protection issues, 12) financing, 13) supervision, 14) penal provisions, 15) final provisions.

The law **defines the protection of environmental segments**, i.e. protection of soil, water, sea and coastal areas, air, nature, protection and preservation of forests, as well as protection against noise in the environment. In addition, **the impacts of the load on the environment are defined**, which includes protection against the harmful effects of chemicals, waste management, protection against the harmful effects of genetically modified organisms, ionizing and non-ionizing radiation, and protection against the negative impact of climate change. Also, **special environmental protection measures have been specified** in order to

⁵Directive 2008/56/EC of June 17, 2008.

⁶Directive 2009/31/EC of April 23, 2009.

⁷Law on the Environment (Official Gazette of Montenegro No. 52/16 and 73/19)

prevent, reduce or mitigate the negative impact of certain substances, such as long-term organic pollutants, asbestos, mercury, CO₂ emissions from vehicles, geological storage of CO₂ and thermal energy facilities. **Monitoring in the area of the environment is carried out on an annual basis**, it contains monitoring programs for individual segments of the environment, and this activity is of **public interest**. Some of the **basic principles**, which are proclaimed by this law, are: the principle of sustainable development, the integral approach to environmental protection, the preservation of natural resources, the principle of cooperation, then that the polluter pays, the user pays, the principle of prevention, precaution, subsidiary responsibility, access to information and participation public, access to justice.

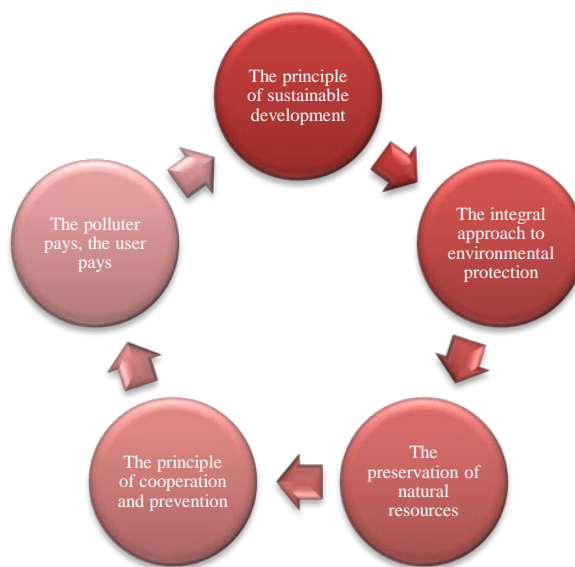


Illustration: Some of the basic principles from the Law on Environment

4.1.3. Questionable definition of interested public

The Montenegrin Law on the Environment is almost completely harmonized with the Directive on the control of the risk of major accidents, either through its own legal provisions and by-laws, or thanks to the provisions contained in other domestic laws. Nevertheless, it can be assessed that the notion of interested public has not been consistently conveyed, while it would be expedient for certain provisions from other laws to be included in this umbrella law for nature protection.

With regard to the Directive on public access to information on the environment, compliance was achieved mostly through the provisions contained in another law, i.e. to the Law on Free Access to Information. Here, too, the issue of introducing certain norms into the Law on Environment should be considered so that the law would be a complete legal act with the definition of all legal situations prescribed by European law in one place.

The directives on the prevention and reduction of environmental pollution with asbestos, then on the availability of data for consumers on the economy of fuel consumption and CO₂ emissions in connection with the sale of new passenger cars, as well as the establishment of a framework for the operation of the marine environment protection policy, were only transferred through certain norms to the Law on environment, while most of the provisions are in other Montenegrin laws and are thus harmonized.

When it comes to **compliance with the Directive on the control of the risk of major accidents**, it will first of all be pointed out here that the Law on the Environment achieves compliance with the subject of the Directive (prevention of major accidents) through the addition of an article that defines the operator of the sevesso plant⁸. With regard to the definition of facilities that pose a risk of major accidents, the presence of dangerous substances or the definition of the concept of danger and risk, the **domestic law shows compliance through the adoption of regulations on the quantities of dangerous substances** for the level of risk of sevesso facilities⁹. In relation to the policy of preventing major accidents, the domestic law shows compliance through legal norms, but also through the Accident Prevention and Protection Rulebook¹⁰, as a secondary legal act. Both regulations were adopted in 2016. However, it can be noted that the **domestic law does not consistently convey the definition of the interested public**, which the Major Accident Hazard Control Directive states is the public that is affected, or could be affected, or has a certain interest, which includes non-governmental organizations, which deal with environmental protection. Nevertheless, the domestic law states that it is only the public that is affected, or can be affected, but **does not convey that it is also the public that has a certain interest**, which would be useful to specify. Furthermore, **part of the compliance** of the domestic law with this Directive is shown through **the provisions contained in other domestic laws**, namely: the Law on Chemicals (when defining the term mixture), the Law on Inspection Supervision (the part on inspection procedures), the Law on Spatial Planning and Construction of buildings (in the part of planning the use of space), the Law on Free Access to Information (part on information and public participation), the Law on Liability for Environmental Damage (the part on information provided by the operator and measures taken after a major accident) and the Law on Integrated prevention and control of environmental pollution (when business is prohibited). Nevertheless, it seems expedient that part of the provisions contained in other laws should be included in the Law on Environmental Protection, so that it would be a complete legal act with the necessary definition of all legal situations in one place.

Also, **several provisions** of the Directive on the control of the risk of major accidents will be applicable when Montenegro becomes a member of the European Union, and **for now** those provisions **are non-transferable**. In relation to the **Directive on public access to information on the environment**, the Montenegrin **Law on the Environment is shown to be fully aligned** with this European legal act. In this sense, through several provisions in the domestic law, it is stated what environmental information includes, requirements and deadlines for providing or refusing information, as well as the right to legal protection in matters of environmental protection. However, a more detailed transfer of all the provisions from this Directive is missing, rather **compliance is achieved through the provisions prescribed in the Law on Free Access to Information**. Nevertheless, it seems expedient that the Law on the Environment, in order to achieve the integrity of the legal proposal and to define all legal situations in the domain of the environment in one place, should transfer the key provisions from the European directive. This is especially important when defining restrictive exceptions for data refusal, so it seems justified that those situations should be specified precisely in the domestic law on the environment.

⁸A Sevesso facility is defined as a facility where activities are carried out in which hazardous substances are present or may be present in equal or greater quantities than prescribed.

⁹Rulebook on quantities of hazardous substances by category, which determine the level of sevesso facilities from September 30, 2016..

¹⁰Rulebook on the detailed content of the prevention plan and accident protection plan from October 12, 2016.

When it comes to the **Council's Directive on the prevention and reduction of environmental pollution with asbestos**, the Montenegrin **Law on the Environment** stipulates in one provision that it is prohibited to put into circulation and use asbestos fibers, as well as raw asbestos in an amount over 100 kilograms per year. **Other provisions of this Directive have been transposed into the Montenegrin legislation through several other laws**, namely the Law on Waste Management, the Law on Integrated Prevention and Control of Environmental Pollution, the Law on Water and several by-laws, which regulate in more detail the matter provided for by the European act on the issue of asbestos. **The directive on the availability of data for consumers on the economy of fuel consumption and CO2 emissions in connection with the sale of new cars** has been incorporated into the Montenegrin legal system by defining the basic concepts related to CO2 emissions from new passenger vehicles in the Law on the Environment through several provisions regarding the content of the information guide, while part of the provisions from the European regulations were transferred through domestic by-laws. **The Directive on the establishment of a framework for the operation of the marine environment protection policy** was transferred to the Law on Environment through a special article, which defines the marine environment protection strategy and its content as a sectoral policy. Other provisions of the Directive have been transposed through secondary legal acts.

KEY RECOMMENDATIONS	
Number	Recommendation
1.	It is necessary to consistently transfer the provision from the Directive on the control of the risk of major accidents, which refers to the definition of the interested public.
2.	It is expedient that part of the provisions contained in other domestic laws, which ensure compliance with the Directive on the control of the risk of major accidents, should be included in the Law on Environment, so that it would be a complete legal act with the necessary definition of all legal situations in one place.
3.	It seems justified to introduce more detailed provisions from the relevant directive on exercising the right of access to information into the Law on the Environment, especially when it comes to restrictive restrictions on the provision of data in order to avoid potentially different legal interpretations.

4.2. STRICT STANDARDS FOR NATURE PROTECTION

The two most important directives for nature protection in the European Union refer to the protection of natural and semi-natural habitats of flora and fauna and to the protection of wild birds. The harmonization of legislation in Montenegro with European law implies that the domestic Law on Nature Protection must primarily be harmonized with those two directives, and certainly with lower regulations as well.

In order to enable the preservation and protection of natural habitats and wild fauna and flora, which are viewed as natural heritage, the **Directive on the protection of natural and semi-natural habitats of flora and fauna**¹¹ was adopted in the European Union three decades ago.

¹¹Directive 92/43/EEC of May 21, 1992.

