

Legal analysis on including the EU Birds, Habitats and Water Framework Directives into the Energy Community Treaty



Hydropower construction in the Valbona Valley National Park, Albania, is one of many egregious examples of biodiversity destruction in the Energy Community countries. Photo: David Hoffman

Summary

The limited scope of the environmental *acquis* within the Energy Community Treaty (ECT) is currently inadequate to protect the environment from the impacts of the energy sector, and additional parts of the environmental *acquis* need to be incorporated into the Treaty.

The current situation, in which only a small portion of the *acquis* has been adopted by the Energy Community countries, has led to an uneven playing field on the common European energy market. There is a danger of ‘emissions leakage’, as some of the energy from coal power plants is exported to the EU, gaining a competitive advantage by applying lower standards, or ‘energy grabbing’, where some EU countries import energy

January 2021

Author

Małgorzata Smolak
Legal Consultant

For more information

Pippa Gallop
Southeast Europe Energy Advisor
CEE Bankwatch Network
pippa.gallop@bankwatch.org

Irma Popović Dujmović
Program Officer, Freshwater
WWF Adria
ipopovic@wwfadria.org

Maja Pravuljac
Lawyer/Juriste
Wildlife, Habitats and Hydro-energy
ClientEarth
mpravuljac@clientearth.org

from renewable sources in third countries to achieve their own renewables targets, likewise applying lower environmental standards.

The impact of energy generation and transmission on water and biodiversity needs to be minimised by implementing the provisions of the Birds Directive, Habitats Directive and Water Framework Directive proposed in this analysis. The Nature Directives (Birds Directive, Habitats Directive) play a significant role in energy investments, particularly in the thermal power, hydropower and wind sectors, which can have a serious impact on natural habitats, flora and fauna. The provisions of the Directives ensure that energy installations are not built at the expense of natural heritage. The provisions of the Water Framework Directive are crucial in minimising the impact of thermal power plants or hydropower plants on water quality and on aquatic ecosystems. Selected provisions of all three Directives are recommended for adoption by the Energy Community, as laid out below.

The Birds Directive

Incorporation of **Article 2, Article 3, Article 4(1) and (4), Article 5, Article 13 and Article 14** (besides Article 4(2), which is already binding) into the Energy Community Treaty is recommended. The provisions relate to the **obligation to maintain the population of wild bird species**; to preserve, maintain and re-establish sufficient diversity and area of habitats for all wild birds, including the **creation of protected areas**; and to implement **special conservation measures concerning the habitats of species mentioned in Annex I**. Contracting Parties would not be obliged to designate additional Special Protection Areas (SPAs), as they are already obliged by Article 4(2) to implement conservation measures similar to those mentioned in Article 4(1). Under the Bern Convention, signed by all Contracting Parties except Kosovo, the countries are also obliged to protect Emerald sites. Areas classified or protected under national or international legislation or designated Natura 2000 sites, should be considered Special Protection Areas under the Birds Directive. Therefore, Article 4(1) should be applied to already existing sites, protected under national and international law. Thus, incorporating the above-mentioned provisions into the ECT should not pose a significant additional burden for the Contracting Parties, compared to their existing obligations. Migratory species are already legally protected under the Treaty. Implementation of Article 4(1) and 4(4) and Article 13 should be considered as a bare minimum to protect endangered bird species.

The Habitats Directive

Incorporation of **an adapted version of Article 6(2), Articles 6(3) and (4), Article 12(1) and (3), Article 13, Article 16** and, if the relevant articles of the Birds Directive are incorporated into the ECT, also **Article 7** of the Habitats Directive into the Energy Community Treaty is recommended.

The provisions relate to the **avoidance of habitat deterioration and significant species disturbance**; the requirement of an **appropriate assessment** (AA) for plans and projects likely to have a significant effect on a Natura 2000 site; and to situations when, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for

imperative reasons of overriding public interest and protection of species. Article 7 refers to **Special Protection Areas** of the Birds Directive.

The key provisions are set up in Article 6(2), (3) and (4), which relate to plans and projects likely to have a significant negative effect on protected habitats and species.

The Contracting Parties are already obliged by Article 4(2) of the Birds Directive to implement conservation measures such as designation of Special Protection Areas for the conservation of bird species. Moreover, some of the Contracting Parties have already implemented the Habitats Directive to a certain extent. Areas classified or protected under national or international legislation or designated Natura 2000 sites, should be considered as Special Areas of Conservation under the Habitats Directive for the purposes of the ECT. Thus, incorporating the aforementioned provisions into the ECT should not represent a significant additional burden for the Contracting Parties, compared to their existing obligations.

The Water Framework Directive

Incorporation of **Article 3, Article 4** (except paragraph 4 which refers to the extension of the timeframe for the implementation), **Article 5, Article 6, Article 8(1) and (2), Article 9, Article 11, Article 13 and Article 14** into the Energy Community Treaty is recommended. The provisions refer to the coordination of administrative arrangements within river basin districts; set the environmental objectives and provide derogations from the obligations to achieve compliance with those objectives; refer to the characteristics of the river basin district, to registers of protected areas, to monitoring, to recovery of costs for water services and to programmes of measures; and oblige Member States to develop river basin management plans (RBMs) and provide the public access to information and consultation.

The key provisions are set up in Article 4(7), which provides for a derogation from the general obligation to refuse authorisation for an individual project where it may cause deterioration of a water body or failure to achieve good status or potential, and in Article 14, which provides for public participation.

Most of the Contracting Parties have already implemented to a certain extent the provisions of the Water Framework Directive. Moreover, the EU provides extended experience and knowledge in river management. Thus, incorporating the above-mentioned provisions into the ECT should not represent a significant additional burden on the Contracting Parties and they should be able fit into the EU's third management cycle (i.e. river basin management plans shall be published at the latest by the end of 2027, and good water status should be achieved at the latest 15 years after the date of entry into force of the Decision on the implementation of the Water Framework Directive). Taking into consideration that the impact of energy infrastructure may differ from case to case, it is not possible to assess which of the above Directives could have the greatest impact nor what should be the order of priority.

All the Directives should be implemented no later than within two years of the adoption of the Ministerial Council Decision on the amending the Energy Community Treaty, with the exception of provisions for which specific deadlines are stipulated.

Introduction

The Energy Community Treaty and the environment

The Energy Community is an international organisation which brings together the European Union and its neighbours to create an integrated pan-European energy market. The organisation was founded by the Treaty establishing the Energy Community signed in October 2005 in Athens, Greece, which has been in force since July 2006 (the ECT).¹ The key objective of the Energy Community is to extend the EU's internal energy market rules and principles to countries in southeast Europe, the Black Sea region and beyond², on the basis of a legally binding framework. The parties committed themselves to implement the relevant EU law (*acquis communautaire*), to develop an adequate regulatory framework and to liberalise their energy markets in line with the *acquis* under the Treaty.

The task of the Energy Community is *inter alia* to organise the relations between the Parties and create a legal and economic framework in relation to *network energy*³ **in order to improve the environmental situation in relation to network energy and related energy efficiency, foster the use of renewable energy**, and set out the conditions for energy trade in the single regulatory space.⁴

The *acquis communautaire* on environment⁵ which each Contracting Party is obliged to implement is:

- Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment as amended by Directive 2014/52/EU⁶;
- Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels and Commission Implementing Decision (EU) 2015/253 of 16 February 2015 laying down the rules concerning the sampling and reporting under Council Directive 1999/32/EC as regards the sulphur content of marine fuels⁷;

¹ [Treaty Establishing the Energy Community](#), October 2005.

² The Contracting Parties are: Albania, Bosnia and Herzegovina, Kosovo, North Macedonia, Georgia, Moldova, Montenegro, Serbia and Ukraine. Armenia, Norway and Turkey take part as Observers.

³ 'Network energy' includes the electricity and gas sectors falling within the scope of the European Community Directives 2003/54/EC and 2003/55/EC and supply, trade, processing and transmission of crude oil and petroleum products falling within the scope of the Directive 2006/67/EC and the related pipelines, storage, refineries and import/export facilities.

⁴ Article 2(1) (d) of the ECT.

⁵ Article 16 of the ECT.

⁶ Amended by the Ministerial Council Decision 2016/12/MC-EnC of 14 October 2016 on amending the Treaty establishing the Energy Community and adapting and implementing Directive (EU) 2016/802 of the European Parliament and of the Council and Commission Implementing Decision (EU) 2015/253.

⁷ Amended by the Ministerial Council Decision 2016/15/MC-EnC of 14 October 2016 on amending the Treaty establishing the Energy Community and adapting and implementing Directive (EU) 2016/802 of the European Parliament and of the Council and Commission Implementing Decision (EU) 2015/253.

- Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants⁸;
- Article 4(2) of Directive 79/409/EEC of the Council of 2 April 1979 on the conservation of wild birds⁹;
- Chapter III, Annex V, and Article 72(3)-(4) of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control)¹⁰;
- Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, as amended by Directive 2006/21/EC, Directive 2009/31/EC and Directive 2013/30/EU¹¹;
- Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.¹²

The above acquis apply only to *network energy*.^{13 14}

Impact of energy infrastructure on ecosystems and freshwater

According to the European Commission's Evaluation Study to support the Fitness Check of the Birds and Habitats Directives¹⁵ in the EU, the energy policy areas that raise the greatest concern with respect to the risks posed to nature and biodiversity, as well as interaction with the Nature Directives, are the Trans-European Networks for energy, renewable energy policy (particularly the use of biofuels and the development of wind farms), the extraction of unconventional hydrocarbons such as shale gas and the extraction of coal. Power lines can pose a particular risk for birds and bats.

Fossil-fuel extraction and processing use water in many ways and there are many ways in which it can become contaminated with a wide variety of pollutants, from sediment to synthetic chemicals. Natural gas

⁸ Amended by the Ministerial Council Decision 2013/05/MC-EnC of 24 October 2013 on the implementation of Directive 2001/80/EC of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants and Decision 2015/07/MC-EnC on amending 2013/05/MC on implementation of Directive 2001/80/EC on limitation of certain emissions.

⁹ According to Article 16(iv) of the Treaty, the *acquis communautaire* on environment includes Article 4(2) of Directive 79/409/EEC. The wording of the provision is the same as of Art 4(2) of Directive 2009/147/EC.

¹⁰ Amended by the Ministerial Council Decision 2013/06/MC-EnC of 24 October 2013 on the implementation of Chapter III Annex V, and Article 72(3)-(4) of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) and amending Article 16 and Annex II of the Energy Community Treaty.

¹¹ Amended by the Ministerial Council Decision 2016/14/MC-EnC of 14 October 2016 on amending the Treaty establishing the Energy Community and adapting and implementing Directive 2004/35/EC of the European Parliament and of the Council.

¹² Amended by the Ministerial Council Decision 2016/13/MC-EnC of 14 October 2016 on amending the Treaty establishing the Energy Community and adapting and implementing Directive 2001/42/EC of the European Parliament and of the Council.

¹³ Article 17 of the ECT.

¹⁴ 'Network energy' includes the electricity and gas sectors falling within the scope of the European Community Directives 2003/54/EC and 2003/55/EC and the oil sector.

¹⁵ Milieu, IEEP and ICF, [Evaluation Study to support the Fitness Check of the Birds and Habitats Directives](#), March 2016.

production degrades water quality primarily at the extraction stage, though processing and combustion also affect water quality to lesser degrees as well. Water is used throughout coal production, from extraction to processing, and occasionally for transportation.

Mining uses water primarily for mineral processing, dust suppression and slurry transport. The main impact of mining on water is: water level drops in and around the mines, mining pollution driving water scarcity, and coal ash and slurry leaching into groundwater and rivers.

Water is used by thermoelectric generating facilities (coal, natural gas and nuclear) to make electricity through converting the water into high-pressure steam to drive turbines. In coal plants, water is also used to clean and process the fuel itself.

Coal causes water pollution, including negative health and environmental effects from acid mine drainage; acid rain; and contamination of groundwater, streams, rivers, and seas from heavy metals, mercury, and other toxins and pollutants found in coal ash, coal sludge, and coal waste. Coal plants can also generate thermal pollution, as water not cooled to tolerable temperatures when released back into streams and rivers can kill fish populations or encourage excessive algal growth.

Freshwater ecosystems are affected in a variety of ways by the direct impacts of fossil-fuel extraction and mining outlined earlier. These ecosystem impacts fall into four basic categories: impacts related to climate change, physical impacts, chemical impacts, and biological impacts. Impacts include direct changes, such as increased temperature and carbon dioxide concentrations and habitat loss, and increased internal nutrient loadings and decreased oxygen concentrations.¹⁶

Nuclear power plants are often built next to rivers, lakes or oceans to utilise the bodies of water. The water is drawn from these sources and heated to create steam to power the turbine. It then condenses and can be reused in the power generation process. However, it is eventually pumped back into the body of water it originated from, albeit at very high temperatures. This can increase the temperature of the natural water source by up to 30 degrees, posing risks to aquatic life. Moreover, fish and other wildlife get caught in the cooling system water intake structures. While this is an issue for all power plants with water-cooled systems, a study completed in 2005 in Southern California indicates that the problem is more acute for nuclear facilities. The study investigated impacts from 11 coastal power plants and estimated that in 2003, a single nuclear plant killed close to 3.5 million fish – 32 times more than the combined impact of all of the other plants in the study.¹⁷

The potential impact of **wind farms** on birds, bats and large carnivores is likely to fall into a number of categories: collision fatalities, disturbance and displacement, barrier effect, habitat loss and degradation. Moreover, wind farms that are placed on or near certain rare and fragile habitat types such as blanket bogs

¹⁶ See more: The World's Water Volume 7, [The Biennial Report on Freshwater Resources, Chapter Four: Fossil Fuels and Water Quality](#) (Lucy Allen, Michael J. Cohen, David Abelson, and Bart Miller); Greenpeace International, [Coal impacts on water; Water consumption from coal plants, Global Energy Monitor](#).

¹⁷ See more: [Nuclear power and its water consumption secrets](#), The Monarch Partnership, Kate Green, 30 January 2019; [How it Works: Water for Nuclear](#), Union of Concerned Scientists, Published 5 Oct 2010, updated 15 Jul 2013.

or raised mires, wetlands, sand dunes and shallow sand banks can potentially cause the loss or deterioration of these habitats.¹⁸

The range of effects a **hydropower** facility can have on species and habitats as well as on rivers and freshwaters varies from one site to another. The effects can occur at any stage of the life cycle of a hydropower installation, from its initial construction to its renovation, decommissioning or day-to-day operation and management and may relate to: changes in river morphology and riverine habitats; barriers to migration and dispersal of protected species; disruption of sediment dynamics; changes to the ecological flow regime; changes in seasonal flood cycles; water chemical and temperature changes; injuries and killing of individual animals; displacement and disturbance to species; and loss, degradation or fragmentation of terrestrial species and habitats. The barrier effect is especially severe when there is more than one obstacle on a river stretch. Even with very small structures or physical barriers, rivers can rapidly become impassable.¹⁹

There is a lack of data to analyse the possible effects of **solar farms** on biodiversity. However, potential impacts of onshore solar farms may relate to habitat loss and degradation, fragmentation, disturbance and displacement, collision, singeing, altered microclimate, increased use of herbicides and attraction of aquatic invertebrates to highly polarised reflected light.²⁰

The potential effects of **energy transmission** facility projects on biodiversity are dependent on the design and location of the specific energy infrastructure and on the sensitivity of the protected habitats and species. The most frequent types of impacts that can occur are: habitat loss, degradation or fragmentation, disturbance and displacement, collision and electrocution risk, and barrier effects.

The potential negative impacts of electricity infrastructure on wild birds include: electrocution, collision, habitat loss and fragmentation, disturbance and displacement, and electromagnetic fields. Cumulative effects of projects may arise when several pieces of energy infrastructure are present within an area or along a bird flyway, or when an energy infrastructure project takes place in the same area as another type of plan or project (e.g. other industrial developments).²¹

¹⁸ See more: [Wind energy developments and Natura 2000](#), Guidance document, December 2013; Science for Environment Policy, [Wind & Solar Energy and nature conservation](#). Future Brief 9 produced for the European Commission DG Environment. Bristol: Science Communication Unit, 2015.

¹⁹ See more: [Guidance document on the requirements for hydropower in relation to EU Nature legislation](#), European Commission, 2018.

²⁰ See more: Lammerant, L., Laureysens, I. and Driesen, K, [Potential impacts of solar, geothermal and ocean energy on habitats and species protected under the Birds and Habitats Directives](#). Final report under EC Contract ENV.D.3/SER/2017/0002 Project: 'Reviewing and mitigating the impacts of renewable energy developments on habitats and species protected under the Birds and Habitats Directives,' Arcadis Belgium, Institute for European Environmental Policy, BirdLife International, NIRAS, Stella Consulting, Ecosystems Ltd, Brussels, September 2020; [Future Brief: Wind & solar energy and nature conservation](#), European Commission, December 2014.

²¹ See more: [Guidance on Energy Transmission Infrastructure and EU nature legislation](#), European Commission, 2018.