The main objective of the Directive is to promote the maintenance of biological diversity, taking into account economic, social, cultural and regional requirements, which contributes to the overall goal of sustainable development. In order to achieve this goal, the Directive **prescribes a number of measures necessary for the maintenance or restoration of natural habitats** and populations of species of wild fauna and flora, defines habitats and species, designates naturally significant areas, designates the area of the European ecological network of special protection within Natura 2000, obliges the members to establish monitoring and reporting system. Another important directive for the protection of nature is the **Directive on the protection of wild birds**¹² and it includes the protection of all species of birds that occur naturally as wild species in the European territory of the member states. The directive relates to the protection, management and control of those species, and applies to birds, their eggs, nests and habitats. In addition to a series of measures that must be taken to protect and restore habitats for wild birds, the Directive also obliges members to monitor and report.

4.2.1. Law on nature against the backdrop of EU regulations

The domestic Law on Nature Protection is for the most part harmonized with the umbrella European directives for the protection of natural habitats and wild birds, whereby part of the harmonization is achieved through the definition of legal situations by secondary legal acts. However, the part of the Law, which prolongs the determination of the management of the ecological network until the day of Montenegro's accession to the European Union, can be assessed as an unjustified delay and the process must be accelerated, in order to better protect the area and nature as a whole.

The Law on Nature Protection from 2016 is in force in Montenegro¹³, which establishes a framework for the protection and improvement of biological diversity in the country, while the competent authorities proclaim that nature is the fundamental value of Montenegro. The law expresses the intention that **conflicts between nature and development are overcome in a sustainable way**, that is, that development projects are sustainable, and this includes the application of mechanisms that assess the impacts of economic and social development on nature and biodiversity. The Law on Nature Protection **incorporates most of the provisions from the Directive** on the Protection of Natural and Semi-Natural Habitats of Flora and Fauna, while part of the norms are transferred through **secondary legal acts**, and in the part that mainly concerns the list of species of plants and animals, including bird species, as well as suitable habitats. However, it seems that it is **legally expedient to include the provisions from the European regulation directly in the Law on Nature Protection**, especially considering the importance of the matter that is being regulated, and which, for the sake of stronger legal protection, should be regulated by law, and not only by secondary legal acts. In addition, the Law on Nature Protection does not transfer the habitat types prescribed by the Annex to the Directive on the Protection of Natural and Semi-Natural Habitats of Flora and Fauna, but the definitions are transferred in a way that is claimed to be relevant for Montenegro. Also, it is prescribed that the **declaration and management of the areas of the ecological network**¹⁴ **will be achieved by the day of accession to the European Union**, which can be considered

¹²Directive 2009/147/EC of November 30, 2009.

¹³Law on Nature Protection (Official Gazette of Montenegro No. 54/16 and 18/19)

¹⁴The area of the ecological network is declared in order to protect and preserve certain habitat types and species of interest to Montenegro and the European Union. The areas of the ecological network are: areas important for the preservation of bird habitats and bird species; areas important for the conservation of habitats and wild species of plants and animals. In the areas of the ecological network, protection measures are implemented to preserve or restore the condition of target habitat types and target species of plants, birds and other animals.

unjustified, because in order to protect nature and the total area, **it is necessary to provide management** in accordance with European standards **as soon as possible**.

When it comes to the compliance of the **Law on Nature Protection with the Directive on the Protection of Wild Birds**, **compliance has been achieved to the greatest extent** through the norms of this law, but several provisions are harmonized through secondary legal acts (for example, lists of bird species in ecological networks), and several provisions are harmonized through the norms of the Game and Hunting Law¹⁵. In addition, it is predicted that the provision on the protection of wild species of birds will achieve full compliance with the adoption of a bylaw on the list of certain wild species of birds, and that this will be achieved by the date of accession to the European Union. Namely, it should be the subject of negotiations with the European Commission in the part related to bird species, which are acceptable to be included in the list in relation to scientific information, which will be presented on the state and status of the populations of those bird species in Montenegro.

4.2.2. New Law on Nature Protection announced

In the middle of 2023, a public debate on the new Law on Nature Protection was organized in Montenegro, but by the time of writing this report, in the spring of 2024, the new legal solutions had not been adopted.

According to the explanation from the relevant Ministry of Ecology and Tourism, the new amendments to the Law on Nature Protection were initiated due to the obligation to comply with the recommendations of the European Commission, which related to the definition of competent bodies for issuing permits and competent inspection bodies and their obligations in the context of the implementation of the Regulation No. 511/2014, which are not determined by the Law on Ratification of the Nagoya Protocol. During the work on the changes, the need to draft a new law arose. As indicated, **by confirming the Protocol from Nagoya on access to genetic resources and the fair and equal distribution of benefits arising from their use**, along with the Convention on Biological Diversity, **Montenegro committed itself to the implementation of the Protocol** through the Law on Nature Protection, and the regulations of the European Union, which derive from the Nagoya Protocol. "The fair and equal distribution of profits arising from genetic resources is one of the three goals of the Convention on Biological Diversity, which is among the most important international agreements and which represents the framework for the global protection of biological diversity of geological and regional diversity." Representing a country of high biological diversity, there is a great potential for the use of genetic resources, which indicates the urgent establishment of a system of regulation of access and use of genetic resources, which can bring monetary and non-monetary profit", announced the competent Ministry in explaining the need to pass a new Law on Nature Protection.

4.2.2.1. By 2030, 30 percent of land and sea must be protected

The Ministry of Ecology and Tourism announced that the **biodiversity and other natural and landscape values** of Montenegro **have been preserved to a significant extent**, even though they are exposed to numerous pressures. "The share of nationally protected nature areas on the territory of the state is 13.2 percent of the land and 1.7 percent of the sea, with a tendency to increase." After the adoption of the National Biodiversity Strategy, which

¹⁵Provisions relating to the hunting of wild animals and the prohibition of the means of their capture and killing.

will be harmonized with international policies, **Montenegro will have the obligation to protect 30 percent of the land and 30 percent of the sea by 2030**, which represents a great challenge for all countries that do not yet have a large coverage of protected assets," stated Ministry.

It was also reasoned that the illegal keeping of wild species of animals and their smuggling in the last period was well covered by the media, with the conclusion that the state does not have an adequate system to ensure the protection of wild animals, and that the protection of wild species of animals is an inseparable part of the overall protection of nature, which regulated by the Law on Nature Protection. However, it will be noted here that the new draft of Law on Nature Protection retains the provision that the **declaration and management of ecological network areas will be achieved by the date of accession to the European Union.**

KEY RECOMMENDATIONS	
Number	Recommendation
1.	It is not justified to wait for the moment of Montenegro's accession to the European Union for the declaration and management of areas of the ecological network, but it is necessary to speed up that process and apply European standards as soon as possible, for the sake of greater protection of space and nature as a whole.
2.	The provisions of the Directive on the protection of natural and semi-natural habitats of flora and fauna and the Directive on the protection of wild birds, which are now incorporated into the domestic legal system through secondary legislation, should be directly incorporated into the Law on Nature Protection.

4.3. NATIONAL PARKS ARE A PART OF DOMESTIC LAW

The protection of national parks is subject to harmonization with European law through provisions on nature protection, that is, harmonization should be achieved through the Law on Nature Protection, which was already shown in the previous chapter. In this sense, there are no specific European directives regarding the management of parks for the Law on National Parks.

The Montenegrin Law on National Parks¹⁶ stipulates that national parks as protected assets enjoy special protection and regulations on nature protection apply to them. It is defined that the protection, improvement and development of national parks is an activity **of public interest**. There are **five national parks** in Montenegro: Biogradska gora, Durmitor, Lovćen, Lake Skadar and Prokletije. The law stipulates that national parks **are managed on the basis of plans and annual programs**, while only those activities are allowed in them, which do not threaten the originality of the nature of the national park.

¹⁶Law on National Parks (Official Gazette of Montenegro 28/14 and 39/16)

The law defines the borders of national parks, prescribes the content of annual management plans, the way of using national park assets and the simultaneous protection of those assets, the fees for using national park assets, but also the management of land and other real estate in national parks or the regime of property rights. The Montenegrin Law on National Parks **enumerates 46 prohibited activities**, which are not allowed in national parks, with certain exceptions.

4.4. THE LAW ON WASTE NEEDS SERIOUS REFINING

In April 2024, the Law on Waste Management was adopted in Montenegro, but it is still not harmonized with European law to a large extent and as such remains one of the biggest challenges for the domestic legislative authorities in the process of European integration in the field of environmental protection.

In relation to the Framework Directive on Waste Management and nine other special directives related to the management of various wastes, the Law on Waste Management records a total of 145 complete compliances, 92 partial or complete non-compliances, as many as 72 provisions are currently shown as non-transferable, while for 17 provisions has not been used the option of transfer to the domestic legal system.

4.4.1. EU directives on waste management

At the level of the European Union, several directives have been adopted for waste management with the aim of defining the largest number of issues related to waste management. Thus, among other things, were defined the concept of waste, its types, methods and principles of waste management, the obligation to obtain permits and reporting, the obligation of members to draw up waste management plans, the principle that waste is managed in a way that does not have a harmful effect on the environment or health of people, the principle of extended responsibility and the principle that the polluter pays.