Inadequacy of the current Energy Community acquis in preventing harm to biodiversity and water bodies from energy infrastructure

The Energy Community environmental acquis, when properly applied, can make a useful contribution to assessing and preventing or mitigating the likely impacts of energy infrastructure on biodiversity and water bodies. However, without the explicit protection of specific habitats and species, and without a general prohibition on causing deterioration in the status of water bodies, the current Energy Community acquis is insufficient – just as the Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA) Directives would not afford adequate protection for biodiversity and water quality within the EU without the additional binding provisions from the Water Framework Directive and Birds and Habitats Directives.

Two cases illustrate this point. The Ćehotina River Valley in Montenegro is a nominated candidate Emerald site (ME0000001).²² It is also the recipient of wastewater from the Pljevlja coal power plant and mine. Without binding provisions to require Montenegro to prioritise improving the status of this water body and to protect the valley as an Emerald site, the pollution is likely to continue for years to come.

Similarly, the upper part of the Neretva River in Bosnia and Herzegovina is also a nominated candidate Emerald site (BA0000002).²³ At the same time, eight hydropower plants are planned there, and the entity-level authorities have de facto prioritised energy generation over biodiversity protection by issuing environmental permits for several of the plants. While this could have been prevented by better application of the EIA Directive, the existing Energy Community acquis does not clearly require the Contracting Parties to prioritise biodiversity protection and improving or maintaining water bodies' status over the construction of new energy infrastructure. In the EU, the Habitats and Water Framework Directives include a clear requirement to prioritise nature and water protection except in a very narrowly-defined set of circumstances.

This is even more serious considering the impacts of climate change in the Energy Community region. If impacts of an energy project on a water body are not properly assessed using updated hydrological data, the region's increasingly fluctuating rainfall may exacerbate the impacts on biodiversity and water status even further than expected. Unfortunately, recent experience shows that highly outdated data is often used, providing a very poor guide to likely impacts.

Connected international legislation and EU policies on environment

Some of the Contracting Parties to the ECT are in **the process of joining the EU**. Albania, the Republic of North Macedonia, Montenegro and Serbia are candidate countries. Bosnia and Herzegovina and Kosovo are potential candidates and have signed Stabilisation and Association Agreements. The principle of the

²² '[Updated list of officially nominated candidate Emerald sites \(December 2019\)](#)', Convention on the Conservation of European Wildlife and Natural Habitats, Standing Committee, 39th Meeting, Strasbourg, 3-6 December 2019.

²³ Ibid.

negotiations is that countries have to fully transpose and implement the EU's legislation by the time of accession, including Chapter 27 on the environment. The negotiation processes are at different stages in each country; however, all of the Western Balkan countries have transposed the Water Framework Directive²⁴, Habitats Directive²⁵ and Birds Directive²⁶, at least to a certain extent.²⁷

Georgia²⁸, Moldova²⁹ and Ukraine³⁰ signed **association agreements with the EU** in 2014. These entered into force in July 2016 (Georgia and Moldova)^{31,32} and September 2017 (Ukraine).³³ According to the Agreements, these Contracting Parties to the ECT should develop environmental legislation that more closely aligns with European legislation. Several Water Framework Directive principles have been partly adopted in Georgian, Moldovan and Ukrainian legislation: the polluter-pays principle; the precautionary principle; the principle of sustainable water use, which addresses the needs of present and future generations to use and protect water resources; and the principle of the economic value of water³⁴. According to the Association Agreements, the consultation and publication of river basin management

²⁴ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.

²⁵ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

²⁶ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds.

²⁷ Albania: [Transposition of the Water Framework Directive in Albania: Gaps and path forward](#), Law Journal, Arta Alla, January 2019; [Instrument for Pre-accession Assistance \(IPA II\) 2014-2020, Albania, Support to Water Management](#), European Commission, 2016; [Albania Environmental Performance Reviews](#), United Nations, New York and Geneva, 2018; [Albania 2020 Report](#), European Commission, Brussels, 6.10.2020 SWD(2020) 354 final.

Bosnia and Herzegovina: [Bosnia and Herzegovina Environmental Performance Reviews](#), United Nations, New York and Geneva, 2018;

[Bosnia and Herzegovina 2020 Report](#), European Commission, Brussels, 6.10.2020 SWD(2020) 350 final.

Kosovo: [Kosovo 2020 Report](#), European Commission, Brussels, 6.10.2020 SWD(2020) 356 final.

Montenegro: [The National Strategy with Action Plan for transposition, implementation and enforcement of the EU acquis on Environment and Climate Change 2016-2020](#), Ministry of Sustainable Development and Tourism, Podgorica, July 2016; [Montenegro Environmental Performance Reviews](#), United Nations, New York and Geneva, 2015; [Montenegro 2020 Report](#), European Commission, Brussels, 6.10.2020, SWD(2020) 353 final.

North Macedonia: [North Macedonia Environmental Performance Reviews](#), United Nations, Geneva, 2019; [North Macedonia 2020 Report](#), European Commission, Brussels, 6.10.2020 SWD(2020) 351 final.

Serbia: [Chapter 27 in Serbia: money talks](#), Shadow Report on Chapter 27 Environment and Climate Change, March 2018 – February 2019, Coalition 27; [Serbia 2020 Report](#), European Commission, Brussels, 6.10.2020 SWD(2020) 352 final; [Transposition and implementation of environmental and climate change acquis – chapter 27: status and plans](#), Belgrade, September 2015; [Serbia Environmental Performance Reviews](#), United Nations, New York and Geneva, 2015.

²⁸ European Commission, [Association agreement between the European Union, the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part](#), *Official Journal of the European Union* L, 260, 001–740, 30 August 2014.

²⁹ European Commission, [Association agreement between the European Union, the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part](#), *Official Journal of the European Union* L, 260, 001–740, 2014.

³⁰ European Commission, [Association agreement between the European Union, the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part](#), *Official Journal of the European Union* L, 161(3), 0001–2132, 2014.

³¹ [Georgia and the EU](#), European Union External Action Service, 2018.

³² [Full entry into force of the Association Agreement between the European Union and the Republic of Moldova](#), Press release, European Commission, 1 July 2016.

³³ [EU Relations with Ukraine](#), European Council and Council of the European Union, accessed 22 December 2020.

³⁴ Vystavna Yuliya, M. Cherkashyna and M. van der Valk, [Water laws of Georgia, Moldova and Ukraine: current problems and integration with EU legislation](#), 2018.

plans should be implemented within ten years of the entry into force of these agreements, while other provisions must be implemented earlier. An EU-funded project is assisting the countries to implement the Water Framework Directive, including selected River Basin Management Plans.³⁵

Some provisions of the Habitats Directive are also part of the Association Agreements. In line with Article 4 of the Directive, completion of the inventory of Emerald sites, designation of these sites and establishing priorities for their management should be done within four years of the entry into force of the agreements for Georgia and Ukraine and five years for Moldova. In line with Article 6, establishment of measures required for the protection of such sites should be implemented within four years for Ukraine and five years for Georgia and Moldova.

The European Commission has launched **the Green Deal**³⁶, in which it commits to achieving zero net emissions of greenhouse gases by 2050 and to stopping biodiversity loss. The Green Deal aims, on the one hand, to ensure a clean energy supply, and on the other, to increase the level of protection for and restoration of natural ecosystems. While these goals may mutually reinforce each other, there are potential contradictions between climate and environmental objectives where the development of renewables constitutes a threat for biodiversity and rivers.

The EU's immediate neighbours are included in these Green Deal plans within *inter alia* a **green agenda for the Western Balkans**. In November 2020, leaders from the Western Balkans signed the Sofia Declaration on the Green Agenda for the Western Balkans.³⁷ The contracting parties have committed *inter alia* to implement the EU Water Framework Directive; to work on defining a post-2020 biodiversity framework and developing a long-term strategy for halting biodiversity loss, protection and restoration of ecosystems and abundant biological diversity (including preparation of nature protection and restoration plans); and to develop programmes and undertake the necessary actions to increase administrative capacities for the implementation of the Green Agenda for the Western Balkans to monitor, promote and enforce compliance with environmental obligations and ensure effective mechanisms for public participation, access to information, access to justice in environmental matters and environmental reporting.

The European Commission has also adopted a new **EU Biodiversity Strategy for 2030**³⁸ a plan to tackle the degradation of nature. The Strategy contains specific commitments and actions to be delivered by 2030, including establishing a larger EU-wide network of protected areas on land and at sea, building upon the existing Natura 2000 areas, with strict protection for areas of very high biodiversity and climate value. The strategy also aims to restore freshwater ecosystems and the natural functions of rivers by removing or

³⁵ [The European Union Water Initiative Plus](#), International Office of Water, accessed 25 January 2021.

³⁶ [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Green Deal](#), European Commission, COM/2019/640 final, 11 December 2019.

³⁷ [Sofia Declaration on the Green Agenda for the Western Balkans](#), 10 November 2020.

³⁸ [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU Biodiversity Strategy for 2030: Bringing nature back into our lives](#), COM/2020/380 final, 20 May 2020.

adjusting barriers that prevent the passage of migrating fish and improving the flow of water and sediments. At least 25,000 kilometres of rivers will be restored as free-flowing rivers by 2030 through the removal of primarily obsolete barriers and the restoration of floodplains and wetlands. The EU will also support the Western Balkans and EU Neighbourhood countries in their efforts to protect biodiversity. In the Guidelines for the Implementation of the Green Agenda for the Western Balkans,³⁹ in addition to knowledge-sharing, the European Commission proposes a number of financial instruments to implement the Green Agenda for the Western Balkans.

The Contracting Parties to the Energy Community Treaty have adopted renewable energy targets, and at the same time, the EU allows Member States to **outsource their renewables targets** to third countries. To achieve their renewable targets, EU Member States may liaise through various cooperation mechanisms with third countries. In return for a compensation payment, they can set off renewably sourced energy from third countries against their own national renewables target. Taking into consideration that EU neighbouring countries have weaker environmental and water protection laws, this may lead to the transfer of the environmental costs of renewable energy production to countries outside the EU.

Moreover, the Southeast European Parties (Albania, Bosnia and Herzegovina, North Macedonia, Kosovo, Montenegro and Serbia) to **the Transport Community Treaty**⁴⁰ are obliged to implement the relevant environmental acquis with regard to transport. *Inter alia* this includes the Habitats Directive – if a project is likely to affect sites of nature conservation importance⁴¹, an appropriate nature conservation assessment shall be made, equivalent to that provided for in Article 6 of the Directive – and the Water Framework Directive – all transport projects on navigation falling under the scope of this Treaty should be developed and implemented in line with Article 4(7) of the Directive.

Similarly, all the Parties to **the Danube River Protection Convention**⁴² (including Bosnia and Herzegovina, Moldova, Montenegro, Serbia and Ukraine) have obliged themselves to implement all transboundary aspects of the EU Water Framework Directive. Moreover, the non-EU Parties also committed themselves to implement the Water Framework Directive within the framework of the Danube

³⁹ [Guidelines for the Implementation of the Green Agenda for the Western Balkans](#), European Commission, Brussels, SWD(2020) 223 final, 6 October 2020.

⁴⁰ [Treaty establishing the Transport Community](#), *Official Journal of the European Union*, L 278, 27 October 2017.

⁴¹ A site of nature conservation importance is not defined in the Treaty. However, for the purpose of the former Instrument for Structural Policies for Pre-Accession (ISPA) a site of nature conservation importance (potential future Natura 2000 site) in a candidate country was a site falling under one or more of the following categories: (a) sites, which have been identified by the competent national authorities as sites to be proposed for the Natura 2000 network as laid down in the Birds Directive (79/409/EEC) and Habitats Directive (92/43/EEC);

(b) sites listed in the latest inventory of Important Bird Areas (IBA 2000) for candidate countries or (if available) equivalent more detailed scientific inventories endorsed by national authorities;

(c) wetlands of international importance designated under the Ramsar Convention or qualifying for such protection;

(d) areas to which the Bern convention on the conservation of European Wildlife and Natural Habitats (Art. 4) applies, in particular sites meeting the criteria of the Emerald Network.

The author has not located a more up-to-date definition for use under the IPA funds.

⁴² [Convention on Cooperation for the Protection and Sustainable use of the Danube River \(Danube River Protection Convention\)](#), International Commission for the Protection of the Danube River, 29 June 1994.

River Protection Convention. Countries such as Albania and North Macedonia, which encompass a very small part of the catchment, cooperate with the International Commission for the Protection of the Danube River (ICPDR) (and in particular with neighbouring countries – in this case with Serbia) under the EU Water Framework Directive.

All the Contracting Parties except Kosovo have ratified **the Bern Convention**.⁴³ In the European Union, the Bern Convention was implemented by the Birds Directive and the Habitats Directive. However, the Directives have stronger enforcement mechanisms than the Convention. The Court of Justice of the European Union has the ultimate authority to determine the correct interpretation of the obligations in the Directives, while the interpretive documents under the Bern Convention are the decisions (Recommendations, Resolutions) adopted by the Standing Committee, which are not themselves legally binding. Natura 2000 sites are considered to be the EU Member States' contribution to the Bern Convention's Pan-European Emerald Network. The two networks are fully compatible and use the same methodology and information tools. Whereas Natura 2000 applies to EU Member States, Emerald applies to the rest of Europe.⁴⁴

Scope of legal analysis

As explained above, the current ECT *acquis communautaire* on environment **does not adequately protect biodiversity and freshwater against the negative impacts of construction, operation and expansion of energy infrastructure** and **does not correspond with other international legislation and European Union policies on environmental protection**. Thus, incorporation of the following EU Directives into the Energy Community Treaty should be considered:

- Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (**Birds Directive**),⁴⁵ beyond Article 4(2), which has already been adopted,
- Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (**Habitats Directive**),
- Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (**Water Framework Directive (WFD)**).

⁴³ [Convention on the Conservation of European Wildlife and Natural Habitats](#), Council of Europe, ETS No. 104, 19 September 1979.

⁴⁴ [The Natura 2000 protected areas network](#), European Environment Agency, 23 November 2020.

⁴⁵ [Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds](#), *Official Journal of the European Union*, last updated 26 June 2019.

The Birds Directive

Summary of the Birds Directive

The Birds Directive aims to protect all of the 500 wild bird species naturally occurring in the European Union. Habitat loss and degradation are the most serious threats to the conservation of wild birds. The Directive therefore places great emphasis on the protection of habitats for endangered and migratory species. It establishes a network of Special Protection Areas (SPAs) including all the most suitable territories for these species. Since 1994, all SPAs have been included in the Natura 2000 ecological network, set up under the Habitats Directive 92/43/EEC.

The 500 wild bird species naturally occurring in the European Union are protected in various ways:

- Annex 1: 194 species and subspecies are particularly threatened. Member States must designate Special Protection Areas (SPAs) for their survival and for the survival of all migratory bird species.
- Annex 2: 82 bird species can be hunted. However, the hunting periods are limited and hunting is forbidden when birds are at their most vulnerable: during their return migration to nesting areas, reproduction and the raising of their chicks.
- Annex 3: Overall, activities that directly threaten birds, such as their deliberate killing, capture or trade, or the destruction of their nests, are banned. With certain restrictions, Member States can allow some of these activities for 26 species listed in the Directive.
- Annex 4: The Directive provides for the sustainable management of hunting, but Member States must outlaw all forms of non-selective and large-scale killing of birds, especially the methods listed in this annex.
- Annex 5: The Directive promotes research to underpin the protection, management and use of all species of birds covered by the Directive, which are listed in this annex.⁴⁶

Article 1 of the Birds Directive defines **the scope** of the Directive, which is the conservation of all species of naturally occurring birds (as well as their eggs, nests and habitat) in their wild state in the European territory of the Member States.

Article 2 provides the overarching **obligation to maintain the population of wild bird species**. Article 3 requires Member States to preserve, maintain and re-establish sufficient diversity and area of habitats for all wild birds, including the **creation of protected areas**.

Article 4(1) sets out **special conservation measures concerning the habitats of species mentioned in Annex I**, in order to ensure their survival and reproduction in their area of distribution – in particular Member States shall classify the most suitable territories in number and size as Special Protection Areas (**SPAs**) for the conservation of these species.

⁴⁶ [The Birds Directive](#), European Commission, accessed 25 January 2021.

Article 4(2) obliges Member States to take similar measures for regularly occurring **migratory species not listed in Annex I**, bearing in mind their need for protection, as regards their breeding, moulting and wintering areas and staging posts along their migration routes. Article 4(3) of the Birds Directive requires Member States to **report** back to the European Commission on the establishment of SPAs and Article 4(4) establishes a **protection system for SPAs** to avoid pollution or deterioration of habitats or any disturbances affecting the birds. Outside the SPAs, Member States must also strive to avoid pollution or deterioration of habitats.

Articles 5 to 9 refer to protection from activities such as **deliberate destruction, selling and hunting**. Articles 10 to 20 provide **overarching and closing provisions**, including reporting to the Commission.

The Birds Directive and energy infrastructure

Energy infrastructure, and in particular the **construction of power plants (including hydropower, wind and solar) and transmission lines**, may have significant negative impacts on species and habitats of naturally occurring birds in their wild state. This is confirmed by the fact that Article 4(2) of the Birds Directive is included in the *acquis communautaire* on environment under the Energy Community Treaty.