One of the most important directives is the **Framework Directive on waste management**¹⁷, which establishes measures to protect the environment and human health by preventing or reducing the harmful effects of waste production and management. The framework directive represents **an umbrella document in the field of waste management** regulation, with which internal legal harmonization must be achieved. At the same time, **nine more important, special European directives define issues related to the management of different types of waste**, which indicates the great importance that the European Community devotes to this area in its legal system. In this regard, at the level of the European Union, special directives define the issue of packaging waste¹⁸, prevention and reduction of environmental pollution with asbestos¹⁹, issues of landfills²⁰, disposal of polychlorinated biphenyls and terphenyls²¹, management of batteries and accumulators²², waste electrical and electronic equipment²³,

¹⁷Framework Directive 2008/98/EC of November 19, 2008.

¹⁸Directive 94/62/EC of December 20, 1994.

¹⁹Directive 87/217/EC of March 19, 1987.

²⁰ Directive 1999/31/EC of April 26, 1999.

²¹Directive 96/59/EC of September 16, 1996.

²²Directive 2006/66/EC of September 6, 2006.

²³Directive 2012/19/EU of July 4, 2012.

waste vehicles²⁴, on reducing the impact of certain plastic products on the environment²⁵ and on waste management from mineral extraction industries²⁶.

4.4.2. (Non) compliance with domestic law

The Domestic Law on Waste Management is significantly inconsistent with the Framework Directive on Waste Management, either through partially or completely non-harmonized norms, or through those that are currently presented as non-transferable, because there is no corresponding provision in the domestic law to which they would refer. There is a large discrepancy between the Montenegrin Law on Waste Management and other European directives in this area. It is expedient to speed up legal harmonization with European directives, in order not only to fulfill obligations from the European agenda of Montenegro, but especially for faster and better protection of the environment and the health of citizens in many areas of waste management.

The Montenegrin **Law on Waste Management**²⁷ sets as the **basic principles** of waste management the following: a) sustainable development (efficient use of resources, reduction of waste and actions aimed at reducing the negative impact on the environment), b) the principle of proximity and regional waste (processing of waste as close as possible to the place of origin with economic justification of the choice of location), c) preventive action (measures to prevent negative impacts on the environment and human health), d) the polluter pays (the producer bears the costs), e) waste hierarchy (from prevention to disposal), f) separate waste collection, g) that recycling waste is not more dangerous than primary waste, h) extended producer responsibility.

Through several chapters, the law defines the concept and types of waste, methods of management, collection and processing, duties and responsibilities of producers, recycling, prohibition of mixing hazardous waste, permits for processing and registration, principles of managing special types of waste, depositing and storing waste. **Waste management plans and programs are also an important legal content**, of which the state waste management plan is certainly the most important. The domestic law records 66 compliances with the provisions of the Framework Directive on waste management, followed by **four partial compliances, five non-compliant provisions**, in six cases the option of applying provisions from the European regulation was not used, while **in 20 cases** it was stated that there are no corresponding provisions, i.e. that European law is non-transferable. These indicators lead to the conclusion that the **Law on Waste Management is not harmonized to a significant extent with the European Framework Directive on Waste Management** and that legal harmonization in the area of waste will be one of Montenegro's major challenges in the coming period in this area.

²⁴Directive 2000/53/EC of September 18, 2000.

²⁵Directive 2019/904/EU of June 5, 2019.

²⁶Directive 2006/21/EC of March 15, 2006.

²⁷ Law on Waste Management (Official Gazette of Montenegro 34/24)

Law on Waste Management	
Type of (non) compliance with the Framework Directive on waste management	Number of provisions
Full compliance	66
Partial compliance	4
Non-compliance	5
Non transferable	20
Option not used	6

Some of the most important non-compliances (complete or partial) refer, for example, to the possibility of deviating from the waste hierarchy, individual cases of termination of the waste status, the list of hazardous waste, the necessary measures for the removal of hazardous substances from waste, the minimum technical standards of waste processing, or the establishment of an electronic register for recording data on hazardous waste. **Montenegro plans future changes to the Law on Waste Management** at the end of 2025 and at the end of 2027, when it plans to harmonize part of the non-harmonized provisions with the Framework Directive, while part of the definition of food waste and the exclusion of substances for use in animal feed is planned to be harmonized only by joining the European The Union. However, it will be emphasized here that it **would be justified**, with the aim of more intensive harmonization and improvement of the situation at its basis and better environmental protection, **to accelerate certain legal adjustments and not to prolong them for a period of several years**. This particularly refers to certain provisions, which have been shown to be currently non-transferable to the Montenegrin domestic legal system. It seems optimal to be able to use the provisions on the waste hierarchy, or to define measures for each individual case of ending the status of waste, or to establish rules for calculating the objectives of reuse and recycling of municipal waste even earlier than projected.

When it comes to compliance with other European directives in the field of waste regulation, it will be pointed out here **that 11 non-compliances with the directive on packaging waste are recorded** (five complete non-compliances and six partial non-compliances), while nine standards are fully compliant. However, as many as 13 provisions were shown as non-transferable, and one option was not used. Some of the non-transferable norms refer to very important issues, such as reporting on packaging waste, databases, measures for processing and recycling, reuse. The Montenegrin government intends to achieve compliance with the directive on packaging waste by the end of 2025 through the adoption of by-laws. The main goal of that directive is the management of packaging waste in order to prevent a harmful impact on the environment.

4.4.2.1. Most battery and accumulator non compliance

The Law on Waste Management **is largely inconsistent with the European Directive on batteries and accumulators** and waste batteries and accumulators. Partial compliance was achieved with 13 provisions, three are complete non-compliance, seven provisions are non-transferable, and in three cases the option of transfer into domestic law was not used. There is full compliance with nine provisions. This European directive establishes the rules for placing batteries and accumulators on the market, with the prohibition of placing on the market those with dangerous substances. The Montenegrin authorities plan to harmonize the domestic law with this European regulation by the end of 2025.

Regarding the European directive on landfills, there are three partial inconsistencies of the domestic law with that European regulation, 26 provisions are harmonized, seven are shown as non-transferable, and in one case the option was not used. Some of the non-transferable or inconsistent provisions refer to the issue of technical conditions and measures for the technical acceptance of landfills, exchange of information, or adoption of plans for landfills. Full harmonization with this European regulation is planned through the adoption of by-laws by the end of 2025.

In relation to the European directive on the prevention and reduction of environmental pollution on asbestos, three partial non-compliances are noted, and in relation to the European directive **on the disposal of polychlorinated biphenyls and polychlorinated terphenyls**, there is the **one partial non-compliance** and three provisions are shown as non-transferable. Harmonization with European law is planned for these directives by the end of 2025.

4.4.2.2. Electrical and electronic waste pending

The aim of the European directive on waste electrical and electronic equipment is to determine measures to protect the environment and human health by preventing or **reducing the harmful effects of generating waste electrical and electronic equipment** and managing that waste. Some of the most important norms are those related to the systems of receiving, collecting and processing this waste, methods of its disposal, proper processing, processing goals, reporting.

The Domestic Law on Waste Management has 14 norms that are partially harmonized with this European regulation, one is completely non-compliant, eight norms are shown as non-transferable, while only seven norms are fully harmonized. This means that the **domestic law is mostly inconsistent with this European directive**. By the end of 2025, it is planned to achieve compliance with this European directive through the adoption of by-laws. At the level of the European Union, the **Directive on waste vehicles is also very important**, the aim of which is to determine measures to prevent waste from vehicles, but also the reuse, recycling and other forms of processing of waste vehicles. In accordance with this goal, individual obligations, that is, provisions for members, which they must incorporate into domestic laws, have been defined. **Montenegrin Law** on Waste Management records ten partial compliances with this Directive, nine provisions are shown as currently non-transferable, while four are fully compliant, which means that there is a **huge non-compliance with the European regulation**. Here, too, legal harmonization with European law is planned by the end of 2025, with the announcement of the adoption of corresponding by-laws.

In the Directive on reducing the impact of certain plastic products on the environment, full compliance is shown for seven provisions, five are partially compliant, and four are non-transferable, so **there is also a significant non-compliance here**. The aim of this Directive is to prevent and reduce the impact of certain plastic products on the environment, especially on the aquatic environment, as well as on human health. This is being attempted by transitioning to management with innovative and sustainable business models, products and materials. In accordance with the above, the Directive prescribes restrictions related to the placing on the

market of plastic products, product labeling, extended producer responsibility, measures to raise awareness, reporting. The Montenegrin authorities plan to comply with this regulation by the end of 2025. Finally, when it comes to the **Directive on waste management from mineral extraction industries, the highest degree of non-compliance** with the domestic Law on Waste Management is noted. Thus, 19 provisions are partially harmonized, one provision is shown as non-transferable, five are fully harmonized, while legal harmonization with this European regulation is planned by the end of 2025, through the adoption of by-laws. The directive devotes the largest part to the definitions of the mineral extraction industry and the waste generated from such industries, which primarily refers to mining waste, and in this sense prescribes particularly large facilities, the best available techniques, plans and measures for managing such waste, preventing major accidents, informing the public, obligation to report to competent authorities.

Law on Waste Management	
Type of (non)compliance with nine European directives on the management of different types of waste	Number of provisions
Full compliance	79
Partial compliance	74
Non-compliance	9
Non transferable	52
Option not used	11

Therefore, it can be concluded that in relation to the Framework Directive on waste management and nine other special directives related to the management of different types of waste, the **Law on Waste Management records a total of 145 complete compliances, while 181 of all others, of which 92 are partial or complete non-compliances, as many as 72 provisions are shown as non-transferable, while for 17 provisions the option of transfer to the domestic legislative legal system was not used.** It should be pointed out that there are a large number of provisions that are presented as non-transferable, which raises the question of whether this option was justified in any case, or whether it is an attempt to influence the total number of other non-aligned provisions to be smaller than it is shown.

KEY RECOMMENDATIONS	
Number	Recommendation
1.	A significant part of the provisions of the Law on Waste Management, for which compliance with the Framework Directive on Waste Management is projected in the next few years, needs to be revised as soon as possible and the harmonization process accelerated before the current projected deadline for achieving harmonization.
2.	A significant part of the provisions of the Law on Waste Management, for which compliance with other European directives on the management of various types of waste is projected in the next few years, needs to be revised as soon as possible and the harmonization process accelerated before the current projected deadline for achieving harmonization.

3.	It is necessary to revise the provisions that are shown as non-transferable in relation to the Framework Directive on waste management, or where the legal option has not been used, with the aim of determining at what time it is possible (and earlier) to incorporate them into the domestic legislation.
4.	It is necessary to revise the provisions that are shown as non-transferable in relation to other European directives on the management of different types of waste, or where the legal option has not been used, with the aim of determining at what time it is possible (and earlier) to incorporate them into the domestic legislation.

4.5. THE LAW ON FORESTS SIGNIFICANTLY NOT COMPLIANT

The Montenegrin Law on Forests records a large non-compliance with important European regulations in this area, namely the regulation on the protection and monitoring of forest ecosystems and interactions with the environment and the regulation on determining the obligations of business entities that put wood and wood products on the market.

At the level of the European Union, the Regulation from 2006 is very important, which establishes detailed rules for forest monitoring, with the ultimate goal of ensuring quality protection and sustainability of forest systems, as valuable natural resources. In addition, in the harmonization of domestic regulations with European law, it is necessary to harmonize domestic legal norms with the Regulation from 2010, which refers to the obligations of business entities that put wood and wood products on the market.

4.5.1. Compliance with European regulations

The Montenegrin Law on Forests²⁸ needs to be harmonized to a greater extent with two European regulations, which refer to the adoption of detailed rules for forest monitoring and interaction with the environment and to the determination of the obligations of business entities that put wood and wood products on the market. In relation to the first mentioned regulation, a higher level of harmonization of domestic law is needed, while in relation to the second regulation, the adoption of a separate law is planned in order to achieve the necessary harmonization with European law.

According to the Montenegrin Law on Forests, forests and forest lands, as goods of general interest, enjoy special protection, which is achieved through their permanent preservation and improvement, sustainable management, but also the quality of their environment. The Law on Forests currently **has the status of partial compliance in relation to eight provisions from the Regulation** on establishing detailed rules for forest monitoring and interactions with the environment²⁹. These are provisions from this European regulation, which define in more detail:

- networks of observation points for forest areas and tree canopy conditions;
- exceptions for large homogeneous forest areas;
- submission of data and preparation and submission of monitoring reports;
- determination of observation points for intensive monitoring;

²⁸Law on Forests (Official Gazette of Montenegro No. 74/10, 40/11, 47/15)

²⁹Regulation 1737/2006 of November 7, 2006.

- method of intensive and constant monitoring of forest ecosystems;
- way of informing about applied monitoring methods;
- method of delivering common key data for each forest fire;
- providing additional information for forest fires with an area of over 50 hectares.

In relation to the previous provisions from the European regulation, the Law on Forests defines that the method of monitoring damage to forest ecosystems is prescribed by the competent ministry³⁰, while the administrative body monitors and assesses the state of health of forests and sustainable management, i.e. performs monitoring, and submits a report with proposed measures to the government and informs the public. The Law on Forests also stipulates that the administrative body keeps records of forest fires. **Achieving full compliance is planned through the adoption of regulations** on detailed rules for monitoring the health status of forests. Until the first quarter of 2024, this rulebook had not been adopted. Furthermore, **for 36 articles of the Regulation** on establishing detailed rules for forest monitoring and interactions with the environment, **their harmonization** and transfer to the domestic legal system **is foreseen when Montenegro becomes a member of the European Union**. Specifically, we are talking about the creation of national monitoring programs and their adaptation, as well as a series of provisions regarding the financial management of the national program, which requires appropriate costs, and which Montenegro plans to apply only when it becomes a member of the Union.

When it comes to the Regulation on determining the obligations of business entities, which put wood and wood products³¹ on the market, the Montenegrin authorities plan **that compliance will be achieved through the adoption of a special law** on the sale of wood and wood products, the adoption of which is planned by the end of 2025. It is also planned to adopt a special rulebook, which will be used to classify wood and wood products. The importance of this European regulation is particularly reflected in the fact that it determines the obligations of business entities, which for the first time put wood and wood products into circulation on the internal market, and the obligations of traders. In this sense, **the regulation focuses on the definition of legally cut wood**, so Article 4 is very important, which prohibits the sale of illegally cut wood and wood products obtained from that wood. **In this part, the Montenegrin Law on Forests achieves only partial compliance** with Article 4 and stipulates that "the circulation, processing and storage of forest products that are not marked in the prescribed manner and that do not have a certificate of origin are prohibited." In addition, the European regulation defines the standard of due diligence in the trade of wood and wood products, with a series of measures and procedures, which this standard includes, then the competent bodies and organizations and their duties, the method of checks and controls, as well as records and cooperation. All that has yet to be transferred into the Montenegrin legal framework.

4.5.2. Key recommendations for forest protection

In the following table, key recommendations for the improvement of public policies regarding the harmonization of the Law on Forests with European regulations will be listed.

³⁰Forest Administration.

³¹Regulation 995/2010 of October 20, 2010.

KEY RECOMMENDATIONS

Number	Recommendation
1.	It is necessary to speed up the process of transferring European provisions on detailed rules for forest monitoring in order to contribute to their better protection and preservation.
2.	It is necessary to speed up the adoption of a special law on the obligations of business entities which put wood and wood products on the market in order to better protect forest resources.

4.6. THE LAW ON WATERS NEEDS MORE WORK

The Montenegrin Law on Waters is for the most part harmonized with the basic directives of the European Union, but compliance was achieved not only through legal norms, but also through secondary legal acts. Although for the most part the harmonization of European and domestic law in this area has been achieved, it is still noted that some standards from European directives have not been fully and consistently transferred into domestic legislation. Also, part of the norms remains partially harmonized.

The basic document on water protection at the level of the European Union is the Water Framework Directive, in the introductory part of which it is emphasized that water is not like other commercial products, but rather a heritage that needs to be preserved and protected. Due to the inestimable existential importance for man, but also the increasing demand for water, the core of the European water management policy is to do it in a sustainable, balanced and fair way. In this sense, the Framework Directive is viewed as a framework for environmental management, the aim of which is to enable the sustainable use of water resources.

In addition to the Water Framework Directive, this chapter also analyzes the compliance of the domestic Law on Waters with the Directive on the Assessment and Management of Flood Risks, with which almost complete compliance was achieved. A significant level of compliance has been achieved in relation to the Directives on urban waste water treatment and on the Management of bathing water quality.

4.6.1. Compliance with the Water Framework Directive

The Montenegrin Law on Waters³² is for the most part harmonized with the Water Framework Directive³³, while partial compliance refers to the issue of the status of surface and underground waters and their monitoring, as well as the definition of an indicative list of the main pollution. However, this analysis notes that in several cases the authorities have avoided specifying the deadlines for the implementation of certain obligations or there is a lack of consistent transmission from the directive.

³²Law on Waters of Montenegro (Official Gazette No. 27/07, 32/11, 47/11, 48/15, 52/16, 55/16, 02/17, 84/18)

³³Directive 2000/60/EC of October 23, 2020. The framework directive for water united a large number of directives, which until then were valid in European legislation, with the aim of providing a more unified and rational approach to the management and protection of surface and underground waters, as well as their sustainable use.

According to the Montenegrin Law on Waters, one of the ways of water management is to **encourage economic and social development**. However, this **legal basis is not recognized by the Water Framework Directive**, so the intention of the domestic legislation to emphasize such a legal basis is unclear. The former is particularly important in the context of the fact that in the past decade, many small rivers in the north of Montenegro were used for small hydropower projects, after which their natural environment and overall sustainability were seriously damaged. Therefore, the legal basis of economic and social development **could serve as an excuse** to support **those projects that were harmful to river waters**, which ultimately led to their devastation and insufficient protection.