Article 4(2)

Member States shall take similar measures for regularly occurring migratory species not listed in Annex I, bearing in mind their need for protection in the geographical sea and land area where this Directive applies, as regards their breeding, moulting and wintering areas and staging posts along their migration routes. To this end, Member States shall pay particular attention to the protection of wetlands and particularly to wetlands of international importance.

Article 4(2) relates to **migratory species** only. There seems to be no substantial reason why the ECT does not protect the species **listed in Annex I as defined in Article 4(1)**, in the areas already protected under national and international law, i.e. why the ECT does not require Contracting Parties to implement Article 4(1), which refers to particularly threatened species, especially, as Article 4(2) refers to ‘similar measures’ as those listed in Article 4(1).

Article 4(1)

The species mentioned in Annex I shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution.

In this connection, account shall be taken of:

- (a) species in danger of extinction;*
- (b) species vulnerable to specific changes in their habitat;*
- (c) species considered rare because of small populations or restricted local distribution;*
- (d) other species requiring particular attention for reasons of the specific nature of their habitat.*

Trends and variations in population levels shall be taken into account as a background for evaluations.

Member States shall classify in particular the most suitable territories in number and size as special protection areas for the conservation of these species in the geographical sea and land area where this Directive applies.

Moreover, the Energy Community Annual Implementation Report of November 2020⁴⁷ shows that the development of **projects related to network energy – with particular regard to hydropower projects – is a major problem with regard to the implementation⁴⁸ of nature protection legislation:**

Albania

A detailed study on the revision of the protected areas network in Albania was completed in December 2019, but not yet approved by the Government. The study provides proposals for new revised boundaries and reliable coverage of the existing protected areas network. In February 2020, a study on the protected area Vjosë-Nartë, an area where a number of hydropower projects are planned (including the Poçem project, which is subject to dispute settlement procedures), has been prepared, but not adopted yet. A dialogue with civil society to address the concerns about the risk of reduction of the proposed Vjosë-Nartë protected area due to the planned hydropower projects has to be conducted. Finally, nature protection considerations have to be properly taken into account in environmental assessment procedures.⁴⁹

Bosnia and Herzegovina

Legislation that will impose effective measures against the deliberate killing or hunting of wild birds, deliberate destruction or damaging of nests and eggs and/or removal of their nests is still not in place in Federation of Bosnia and Herzegovina. In Republika Srpska, serious efforts must be made for improving the assessment of energy projects that might have significant impacts on protected areas.⁵⁰

Georgia

With regard to nature protection, the draft Law on Biodiversity is in its final development stage, with the provisions related to the protection and preservation of wild birds being one of the most essential elements of the draft. The draft law initiates a new approach of “protected and strictly protected species”, meaning that two different lists of species will be adopted, based on the Birds and the Habitats Directives. The submission of the draft law to the Government is planned by the end of 2020. Furthermore, Special Protection Areas for Birds (SPAs) are established. At this stage, there are a total of 24 SPA sites in Georgia. The database of SPA sites, together with an interactive map, is publicly available and actively used in environmental impact assessments.⁵¹

⁴⁷ [Annual Implementation Report 2020](#), Energy Community Secretariat, 1 November 2020.

⁴⁸ The Contracting Party was obliged to implement Article 4(2) of the Birds Directive on the entry into force of the Energy Community Treaty, i.e. by 1 July 2006, with exemption of Moldova which shall implement it by 31 December 2010, Ukraine – by 1st January 2015 and Georgia – by 1 September 2019.

⁴⁹ Annual Implementation Report 2020, Energy Community Secretariat, 1 November 2020, p. 34.

⁵⁰ Ibid., p. 55.

⁵¹ Ibid., p. 74.

Kosovo

Kosovo is neither a signatory to the Ramsar Convention on Wetlands of International Importance, nor to the Bern Convention on European Wildlife and Natural Habitats. New secondary legislation on the designation of protected areas and natural reserves (strictly protected areas) is being prepared and expected to be adopted by the end of 2020. The national Red Book of Fauna was also published during this reporting period. The Red Book should contribute to planning and successful implementation of activities for the conservation of rare and endangered species and to the assessment of energy-related infrastructure projects that might have an impact on the identified species.⁵²

Moldova

As regards the protection of wild birds, Moldova currently has three sites designated as Wetlands of International Importance (Ramsar sites). Furthermore, 61 sites are officially adopted as Emerald sites under the Bern Convention, with nine new sites being included in December 2019. Ensuring the proper functioning of the Emerald Network by introducing and implementing measures against prohibited means and methods of killing, capture and other forms of exploitation of protected species (by e.g. closed seasons or temporary or local prohibition of exploitation) would be beneficial for the future Natura 2000 classification process. The draft law amending and supplementing the Law on Wildlife, which is to transpose Article 4(2) of the Wild Birds Directive, is still not adopted.⁵³

Montenegro

With regard to the protection of wild birds, Montenegro should improve the administrative capacity and allocate adequate financial support in order to assess the possible impacts early in the planning process and secure proper and effective protection, to be safeguarded by the competent authority. For the recently designated National park “Ulcinj Salina”, a category II protected area, a temporary management body was set up, operative protective measures are however yet to be established. Work continued on the designation of other future Natura 2000 sites during the latest reporting period.⁵⁴

North Macedonia

Two new protected areas are in the last stage of being designated as special protected areas – the National park “Shar planina” and Protected Landscape “Osogovo”. The National park “Shar planina” will extend the nature protection of the Šar Mountains (already designated as a national park in Kosovo) to Macedonian territory. A joint management action plan should be prepared by both Contracting Parties in order to secure proper and effective measures in line with the Wild Birds Directive. A designation file for the international protection of Lake Ohrid under the Ramsar Convention is also prepared. Ensuring proper protection of the Emerald Network and enforcement of the Law on nature protection is still a challenge. The Bern Convention

⁵² Annual Implementation Report 2020, p. 94.

⁵³ Ibid., p. 115.

⁵⁴ Ibid., p. 134.

of European Wildlife and Natural Habitats announced that due to the large number of complaints in North Macedonia, it will conduct an expert mission to the country in the upcoming year to assess the protection of the Emerald sites and potential conflicts with proposed and planned energy and other infrastructure projects.⁵⁵

Serbia

Management plans and management entities with sufficient capacity to secure enforcement of effective measures against the use of prohibited means and methods of killing, capture and other forms of exploitation of protected species are still lacking. Serious efforts should be made for proper protection and management of the nature park “Stara Planina”, a biodiversity hotspot which is also a category I protected area. Administrative capacities must be improved and adequate financial support must be allocated (on national and local level) in order to properly assess the impact of planned hydropower projects early in the decision-making process. Dialogue with the local communities and the civil society sector has to be ensured whenever conflict between planned energy projects (with particular regard to fore-seen hydropower projects) and nature protection goals emerges.⁵⁶

Ukraine

A number of complaints have been registered under the Bern Convention on the Conservation of European Wildlife and Natural Habitats concerning the impacts of energy projects on protected Emerald sites. Concerns about presumed threats were raised about wind farm development projects in the Polonina Borzhava, Zatoky and Cholhynskiyi sites, while the Holosiyin National Park, Sviati Hory, Iziumska Luka Regional Landscape Park, Ukrainskiyi Stepovyi Nature Reserve and Riznykivskiyi are concerned by hydrocarbons extraction or gas stations. Dialogue with the local communities and the civil society sector has to be ensured when conflict between planned energy projects and nature protection goals emerges.⁵⁷

Recommendations

Since the *acquis communautaire* on environment under the Energy Community Treaty apply only to network energy, countries should primarily implement the provisions that are related to the potential impact of energy infrastructure.

Thus, the recommendation is to incorporate **Article 2, Article 3, Article 4(1) and Article 4(4), Article 5,**⁵⁸ **Article 13 and Article 14**, beside Article 4(2) that is already binding, into the ECT. If Article 2 and Article 3

⁵⁵ Annual Implementation Report 2020, p. 155.

⁵⁶ Ibid., p. 175.

⁵⁷ Ibid., p. 195.

⁵⁸ On the basis of the approach taken by the Court in cases C-103/00 and C-221/04, the following definition could be proposed: ‘Deliberate’ actions are to be understood as actions by a person who knows, in light of the relevant legislation that applies to the species involved, and the general information delivered to the public, that his action will most likely lead to an offence against a species, but intends this offence or, if not, consciously accepts the foreseeable results of his action. In other words, not only a person who fully intends to capture or kill a specimen of an animal commits an offence: an offence is also committed by a person who might not intend to capture or kill a specimen but is sufficiently informed and aware of the consequences his action will most likely have and nevertheless performs the action, leading to the capturing or killing of specimens (e.g. as an unwanted but accepted side-

are considered too broad and too general in scope or not relevant because they do not refer directly to the potential impact of *network energy* on bird species and habitats, the **implementation of Article 4(1) and (4) and Article 13 should be considered as a minimum to protect endangered bird species.**

As mentioned above, Article 4(1) should be applied to areas already protected under national and international law. Moreover, as mentioned above, all the Contracting Parties except Kosovo have ratified the Bern Convention. Recommendation No. 16 (1989) of the Standing Committee to the Bern Convention defines Areas of Special Conservation Interest (ASCI), which are areas of a great ecological value for both the threatened and endemic species listed in the Appendices of the Bern Convention and for the endangered habitat types which are to be identified by the Standing Committee as ‘requiring specific conservation measures’. The ASCIs create the Emerald Network of the Bern Convention.