Article 3.6 of the Water Framework Directive indicates that **member states may designate** an existing national or international **body** as competent **for the purposes of this directive**. Although the norm refers to the member states, and is also of an optional nature, **the responsible ministry** for the issue of water in Montenegro **has not expressed its position** in relation to this issue, and it would be expedient to specify it. Article 4.1 of the Water Framework Directive, which refers to the environmental objectives for surface and underground waters, as well as protected areas, states, among other things, that **member states will reach agreement with all standards and objectives no later than 15 years after the entry into force of the European directive**, except if it is possible to realistically extend the deadlines or if it is not otherwise defined by the European legislation for certain protected areas. At the same time, the **Montenegrin Law on Waters does not mention this 15-year term** (with the possibility of extension), but ties it to the first update of the water management plan. As the water management plan is adopted for a period of six years and the fact that the Framework Directive was adopted in 2000, and in the context of the stages of Montenegro's accession to the European Union and the possibility of real extensions of the deadlines, it follows that in practice this limit of 15 years for Montenegro can be significantly longer. Namely, in Montenegro, the Water Management Strategy³⁴, as a ten-year document, was adopted at the beginning of 2017, so it is expected that at least in the next three years a new strategy will be adopted, which will be the basis for adopting a new water management plan. Therefore, it is clear that in practice the deadlines for the implementation of the Water Framework Directive in terms of standards and goals in Montenegro can be significantly longer than the European practice, in which the 15-year deadline should be avoided.

In relation to Article 4.8 of the Water Framework Directive, which ensures that exceptions, in relation to the application of standards and goals in environmental protection, should not permanently exclude or threaten the achievement of the goals of this directive, **incomplete transfer to the Montenegrin Water Law is noted**. In this regard, the Water Framework Directive indicates that the application of the provisions in relation to the achievement of protection standards and objectives must be consistent with other European legislation and that the new provisions must guarantee at least the same level of protection as the existing legislation of the European Community, but this part is not precisely transferred to the Law on Waters. Furthermore, **Article 5 of the Water Framework Directive**, which refers to the obligation to carry out analyzes on the characteristics, impact and economic use of water, is not sufficiently transposed in terms of deadlines. It foresees that the analyzes must be completed in four years from the entry into force of the directive, and will be reviewed no later than 13 years after its legal validity and then reviewed every six years. However, the Montenegrin Law on Waters only states that analyzes will be made within six years and that they are part of the water management plan. Also **in Article 6 of the Water Framework**

³⁴Water management strategy from March 19, 2017

Directive, which regulates the issue of the register of protected areas, it indicates that the register is completed no later than four years after its entry into force and that it is then continuously updated, but the Law on Waters avoids mentioning deadlines and states that the registers are to be regularly updated. Articles **11.7 and 11.8 of the Water Framework Directive** will be pointed out here, since they refer to the deadlines for the implementation of the program of measures to achieve environmental protection goals, and target a period of 15 years from the entry into force of the directive for periodic review, as well as every six years after that. However, the Montenegrin **Law on Waters does not mention deadlines** here either, although representatives of the executive authority state that this part is fully harmonized, probably guided by the fact that water management plans should be revised every six years.

Partial compliance of the Montenegrin Law on Waters with the Water Framework Directive (Articles 8.1 and 8.2) exists in relation to the **monitoring of water conditions**, and in the part of monitoring of water conditions in protected areas, because the Framework Directive binds the collection of data to European legislation, and our law to the corresponding law on area protection. The Montenegrin authorities expect full compliance to be achieved through the improvement of the monitoring system and the adoption of water management plans. There is also the question of whether important issues, contained in the Framework Directive, should be regulated through appropriate regulations, as by-laws. This is, for example, the case with Article 11.3 and 11.4 of the Water Framework Directive, which refer to the content of basic and supplementary measures from the overall program of measures, in order to achieve the goals of environmental protection. Or, for example, Article 14.4 of the Water Framework Directive, which refers to the content of the river basin management plan. These listed issues are not defined by the Law on Waters, but by a regulation, as a secondary legal act, but it **still seems justified that important issues from the European directive should be legally regulated**, and not by acts of lower legal force, for the sake of greater legal force defining those issues.

The **Water Framework Directive, through its annexes, requires the member states** to submit data and **define water protection conditions** in great detail. The fulfillment of the annex actually turns out to be the most demanding part in the alignment of the domestic law with the European legislation. The annexes refer to the definition of competent authorities, typology of water (surface and underground), economic analyses, protected areas, status of surface and underground waters, lists of measures to be included in protection programs, river basin management plans, to an indicative list of the main pollutions, then to emission limit values and environmental quality standards, as well as priority substances in the field of water policy and ecoregion.

For as many as six annexes of the Water Framework Directive, the Montenegrin authorities link **the achievement of full compliance** with this directive **to the adoption of water management plans** and the **by-law on determining the status of water and conducting monitoring**. At the beginning of 2022, the document "Water Management Plan in the Water Area of the Danube and Adriatic Basin"³⁵ was published, but the **publication of the Water Management Plan was not accompanied by an assessment of the degree of compliance with the European directive**. At the same time, from the Surface and Groundwater Monitoring Program for the year 2024³⁶, it can be seen that this document is adopted on the basis of the Law on Waters, and not a decree or rulebook, as a bylaw on determining the status

³⁵Water management plans in the water area of the Danube and Adriatic basin 2021 with attachments from March 17, 2023.

³⁶The proposal for the Surface and Groundwater Monitoring Program for 2024 was adopted at the session of the Government of Montenegro, which was held on January 18, 2024.

of water and conducting monitoring. **This means that by the beginning of 2024, the Montenegrin authorities have not passed a by-law**, which should enable full compliance with the Water Framework Directive, and which would harmonize in detail with the European regulation the issue of the status of surface and underground waters and their monitoring, as well as the issue of indicative list of main pollutions. However, it will be emphasized here again that harmonization is best achieved through legal norms, that is, through amendments to the existing Law on Waters.

4.6.2. Compliance with other water directives

The Law on Waters is harmonized with the Directive on the assessment and management of flood risks, but it can be assessed that in one minor part, which concerns the active participation of the interested public, there was no consistent transfer of the European norm to national legal acts. Significant compliance has been achieved in relation to the directives on urban waste water treatment and on the management of bathing water quality.

At the level of the European Union for the management and protection of water, **the Directive on the assessment and management of flood risk**³⁷ is particularly important, the main goal of which is to reduce potential damage from floods to human health, the environment, cultural heritage and the economy through flood risk management. According to the Montenegrin authorities, **the Law on Waters is harmonized with** this European directive, and compliance was achieved not only **through legal norms**, but also **through secondary legal acts**.³⁸ Here, **however**, it will be pointed out that the **provisions on informing and consulting the public have not been consistently transferred** to the domestic legal framework. It is about Article 9 of the Directive, which defines in more detail the active participation of the interested public and the necessary coordination in relation to all issues related to its subject matter. In Montenegro, this part is regulated by the rulebook as a sub-legal act, but in a quite general way³⁹, i.e. it is foreseen to be further defined by action plans, which may open up space for public consultation not to be at the required level in many cases, which may be significant, without at the same time, it is not about plans, maps and the like.

It should also be noted that the Flood Risk Assessment and Management Directive required member states to complete a **preliminary flood risk assessment** by the end of 2011, to be updated by the end of 2018, and every six years thereafter. On the other hand, the Montenegrin Law on waters stipulates that the preliminary flood risk assessment is reviewed every six years. According to public data, the document "Preliminary Flood Risk Assessment for the Adriatic Basin" was adopted in Montenegro only in 2022⁴⁰. Furthermore, according to the European directive, the member states had to create flood **hazard maps** and flood **risk maps** by the end of 2013, update them by the end of 2019, and then every six years. When it comes to flood risk management plans, the obligation for member states to update is prescribed by the end of 2021, and every six years after that. In both of these cases, the Montenegrin Water Law stipulates that these documents will be reviewed after six years.

³⁷Directive on flood risk assessment and management 2007/60/EC of October 23, 2007.

³⁸Rulebook on the detailed content of the preliminary flood risk assessment and flood risk management plan of December 22, 2015.

³⁹Article 10 of the Rulebook on the detailed content of the preliminary flood risk assessment and flood risk management plan of December 22, 2015.

⁴⁰Preliminary flood risk assessment for the water area of the Danube basin (June 2021)

In part of this subchapter, it will be stated that a significant level of compliance has been achieved in relation to the **Directive for the treatment of urban waste water**⁴¹ and the **Directive on the management of bathing water quality**⁴². However, it should be noted that even for these directives there is a practice of transferring part of its provisions through regulations, as by-laws, and not through legal provisions, whether it is the Law on Waters or the Municipal Wastewater Management Act⁴³, and regarding the issue of urban wastewater treatment.

4.6.3. Key recommendations for water management and protection

In the following table, key recommendations for the improvement of public policies regarding the harmonization of the Water Act with European directives will be listed. Some of the recommendations here are also of a general nature, and some are directly related to the issue of water management and protection.

KEY RECOMMENDATIONS	
Number	Recommendation
1.	Bearing in mind that European directives have the force of European laws, it is legally expedient and justified to standardize all and/or the largest number of provisions from the directives in the Law on Waters instead of transferring part of the harmonization through secondary legal acts as acts of lower legal force.
2.	Provisions that have not been consistently transposed from European directives into domestic laws and by-laws on water need to be specified in the spirit of European regulations in order to avoid potential situations where, due to insufficient precision, the application in practice may be interpreted differently.
3.	Considering the exceptional importance of monitoring the status of surface and underground waters, it is necessary to define this issue by legal norms instead of by-laws, all with the aim of achieving complete harmonization with European regulations, and also the entire process for monitoring needs to be accelerated.
4.	It is necessary to revise the legal basis from the existing Law on Waters, which refers to the fact that one of the ways of managing water is to encourage economic and social development with the aim of avoiding the possibility that the former basis can be used in practice for cases of extreme and unjustified destruction of water resources to the detriment of the public interest and citizens as a whole.
5.	In order to achieve greater transparency, but also to inform the domestic public more intensively about issues and the obligation of legal harmonization of domestic laws with European law, it is justified to continuously update the table of compliance for the Law on Waters and publish it publicly on the website of the relevant ministries.

⁴¹Directive on urban waste water treatment 91/271/EEC of May 21, 1991.

⁴²Water Quality Management Directive 2006/7/EC of February 15, 2006.

⁴³Law on Municipal Wastewater Management (Official Gazette of Montenegro No. 02/17)

4.7. PROTECTION OF THE MARINE ENVIRONMENT ACCORDING TO EU STANDARDS

The Directive on the establishment of a framework for the action of the European Community in the area of the marine environment⁴⁴, which is better known as the **Framework Directive on Marine Strategy**, established the **European legal framework** for achieving and maintaining a good state of the marine environment. The framework directive is the most important European legal document in this area, which prescribes measures for the protection and preservation of the marine environment, measures to prevent its deterioration, the introduction of polluting substances into the marine environment and the overall restoration of marine ecosystems.

The framework directive stipulates that this European regulation **applies to all sea waters** and defines sea regions and sub-regions, so Montenegro belongs to the sub-region of the Adriatic Sea. The concept of a good state of the marine environment is also defined, as well as a number of other issues related to regional cooperation regarding the preservation and protection of the marine environment, the obligation to develop strategies for marine regions and subregions, determining protection goals, developing monitoring programs and protection measures, exceptions from the implementation of such programs, as well as information or reporting in this area.

4.7.1. Quality compliance with European law

The Law on the Protection of the Marine Environment in Montenegro is harmonized with the Framework Directive on Marine Strategy mostly through legal norms and to a lesser extent through secondary legal acts. However, it is noted that one provision is shown as non-transferable, although it could be incorporated into the domestic legislative system in this area.

The Montenegrin Law on the Protection of the Marine Environment⁴⁵, which has been in force since 2020, is harmonized with the Framework Directive on Marine Strategy, whereby the **largest part of harmonization is achieved directly through legal provisions**, while a smaller part of compliance is achieved through secondary legal acts. Prior to the adoption of the Law on the Protection of the Marine Environment, it was pointed out that the protection of the marine environment is of particular importance and is one of the goals of sustainable development until 2030, which are defined by the United Nations Agenda for Sustainable Development until 2030. As it was emphasized at the time, at the national level, **the coastal area of Montenegro is one of the most valuable national resources**, characterized by a high development potential that is essential for the development of Montenegrin society. "It is also characterized by complex relationships between human activities and the natural environment, which often result in significant pressure on natural resources." Since accession to the European Union is a strategic priority of Montenegro, it is important that the policy of the European Union, which refers to the sea and coastal area, includes the provision of a healthy and stable environment, but also the protection of natural resources, as a basis for long-term planning and implementation of development activities", it was announced before its adoption.

⁴⁴Directive 2008/56/EC of June 18, 2008.

⁴⁵ Law on the Protection of the Marine Environment (Official Gazette of Montenegro No. 73/19)

The Law on the Protection of the Marine Environment sets as **protection goals** the preservation and establishment of a balance between human activities and natural resources in the sea and coastal area, then **the preservation of the sea and coastal area for the benefit of current and future generations**, as well as the sustainable use of natural resources in the sea and coastal area. It is also prescribed that the protection of the marine environment is carried out to protect biodiversity and preserve protected areas in the sea and ecologically significant areas within the Natura 2000 network. The goal is **to prevent and reduce pollution and negative impacts on human health and the health of marine and coastal ecosystems**, but also to prevent or mitigate the effects of natural phenomena, especially climate change, which may be caused by natural or human activities. The Domestic Law on the Protection of the Marine Environment with the **Framework Directive** on Marine Strategy records the greatest conformity directly through the definition of legal provisions. However, **full compliance was achieved through the adoption of three by-laws**, adopted during 2021. By-laws refer to the prescription of criteria and standards for the good condition and monitoring of the marine environment⁴⁶, to the analysis of the properties and characteristics of the marine environment and the determination of goals and indicators⁴⁷, as well as to the program of measures for maintaining the good condition of the marine environment⁴⁸. Here, however, it will be pointed out that the Law on the Protection of the Marine Environment presents **several provisions** as non-transferable, most of which are justified as such, but **one case is questionable**. It is a provision from the Framework Directive that it "does not apply to activities whose sole purpose is defense or national security, while member states nevertheless strive to ensure that these activities are carried out in accordance with the Directive's objectives to the extent that this is justified and feasible." It can be assessed that the previous provision has justification to be incorporated into the Montenegrin legal framework.

4.7.2. Key recommendations regarding the marine environment

Given the complete compliance of the Law on the Protection of the Marine Environment with the Framework Directive on Marine Strategy, one recommendation is given below regarding the provision, which is shown to be non-transferable.

KEY RECOMMENDATIONS	
Number	Recommendation
1.	It is necessary to consider the provision from the Framework Directive that it does not apply to activities whose purpose is defense or national security, but that efforts should be made to ensure that these activities are in accordance with the goals of the Framework Directive, and to incorporate it as such into the domestic legal system.

⁴⁶Rulebook on criteria and standards for determining the good condition and monitoring of the environment (Official Gazette of the Republic of Montenegro No. 36/21)

⁴⁷Rulebook on the method of analysis of the properties and characteristics of the current state of the marine environment, qualitative indicators and the method of determining goals and indicators for achieving and maintaining a good state of the marine environment (Official Gazette of Montenegro No. 36/21)

⁴⁸ Rulebook on the detailed content of the Program of measures to achieve and maintain a good state of the marine environment (Official Gazette of the Republic of Montenegro No. 36/21)

4.8. THE AIR LAW FOLLOWS THE EU DIRECTIVE

At the level of the European Union, special attention is paid to air quality and taking measures to prevent harmful effects on human health and the environment. The most important in this area is the Directive on ambient air quality and cleaner air in Europe, with which member states and candidate countries must harmonize their internal legal system.

4.8.1. Compliance achieved

The Montenegrin Law on Air Protection is harmonized with the most important Directive of the European Union on the quality of ambient air and cleaner air in Europe, whereby a significant part of the compliance is achieved through a secondary legal act. However, it should be emphasized that with the ever-increasing and pronounced problem of climate change, other directives are being adopted at the level of the European Union, which are related to air protection.

The European Union **Directive on ambient air quality and cleaner air** in Europe is the **umbrella European document** in this area⁴⁹. The directive establishes measures for defining air quality objectives with the aim of avoiding, preventing or reducing harmful effects on human health and the environment as a whole. Air quality assessment in member states is assessed on the basis of common methods and criteria, **and one of the goals is to obtain information on air quality** to help combat air pollution and harmful effects and to make such information available to the public.

The **Montenegrin Law on Air Protection**⁵⁰ is harmonized with the European Union Directive on ambient air quality and cleaner air in Europe. The law regulates the method of air quality monitoring, protection measures, evaluation and improvement of air quality, as well as planning and management of air quality. The law defines **air as a natural value of general interest**, which is part of the environment and **has special protection** in Montenegro. It is also foreseen that the protection of the air from pollution by radioactive substances, genetically modified organisms, noise and natural disasters is governed by special regulations.

The full compliance of the domestic law with the European regulation is shown through 66 provisions, whereby **about half is achieved directly through legal norms, and half through secondary legal acts**, i.e. through provisions in the Regulation on determining the types of polluting substances, limit values and other air quality standards, Regulation on the establishment of a network of measuring points for air quality monitoring and the Rulebook on the content and method of preparing annual information on air quality. At the same time, four provisions are shown as non-transferable.

4.8.1.1. The law on the impact of climate change needs to be worked on

In 2019, Montenegro adopted the Law on Protection from the Negative Effects of Climate Change, which should establish a system for reducing greenhouse gas emissions,

⁴⁹Directive 2008/50/EC of May 21, 2008.

⁵⁰Law on Air Protection (Official Gazette of Montenegro 25/10, 40/11, 43/15 and 73/19)

protecting the ozone layer and adapting to changed climate conditions at the national level, as well as issues related to protection from the negative impacts of climate change.