Setting up the Emerald Network at the national level is considered one of the main tools for the Contracting Parties to comply with their obligations under the Bern Convention. Natura 2000 sites are considered EU Member States’ contribution to the Bern Convention’s Pan-European Emerald Network. The two networks are fully compatible and use the same methodology and information tools.

In addition, the Contracting Parties have their own legally protected areas, which may or may not be part of the Emerald Network.

Consequently, areas classified or protected under national or international legislation or Natura 2000 areas designated by Contracting Parties, including Emerald sites and candidate Emerald sites, should be considered as Special Protection Areas under the Birds Directive. Contracting Parties would not be obliged to designate additional SPAs and thus, incorporating the above-mentioned provisions into the ECT should not pose an additional burden for the Contracting Parties, beyond their existing obligations.

The Contracting Parties are already obliged by Article 4(2) to implement conservation measures similar to those mentioned in Article 4(1), such as the designation of Special Protection Areas for the conservation of these species. Theoretically, protecting species other than migratory species requires the **designation of additional SPAs**, but in practice, as can be seen in the implementation report, the Contracting Parties implement (to a certain extent) the whole Directive, including provisions on hunting and other measures.

The timeframe for the implementation of the above provisions should be compatible with the implementation of the relevant provisions of Habitats Directive. Both the Directives should be

effect), with reckless disregard of the known prohibitions (conditional intent). In the network energy sector, failure to abide by environmental permitting conditions, e.g. prohibiting works during breeding periods, would be a clear example of this. It goes without saying that negligence is not included in the meaning of ‘deliberate’. The European Commission’s own Guidance document points out that: In Case C-103/00, the Court referred to the element of ‘intent’, observing that: ‘the use of mopeds on the breeding beaches was prohibited and notices indicating the presence of turtle nests on the beaches had been erected. As regards the sea area around Gerakas and Dafni, it had been classified as an absolute protection area and special notices had been erected there.’ Despite the information available to the public on the need to protect these areas, the persons on the beach committed the infringements. This constituted a failure of enforcement. Thus, the Court ‘seems to interpret the term “deliberate” in the sense of conscious acceptance of consequences’. The term ‘deliberate’ has to be interpreted as going beyond ‘direct intention’. A person who is reasonably expected to know that his action will most likely lead to an offence against a species, but intends the offence or, if not, at least accepts the results of his action, commits an offence. ([Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC](#), para 31-34). Taking into consideration the above, the term ‘deliberate’ may refer also to the development of energy infrastructure if a person ‘reasonably expected to know that his action will most likely lead to an offence against a species, but intends the offence or, if not, at least accepts the results of his action, commits an offence’.

implemented not later than within two years from the adoption of the Ministerial Council Decision on the amending of the Energy Community Treaty, with the exception of provisions for which specific deadlines are stipulated.

The term ‘Member States’ shall be replaced by ‘Contracting Parties’.

Article 16(iv) of the Energy Community Treaty shall refer to the new version of the Birds Directive, i.e. Directive 2009/147/EC.

The provisions of the Birds Directive proposed to be incorporated into the ECT, taking into consideration that according to Article 17 of the ECT the environmental *acquis* applies only to *network energy*, are:

Article 2

~~Member States~~ **Contracting Parties** shall take the requisite measures to maintain the population of the species referred to in Article 1 at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level.

Article 3

1. In the light of the requirements referred to in Article 2, ~~Member States~~ **Contracting Parties** shall take the requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats for all the species of birds referred to in Article 1.

2. The preservation, maintenance and re-establishment of biotopes and habitats shall include primarily the following measures:

- (a) creation of protected areas;
- (b) upkeep and management in accordance with the ecological needs of habitats inside and outside the protected zones;
- (c) re-establishment of destroyed biotopes;
- (d) creation of biotopes.

Article 4(1)

The species mentioned in Annex I shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution.

In this connection, account shall be taken of:

- (a) species in danger of extinction;
- (b) species vulnerable to specific changes in their habitat;
- (c) species considered rare because of small populations or restricted local distribution;
- (d) other species requiring particular attention for reasons of the specific nature of their habitat.

Trends and variations in population levels shall be taken into account as a background for evaluations.

~~Member States~~ **Contracting Parties** shall classify in particular the most suitable territories in number and size as special protection areas for the conservation of these species in the geographical sea and land area where this Directive applies.

Article 4(4)

In respect of the protection areas referred to in paragraphs 1 and 2, ~~Member States~~ **Contracting Parties** shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. Outside these protection areas, ~~Member States~~ **Contracting Parties** shall also strive to avoid pollution or deterioration of habitats.

Article 5

Without prejudice to Articles 7 and 9, ~~Member States~~ **Contracting Parties** shall take the requisite measures to establish a general system of protection for all species of birds referred to in Article 1, prohibiting in particular:

- (a) deliberate killing or capture by any method;
- (b) deliberate destruction of, or damage to, their nests and eggs or removal of their nests;
- (c) taking their eggs in the wild and keeping these eggs even if empty;
- (d) deliberate disturbance of these birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of this Directive;
- (e) keeping birds of species the hunting and capture of which is prohibited.

Article 13

Application of the measures taken pursuant to this Directive may not lead to deterioration in the present situation as regards the conservation of the species of birds referred to in Article 1.

Article 14

~~Member States~~ **Contracting Parties** may introduce stricter protective measures than those provided for under this Directive.

The Habitats Directive

Summary of the Habitats Directive

The Habitats Directive ensures the conservation of a wide range of rare, threatened or endemic animal and plant species. Some 200 rare and characteristic habitat types are also targeted for conservation in their own right. The Directive aims to promote the maintenance of biodiversity, taking into account economic, social, cultural and regional requirements. It forms the cornerstone of Europe's nature conservation policy with the Birds Directive and establishes the EU-wide Natura 2000 ecological network of protected areas, which are safeguarded against potentially damaging developments.

Over 1,000 animal and plant species, as well as 200 habitat types, listed in the Directive's annexes are protected in various ways:

- Annex II species (about 900): core areas of their habitat are designated as Sites of Community Importance (SCIs) and included in the Natura 2000 network. These sites must be managed in accordance with the ecological needs of the species.
- Annex IV species (over 400, including many Annex II species): a strict protection regime must be applied across their entire natural range within the EU, both within and outside Natura 2000 sites.
- Annex V species (over 90): Member States must ensure that exploitation of these species and taking them in the wild is compatible with maintaining a favourable conservation status.⁵⁹

Article 1 of the Habitats Directive provides **definitions** and Article 2 lays out the **aim**, which is to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora.

Articles 3 to 11 refer to conservation of natural habitats and habitats of species. Article 3 refers to the creation of the **Natura 2000** network. Articles 4 and 5 refer to priority natural habitat types and priority species, Sites of Community Importance (**SCIs**) and Special Areas of Conservation (**SACs**).

Article 6 sets out the framework for site conservation and protection, and includes proactive, preventive and procedural requirements.

Article 6(1) makes provisions for the **establishment of the necessary conservation measures**, and is focused on positive and proactive interventions; Article 6(2) stipulates preventive provisions for **avoidance of habitat deterioration and significant species disturbance**; Article 6(3) requires **appropriate assessment** (AA) for plans and projects likely to have a significant effect on a Natura 2000 site; and 6(4) refers to situation when, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for **imperative reasons of overriding public interest**.

Article 7 refers to **Special Protection Areas** of the Birds Directive. Article 8 relates to financing necessary for conservation measures. Article 9 refers to the review of Natura 2000 sites. Article 10 covers land-use

⁵⁹ [The Habitats Directive](#), European Commission, accessed 15 January 2020.

planning and development policies. Article 11 imposes an obligation of **surveillance** of the conservation status of natural habitats. Articles 12 to 16 refer to protection of species from activities such as: **deliberate destruction, selling and hunting**. Articles 17 to 20 provide provisions on **reporting and research, as well as closing provisions**.