A high concentration of **greenhouse gas emissions in the atmosphere leads to a very negative impact on climate change**, and in order to mitigate them, adequate measures are necessary, which lead to a reduction of greenhouse gas emissions.

However, the Montenegrin Law on Protection from the Negative Effects of Climate Change is **only partially harmonized with a number of directives and regulations in this area**, and further harmonization with European regulations is necessary. In this sense, some of the more important European regulations, with which further harmonization is needed, will be mentioned here:

- ✓ Regulation on the mechanism of monitoring and reporting on greenhouse gas emissions and relevant information for climate change at the national and Union level;
- ✓ Regulation on the management of the Energy Union and Climate Action;
- ✓ Implementation Regulation on data verification and accreditation of verifiers;
- ✓ Regulation on inclusion of emissions and removal of greenhouse gases from the sector of land use, land conversion and forestry in the framework for climate and energy policy until 2030;
- ✓ Regulation on the mandatory annual reduction of greenhouse gas emissions in the member states from 2021 to 2030, which contributes to measures to fulfill obligations under the Paris Agreement;
- ✓ Regulation on substances that damage the ozone layer;
- ✓ Directive on the availability of data for consumers on the economy of fuel consumption and CO₂ emissions in connection with the sale of new passenger cars;
- ✓ Directive on geological storage of carbon dioxide;
- ✓ Directive on the establishment of a system for trading emission units of greenhouse gases within the Community;
- ✓ Directive regarding the inclusion of aviation activities in the system for trading emission units of greenhouse gases.

4.9. THE CLIMATE CHALLENGE IS STILL AHEAD

In Montenegro, the Law on Integrated Prevention and Control of Environmental Pollution was in force for more than a decade, the essence of which was that the biggest polluters in the country have integrated permits to work. One of the largest industrial polluters of the environment in the country - Thermal Power Plant Pljevlja - managed to obtain an integrated permit for operation shortly before the expiration of the Law on Integrated Prevention and Control of Environmental Pollution.

In the meantime, the issue of the future operation of the Pljevlja Thermal Power Plant, as the only coal-fired power plant in the country, is being tried to be resolved through the adoption of the National Energy and Climate Plan, but its adoption is seriously delayed. In parallel, Montenegro announces the adoption of new laws in the area of the environment, in order to further harmonize regulations with European law.

4.9.1. Integrated permits to a better environment

According to the Law on Integrated Prevention and Control of Environmental Pollution, the largest industrial polluters in the country were obliged to obtain integrated permits for work. The deadlines for obtaining permits were continuously postponed, and the Pljevlja Thermal Power Plant managed to obtain an integrated permit just before the expiration of this Act. In the meantime, the country has a new law in this area.

The essence of the Law on Integrated Prevention and Control of Environmental Pollution was to prescribe the procedure for issuing an integrated permit for facilities and activities that may have negative impacts on human health, the environment or material goods. The aim of the legal norms was to ensure the **control of environmental pollution**. On the basis of the Law, **a special program of harmonizing certain economic branches**, lists of industrial facilities and deadlines for obtaining integrated permits, was adopted. Permits were supposed to determine the amount of substances and the intensity of their discharge, as well as measures to control environmental pollution, and for this Law there were no European regulations with which it was supposed to be harmonized. The law was adopted at the end of 2005 and was in force until 2019, but it was changed several times, because the **deadlines for obtaining an integrated permit for the Pljevlja Thermal Power Plant**, as one of the biggest environmental polluters in Montenegro, **were postponed**. The operation of the plant in Pljevlja is based on old technologies from the 1980s, and this thermal power plant managed to obtain an integrated permit⁵¹ for operation in 2018, shortly before the expiration of the Law, but with the obligation of environmental rehabilitation of the plant.

4.9.2. The fate of the Pljevlja thermal power station “rides on a seesaw”

In the middle of 2021, the European Union adopted the Law on Climate, which foresees the achievement of climate neutrality by 2050 for the member states. In addition to climate neutrality and achieving negative emissions after 2050, the European Climate Act sets a binding EU climate target to reduce net greenhouse gas emissions by at least 55 percent by 2030 compared to 1990.

Montenegro, as a candidate for membership in the European Union, should also harmonize its legal regulations on climate with European regulations, and the biggest challenge in achieving the goals, which will be set for the coming years, is currently the Thermal Power Plant in Pljevlja. In this sense, Montenegro is already seriously late with the adoption of the National Energy and Climate Plan, which should determine the further fate of the operation of this energy plant and, in general, the future energy and climate development of the country.

Achieving climate neutrality by 2050 at the level of the European Union means that then the emission of carbon dioxide and other gases harmful to the climate will be equal to zero. The European Union is paying more and more attention to the issue of climate change due to the fact that in the last century the Earth's temperature has increased by one degree. The accelerated warming of the planet is mostly influenced by the emission of gases, which lead to the so-called greenhouse effect. These gases include carbon dioxide (CO₂), methane, water vapor, nitrous oxide and chlorofluorocarbons.

⁵¹ Link: <https://epa.org.me/2018/07/27/integrisane-dozvole/>

4.9.2.1. Climate neutrality

It is considered that a product is **climate neutral**, if no amount of harmful gases is emitted during production, storage and distribution, which is difficult to achieve in modern conditions. Therefore, it is necessary to **remove the same amount of harmful gases** from the atmosphere, which will be created during the creation and transportation of the new product so that it is climate neutral.

Natural reservoirs of forests, soils and water can absorb or store carbon. Some examples are planting trees or changing agricultural practices. In technological terms, **it is possible to capture and store carbon**, by collecting carbon dioxide from industrial sources, which is used as a fossil fuel. Emissions of all gases are collected and transported by gas pipeline or ships, and then carbon dioxide is separated from other gases by technical processes. Those other gases are released into the atmosphere, and the separated carbon dioxide is usually stored in rocks.

In order to set goals from the demanding agenda of the European Union in terms of climate and energy goals, Montenegro, first of all, through the Law on Energy⁵², **prescribed the obligation to prepare a National Energy and Climate Plan**. This obligation stems from Montenegro's membership in the Energy Community of Southeast Europe. The national energy and climate plan should be adopted for a period of ten years, with mandatory revision every four years and biannual reporting, but Montenegro is seriously late in adopting this strategic document⁵³. At the end of 2023, **it was expected that Montenegro would submit the final draft of the document** to the Secretariat of the Energy Community **by the end of June 2024**⁵⁴.

The working group in charge of drafting the document pointed out that the **future operation of the Pljevlja Thermal Power Plant is one of the key issues for the National Energy and Climate Plan**, because the gradual abolition of coal-fired electricity production must be planned. The Working Group also pointed out that the gradual abolition of coal must take into account social aspects and the economy, in the sense that future infrastructure projects (for example, highways, power plants) should create a need for additional employment, companies and materials and goods. Regarding the future of the Pljevlja Thermal Power Plant, **three scenarios were discussed** at the Working Group, **one of which was supposed to be agreed upon as a reference**, but more details were not known. At the beginning of 2024, it was expected that during the year **it would be possible to adopt a new law on protection from the negative effects of climate change** and protection of the ozone layer, for which a public discussion was organized in the previous year 2023. That law should incorporate a number of solutions from several European regulations related to achieving climate neutrality, monitoring and reporting on greenhouse gas emissions, substances that damage the ozone layer...

⁵²Law on Energy (Official Gazette of Montenegro 05/16, 51/17, 82/20, 29/22 and 152/22)

⁵³The amendments to the Energy Law, which entered into force in August 2020, stipulated that by-laws would be adopted within a year of the adoption of the amendments, which means that the National Energy and Climate Plan should have been finalised by mid-2021. year, but at the beginning of 2024 it was still being worked on.

⁵⁴Minutes from the meeting of the Working Group for the preparation of the National Energy and Climate Plan from December 18, 2023, which Action for Social Justice received from the Ministry of Energy and Mining on the basis of the Law on Free Access to Information.

KEY RECOMMENDATIONS	
Number	Recommendation
1.	It is necessary to speed up the development of the National Energy and Climate Plan and to use only reliable and objective indicators in defining national goals, which provide not only sustainable solutions, but also those that are in the best public interest.
2.	In order to increase transparency and include as wide a circle of interested public as possible, it is necessary to increase and improve the overall public campaign in the adoption of the National Energy and Climate Plan, because this is the only way to obtain the best solutions.
3.	It is necessary to speed up the adoption of a new Law on protection against negative impacts from climate change and protection of the ozone layer, in order to achieve not only compliance with European regulations, but also the country to start climate adaptation more quickly.

4.10. STRATEGIC IMPACT ASSESSMENT ACCORDING TO EU PRINCIPLES

The directive of the European Union on strategic environmental impact assessment is based on the principles of prudence and preventive action, the main goal of which is that the environmental impacts of certain decisions are considered before they are adopted. Therefore, this Directive actually applies to public plans and programs, excluding politics, so it is the obligation of all member states and candidate countries to transpose it into their national laws.

4.10.1. Harmonization of regulations achieved

The Montenegrin Law on Strategic Environmental Impact Assessment is harmonized with the European Union Directive in this area, which created the basis for the application of European principles when preparing strategic environmental impact assessments.

The European Union's Directive on strategic environmental impact assessment entered into force in 2001⁵⁵ and has been improved several times since then. As a basic goal, it defines the provision of a high degree of environmental protection and **contribution to the inclusion of environmental issues when creating plans and programs**, in order to enable sustainable development. Therefore, environmental impacts are taken into account at the earliest possible stage in all procedures, ie technical planning and decision-making processes.

Strategic impact assessment is **carried out in relation to projects** in different areas, which can be assessed as **may behaving a large impact on the environment**.

It is prescribed to prepare a report on strategic impact assessment, with all relevant information on the potential impact on the environment, which must offer reasonable alternative solutions.

⁵⁵Directive 2001/42/EC of June 27, 2001.

In the preparation of the report, the opinions of the competent authorities are sought, and the document is referred to a wide public discussion by **stakeholders**, who are also **guaranteed access to justice**. The great importance of this Directive of the European Union is also reflected in the fact that the property of the interested public is guaranteed to non-governmental organizations, which deal with environmental protection. Also, for projects with cross-border impacts, interstate consultation is prescribed, including the interested public of the states, on whose territories there may be negative impacts.

The Directive of the European Union, **through special attachments, defines a list of individual projects** for which it is necessary to carry out a strategic assessment of the impact on the environment.

Montenegrin Law on Strategic Impact Assessment⁵⁶ **essentially follows the provisions of the relevant European Union Directive** on Strategic Environmental Impact Assessment and transfers them to the domestic legal system. Among other things, sustainable development, ensuring that environmental issues and people's health are fully taken into account during the development of plans and programs, and ensuring public participation are listed as the goals of the strategic assessment. And other legal solutions are in the spirit of European regulations in this area.

⁵⁶ Law on strategic environmental impact assessment (Official Gazette of Montenegro 80/05, 40/11 and 52/16)

5. OPTIMAL PENAL POLICY

Quality misdemeanor and penal policy in the field of the environment play a very important role in prevention and better protection of the environment. The legal framework in Montenegro provides a satisfactory basis for the application of misdemeanor and punitive measures in this area, but it seems that all available legal mechanisms are insufficiently used in practice. In support of this is the fact that the water management inspection collected only 410 thousand euros in fines during the decade, although numerous examples of devastation and exploitation of rivers in the country are present almost every day.

5.1. Types of responsibility through three laws

The Law on Liability for Environmental Damage, the Criminal Code of Montenegro and the Law on Inspection Supervision provide a satisfactory legal framework for criminal-misdemeanor prevention and penal policy in environmental protection.

The Montenegrin **Law on Liability for Environmental Damage**⁵⁷ foresees the liability of legal and natural persons who, through their activities, cause damage or immediate danger of damage to the environment. If liability is established, **legal or natural persons are obliged to compensate for the damage**, which is based on the principles that the polluter pays and mandatory insurance. The first principle implies that legal and natural persons are obliged to compensate the damage by implementing preventive and remedial measures at their own expense. The second principle implies that legal and physical persons for activities, i.e. activities that pose a risk to human health and the environment, are obliged to insure themselves against liability for damage to the environment.

Furthermore, the Law on Liability for Environmental Damage stipulates that **environmental damage is caused to:**

- a) protected species of plants, animals and fungi and natural habitats, which has a significant negative impact on reaching or maintaining a favorable status of protected species and habitats;
- b) waters, which has a significant negative impact on the ecological, chemical and quantitative status and ecological potential of waters, including the ecological status of sea water;
- c) to the soil, by indirect or direct introduction into, on or under the soil of substances, mixtures, organisms or microorganisms, which cause damage that represents a significant danger to human health.

Some of the risky activities are: management of facilities for which an integrated permit is issued; waste management, including mining waste; use of sewage sludge for agricultural purposes; discharge of polluting substances into surface and underground waters; transportation of dangerous substances in road, rail, sea and air traffic. The law prescribes **a procedure for determining damage** to the environment, and when it occurs, the operator is obliged to immediately notify the administrative body and the competent inspection and take the necessary remedial measures, in order to limit and prevent the further spread of damage to the environment and negative effects on human health. **Remediation measures** aim to restore damaged waters, soil, protected species and natural habitats to their original state.

⁵⁷Law on Liability for Environmental Damage (Official Gazette of Montenegro 27/14 and 55/16)

When it comes to the **Criminal Code**⁵⁸, a series of criminal offenses against the environment and spatial planning are provided for in a special chapter. The table below shows some of the most important criminal offenses from this chapter, with the name of the specific criminal offense and the prescribed sanction for each individual criminal offense.

No.	NAME OF THE CRIMINAL OFFENSE	PENALTY
1.	Environmental pollution	Up to ten years in prison, and if death has occurred up to twelve years in prison; Negligence fine or up to five years in prison
2.	Pollution of the environment with waste	Up to ten years in prison, and if death has occurred up to twelve years in prison; Negligence fine or up to five years in prison
3.	Depletion of the ozone layer	Up to three years in prison
4.	Failure to take environmental protection measures	Up to five years of imprisonment; Negligence fine or up to three years in prison
5.	Illegal construction, commissioning and operation of facilities and plants that pollute the environment	Up to ten years in prison, and if death has occurred up to twelve years in prison
6.	Damage to facilities and devices for environmental protection	Up to five years in prison; Negligence fine or up to three years in prison
7.	Damage to the environment	Up to eight years in prison; Negligence fine or up to one year imprisonment
8.	Abuse of genetically modified organisms	A fine or imprisonment of up to one year
9.	Destruction of plants	Up to five years in prison; Negligence fine or up to three years in prison
10.	Destruction and damage to protected natural property	Up to five years in prison; Negligence fine or up to six months in prison
11.	Theft of protected natural property	Up to fifteen years in prison
12.	Carrying out and bringing in dangerous substances	Up to twelve years in prison
13.	Illegal handling of dangerous substances	Up to twelve years in prison
14.	Non-execution of the decision on environmental protection measures	Up to three years in prison
15.	Destruction of forests	A fine or up to three years in prison (up to five years)
16.	Forest theft	A fine or up to three years in prison
17.	Construction of an object without registration and documentation for construction	Up to five years in prison
18.	Construction of a complex engineering facility without a building permit	Up to eight years in prison
19.	Illegal connection to the infrastructure	Up to three years in prison

So, from the previous table, it can be seen that **the range of criminal sanctions is very different**, and the largest ones are those with a fatal outcome as a consequence of a specific criminal offense in the field of the environment, for which the penalty is imprisonment for up to twelve years. However, the maximum criminal sanction of 15 years in prison is threatened for the criminal offense of theft of a protected natural asset.

Bearing in mind that there is a great devastation and destruction of forest wealth in the country, it seems that the threatened sentences of up to three years in prison **for the criminal acts of forest devastation and forest theft are within the framework of a mild penal policy**, and they should be revised and the criminal sanctions tightened as more adequate measure to deter

⁵⁸Criminal Code of Montenegro.

potential perpetrators from these crimes. It also seems expedient, and given that the adoption of new laws in the field of climate change is planned, that in the coming period the widest interested public should be gathered, which will consider the possibility of defining new and redefining existing criminal offenses in the field of climate protection.

In terms of the Law on Inspection Supervision⁵⁹, it is prescribed that inspection supervision is carried out in order to achieve and protect the public interest, it is initiated ex officio, and anyone can submit an initiative for undertaking inspection control. In the area of environmental protection, **ecological and water inspections are particularly important**.

Inspectors can issue misdemeanor fines and also file criminal charges. However, the data of the Action for Social Justice⁶⁰ show that the **environmental and water inspection do not make much use of the mechanism of punitive or misdemeanor policy**. Thus, in the period from 2013 to the end of 2023, the environmental inspection undertook 24,733 inspections, and submitted only 41 criminal charges, or an average of four per year. In the same period, the water management inspection carried out 5,772 inspections, filed 141 criminal charges and collected around 410,000 euros in fines. All of the foregoing indicates that it is necessary to tighten the misdemeanor and penal policy on the part of the inspection authorities, but certainly to strengthen the personnel capacity of the inspections.

KEY RECOMMENDATIONS	
Number	Recommendation
1.	For the criminal acts of forest devastation and forest theft, it is necessary to tighten the criminal sanctions, because the existing ones can be evaluated in the domain of mild criminal policy.
2.	Given that it is planned to pass new laws in the field of climate change, it is necessary to consider the possibility of defining new and redefining existing criminal offenses in the field of climate protection and overall environmental protection.
3.	It is necessary to strengthen the personnel capacities of the inspection bodies, especially in the inspections that deal with environmental protection issues, as well as to introduce regular and effective control mechanisms in the legality of the inspections themselves.

⁵⁹Law on Inspection Supervision (Official Gazette of Montenegro 76/09, 57/11, 18/14, 11/15 and 52/16)

⁶⁰The response of the Administration for Inspection Affairs based on the Law on Free Access to Information (Request of Action for Social Justice No. 11/24)