The Habitats Directive and energy infrastructure

Ecosystems including protected species and habitats might be negatively impacted by all kinds of energy infrastructure (including renewable energy and transmission infrastructure). Article 4(2) of the Birds Directive, protecting migratory birds, is already included into the *acquis communautaire* on environment of the Energy Community Treaty, but the provisions of the Habitats Directive protecting other species and habitats are not.

Article 6 is a key provision of the Habitats Directive, as it sets out the framework for site conservation and protection, and includes proactive, preventive and procedural requirements. Article 6(2) requires Member States to take appropriate steps to **avoid deterioration of natural habitats and the habitats of species and disturbance of the species**, including when such outcomes derive from energy infrastructure and its development.

Article 6(3) obliges Member States to provide an appropriate assessment for any plan or project (including energy plans or projects) likely to have a significant effect on Natura 2000 sites – the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned.

Article 6(4) provides a derogation which would allow a plan or project to be approved, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions when a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature.

Article 6(1) applies to Special Areas of Conservation which are to protect one or more special habitats and/or species listed in Annex I and Annex II. Article 6(2) applies to Special Protection Areas of the Birds Directive, Sites of Community Importance (SCIs) and Special Areas of Conservation. Article 6(3) and (4) applies to SPAs, SCIs and SACs.

Article 6

1. For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.

2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have

been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.

Recommendations

Since the *acquis communautaire* on environment apply only to *network energy*, Contracting Parties should primarily implement the provisions that are related to potential impact of energy infrastructure.

Thus, the recommendation is to incorporate into the ECT **an adapted version of Article 6(2), Articles 6(3) and (4), Article 12(1) and (3), Article 13⁶⁰, Article 16**, and if the relevant articles of the Birds Directive are incorporated into the ECT, also **Article 7** of the Habitats Directive.

The Contracting Parties are already obliged by Article 4(2) of the Birds Directive to implement conservation measures such as the designation of Special Protection Areas for the conservation of migratory bird species. Moreover, some of the Contracting Parties have already implemented the Habitats Directive to a certain extent.

Additionally, all the Contracting Parties except Kosovo have ratified the Bern Convention. As mentioned in the Birds Directive section, Areas of Special Conservation Interest and the Emerald Network under the Bern

⁶⁰ See footnote to Article 5 of the Birds Directive on the term 'deliberate'. It should also be noted that Article 12(1)(d) refers to the 'deterioration or destruction of breeding sites or resting places', even if not deliberate (ECJ C-6/04).

Convention are equivalent to the Special Areas of Conservation (SACs) and the Natura 2000 network. The two networks are fully compatible and use the same methodology and information tools.

In addition, the Contracting Parties have their own legally protected areas, which may or may not be part of the Emerald Network. Consequently, areas classified or protected under national or international legislation or Natura 2000 areas designated by Contracting Parties, including Emerald sites and candidate Emerald sites, should be considered Special Areas of Conservation under the Habitats Directive within the ECT. Contracting Parties would not be obliged to designate additional SACs and thus, incorporating the above-mentioned provisions into the ECT should not pose an additional burden for the Contracting Parties, compared to their existing obligations.

The timeframe for the implementation of Habitats Directive should be not later than within two years from the adoption of the Ministerial Council Decision on the amending of the Energy Community Treaty, with the exception of provisions for which specific deadlines are stipulated.

The term 'Member States' shall be replaced by 'Contracting Parties'.

The provisions of the Habitats Directive proposed for incorporation into the ECT are:

Article 6

2. ~~Member States~~ **Contracting Parties** shall take appropriate steps to avoid, in ~~the special areas of conservation~~ **areas classified or protected under national or international legislation or designated Natura 2000 sites**, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the ~~Member States~~ **Contracting Parties** shall take all compensatory measures necessary to ensure that the overall coherence of ~~Natura 2000~~ **the network of sites under paragraph 2** is protected. It shall inform the ~~Commission~~ **Secretariat** of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial

consequences of primary importance for the environment or, further to an opinion from the ~~Commission Secretariat~~, to other imperative reasons of overriding public interest.

Article 7

Obligations arising under Article 6 (2), (3) and (4) of this Directive shall replace any obligations arising under the first sentence of Article 4 (4) of Directive 79/409/EEC in respect of areas classified pursuant to Article 4 (1) or similarly recognized under Article 4 (2) thereof, as from the date of implementation of this Directive or the date of classification or recognition by a ~~Member State~~ **Contracting Party** under Directive 79/409/EEC, where the latter date is later.

Article 12

1. ~~Member States~~ **Contracting Parties** shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV (a) in their natural range, prohibiting:

- (a) all forms of deliberate capture or killing of specimens of these species in the wild;
- (b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration;
- (c) deliberate destruction or taking of eggs from the wild;
- (d) deterioration or destruction of breeding sites or resting places.

3. The prohibition referred to in paragraph 1 (a) and (b) and paragraph 2 shall apply to all stages of life of the animals to which this Article applies.

Article 13

1. ~~Member States~~ **Contracting Parties** shall take the requisite measures to establish a system of strict protection for the plant species listed in Annex IV (b), prohibiting:

- (a) the deliberate picking, collecting, cutting, uprooting or destruction of such plants in their natural range in the wild;
- (b) the keeping, transport and sale or exchange and offering for sale or exchange of specimens of such species taken in the wild, except for those taken legally before this Directive is implemented.

2. The prohibitions referred to in paragraph 1 (a) and (b) shall apply to all stages of the biological cycle of the plants to which this Article applies.

Article 16

1. Provided that there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range, ~~Member States~~ **Contracting Parties** may derogate from the provisions of Articles 12 **and** 13, ~~14 and 15 (a) and (b)~~:

- (a) in the interest of protecting wild fauna and flora and conserving natural habitats;
- (b) to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other

types of property;

(c) in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment;

(d) for the purpose of research and education, of repopulating and re-introducing these species and for the breedings operations necessary for these purposes, including the artificial propagation of plants;

(e) to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species listed in Annex IV in limited numbers specified by the competent national authorities.

2. ~~Member States~~ **Contracting Parties** shall forward to the ~~Commission~~ **Secretariat** every two years a report in accordance with the format established by the Committee on the derogations applied under paragraph 1. The ~~Commission~~ **Secretariat** shall give its opinion on these derogations within a maximum time limit of 12 months following receipt of the report ~~and shall give an account to the Committee.~~

3. The reports shall specify:

(a) the species which are subject to the derogations and the reason for the derogation, including the nature of the risk, with, if appropriate, a reference to alternatives rejected and scientific data used;

(b) the means, devices or methods authorized for the capture or killing of animal species and the reasons for their use;

(c) the circumstances of when and where such derogations are granted;

(d) the authority empowered to declare and check that the required conditions obtain and to decide what means, devices or methods may be used, within what limits and by what agencies, and which persons are to carry out the task;

(e) the supervisory measures used and the results obtained.

Water Framework Directive

Summary of the Water Framework Directive

The purpose of the Water Framework Directive is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which:

- a) prevents further deterioration and protects and enhances the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystems;
- b) promotes sustainable water use based on a long-term protection of available water resources;
- c) aims at enhanced protection and improvement of the aquatic environment, *inter alia*, through specific measures for the progressive reduction of discharges, emissions and losses of priority substances and the cessation or phasing-out of discharges, emissions and losses of the priority hazardous substances;
- d) ensures the progressive reduction of pollution of groundwater and prevents its further pollution, and
- e) contributes to mitigating the effects of floods and droughts.

The Water Framework Directive contributes to: the provision of the sufficient supply of good quality surface water and groundwater as needed for sustainable, balanced and equitable water use, a significant reduction in pollution of groundwater, the protection of territorial and marine waters and achieving the objectives of relevant international agreements.⁶¹

Article 1 of the Water Framework Directive describes the **purpose** of the Directive. Article 2 provides **definitions**. Article 3 refers to coordination of administrative arrangements within river basin districts. Article 4 sets the **environmental objectives and provides derogations from those obligations to achieve compliance with those** objectives. Article 5 refers to characteristics of the river basin district, review of the environmental impact of human activity and economic analysis of water use. Article 6 obliges Member States to establish registers of protected areas. Article 7 refers to waters used for the abstraction of **drinking water**. Article 8 refers to **monitoring** of surface water status, groundwater status and protected areas. Article 9 refers to recovery of costs for water services. Article 10 obliges Member States to control **discharges** into surface waters. Article 11 obliges Member States to establish a **programme of measures** in order to achieve the environmental objectives. Article 12 refers to issues which cannot be dealt with at the Member State level. Article 13 obliges Member States to develop river basin management plans (RBMs). Article 14 refers to **public information and consultation**. Article 15 refers to reporting. Articles 16 to 17 refer to strategies to **prevent pollution**. Articles 17 to 26 are overarching and closing provisions.

⁶¹ Article 1 of the Water Framework Directive.

The Water Framework Directive and energy infrastructure

Water is highly negatively impacted by energy generation. Fossil fuel-based and especially coal-fired energy generation is particularly water intensive, as is nuclear power. The main impacts on water from coal processing are: water level drops, mining pollution driving water scarcity, and coal ash and slurry leaching into groundwater.

Hydropower facilities, even small ones, impact ecosystems of rivers with a whole range of effects: changes in river morphology and riverine habitats; barriers to migration and dispersal of protected species; disruption of sediment dynamics; changes of the ecological flow regime; changes in seasonal flood cycles; water chemical and temperature changes; injuries to and the killing of individual animals; displacement and disturbance to species; and the loss, degradation or fragmentation of terrestrial species and habitats.

The Water Framework Directive requires Member States — unless an exemption under Article 4(7) is granted — to refuse authorisation for an individual project where it may cause deterioration of a water body or failure to achieve good status or potential.⁶² Thus, provisions under Article 4(7) are crucial for any energy project's development.

According to Article 4(7) of the Water Framework Directive, exemptions can be approved by the authorities for **new modifications** and **sustainable human development activities** that result in the deterioration of the status of the water body or that prevent the achievement of good ecological status or potential or good groundwater status if all the following conditions are met together: **all practicable steps are taken to mitigate the adverse impact**; the **reasons** for those modifications or alterations **are set out and explained in the river basin management plan**; the reasons for those modifications or alterations are of **overriding public interest**; and the beneficial objectives served by those modifications or alterations **cannot** for reasons of technical feasibility or disproportionate cost **be achieved by other means**.

Article 4(7)

Member States will not be in breach of this Directive when:

- failure to achieve good groundwater status, good ecological status or, where relevant, good ecological potential or to prevent deterioration in the status of a body of surface water or groundwater is the result of new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater, or
- failure to prevent deterioration from high status to good status of a body of surface water is the result of new sustainable human development activities

and all the following conditions are met:

- (a) all practicable steps are taken to mitigate the adverse impact on the status of the body of water;

⁶² See C-461/13, Bund für Umwelt und Naturschutz Deutschland e.V. v Bundesrepublik Deutschland.

- (b) the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 and the objectives are reviewed every six years;
- (c) the reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development, and
- (d) the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means, which are a significantly better environmental option.

Recommendations

Since the *acquis communautaire* on environment under the Energy Community Treaty apply only to *network energy*, Contracting Parties should primarily implement the provisions that are related to the potential impact of energy infrastructure.

Any new developments⁶³ in a river or river basin have to be assessed, to conclude whether they: cause deterioration of the status (or potential) of a surface or groundwater body, or prevent the achievement of good groundwater status or good ecological status/potential for water bodies currently failing to achieve this status/potential. Therefore, **Article 3, Article 4** (except paragraph 4 which refers to the extension of the timeframe for implementation), **Article 5, Article 6, Article 8(1) and (2), Article 9, Article 11, Article 13** and **Article 14** should be incorporated into the ECT. The key provision for energy infrastructure development and operation is Article 4(7) of the Directive, but it cannot be considered separately from the provisions on river basin management plans (RBMPs). Article 14 on public participation is crucial to ensure proper implementation of the above provisions.⁶⁴

The key objective of the Water Framework Directive is to achieve good status for all water bodies. The key tools for the implementation of the WFD are the RBMPs and the accompanying programmes of measures (PoM). EU Member States had nine years to finalise their RBMPs including PoMs, 12 years to make operational programmes of measures and 15 to meet the environmental objectives (including non-deterioration of water status and the achievement of good status) when the first management cycle ended and second RBMP was to be revised. The second management cycle ends and the third RBMP will be

⁶³ This includes new modifications to the physical characteristics of a surface water body, alterations to the level of groundwater, and new sustainable human development activities.

⁶⁴ Article 14 requires Member States to encourage the active involvement of all interested parties in the implementation of the Water Framework Directive and to ensure consultation of the river basin management plans. It derives from Article 14(1) that environmental organisations have the right to participate, as a party to the procedure, in both administrative and judicial procedures related to the implementation of the Directive, e.g. environmental NGOs must be able to legally contest a decision granting a permit for a project, which does not comply with the obligation to prevent the deterioration of the status of bodies of water, as set out in Article 4 of the Water Framework Directive (See C-664/15, Protect).

revised in 2021, the third management cycle ends and the fourth RBMP will be revised in 2027, the fourth management cycle ends and the fifth RBMP will be revised in 2033, and so on, every six years thereafter.

The river management cycle of the Contracting Parties should be harmonised with the EU cycle, especially because most of the Contracting Parties are in the EU accession process. Thus, the first RBMPs could be published in 2027 or in 2033, which would mean shortening the timeline compared to the EU or providing an extension of 5 years, respectively. Most of the Contracting Parties have implemented the provisions of the Water Framework Directive to a certain extent.⁶⁵ Serbia, for example, set the deadline for publishing the first RBMPs and programmes of measures by 2012 and Bosnia and Herzegovina transposed the Water Framework Directive in 2006 and RBMPs for 2016-2021 were published in 2018.

Moreover, the EU provides a Common Implementation Strategy (CIS) for the Water Framework Directive including guidance documents intended to provide an overall methodological approach and technical reports that have been produced to assist stakeholders to implement the WFD. In order to promote greater information exchange and to facilitate the work in the numerous expert groups, the Commission set up an internet-based platform called CIRCABC. It is used to create collaborative workspaces where communities of users can work together and share information and resources. The EU experience in the implementation of the Water Framework Directive may considerably enhance the process in the Contracting Parties.

Taking the above into consideration, it seems reasonable that the Contracting Parties fit into the EU's third management cycle, i.e. programmes of measures should be established by the end of 2027 at the latest and all the measures shall be made operational at the latest by 2030; river basin management plans shall be published at the latest by the end of 2027, and good water status should be achieved at the latest 15 years after the date of entry into force of the Decision on the implementation of the Water Framework Directive.

The timeframe for the general implementation of the Water Framework Directive should be no later than within two years of the adoption of the Ministerial Council Decision on the amending the Energy Community Treaty, with the exception of the other provisions for which specific deadlines are stipulated.

The term 'Member States' shall be replaced by 'Contracting Parties'.

The provisions of the Water Framework Directive proposed to be incorporated into the ECT are:

Article 3

1. ~~Member States~~ **Contracting Parties** shall identify the individual river basins lying within their national territory and, for the purposes of this Directive, shall assign them to individual river basin districts. Small river basins may be combined with larger river basins or joined with neighbouring small basins to form individual river basin districts where appropriate. Where groundwaters do not fully follow a particular river basin, they shall be identified and assigned to the nearest or most appropriate river basin district. Coastal waters shall be identified and assigned to the nearest or most appropriate river basin district or districts.

⁶⁵ For extracts from the European Commission's annual Enlargement Reports for the countries regarding the Water Framework Directive, see Annex 1.

2. ~~Member States~~ **Contracting Parties** shall ensure the appropriate administrative arrangements, including the identification of the appropriate competent authority, for the application of the rules of this Directive within each river basin district lying within their territory.

3. ~~Member States~~ **Contracting Parties** shall ensure that a river basin covering the territory of more than one ~~Member State~~ **Contracting Party** is assigned to an international river basin district. ~~At the request of the Member States involved, the Commission shall act to facilitate the assigning to such international river basin districts.~~

Each ~~Member State~~ **Contracting Party** shall ensure the appropriate administrative arrangements, including the identification of the appropriate competent authority, for the application of the rules of this Directive within the portion of any international river basin district lying within its territory.

4. ~~Member States~~ **Contracting Parties** shall ensure that the requirements of this Directive for the achievement of the environmental objectives established under Article 4, and in particular all programmes of measures are coordinated for the whole of the river basin district. For international river basin districts the ~~Member States~~ **Contracting Parties** concerned shall together ensure this coordination and may, for this purpose, use existing structures stemming from international agreements. ~~At the request of the Member States involved, the Commission shall act to facilitate the establishment of the programmes of measures.~~

5. Where a river basin district extends beyond the territory of the **Energy** Community, the ~~Member State~~ **Contracting Party** or ~~Member States~~ **Contracting Parties** concerned shall endeavour to establish appropriate coordination with the relevant non-**Contracting Party** States, with the aim of achieving the objectives of this Directive throughout the river basin district. ~~Member States~~ **Contracting Parties** shall ensure the application of the rules of this Directive within their territory.

6. ~~Member States~~ **Contracting Parties** may identify an existing national or international body as competent authority for the purposes of this Directive.

7. ~~Member States~~ **Contracting Parties** shall identify the competent authority ~~by the date mentioned in Article 24~~ at the latest three years after the date of entry into force of this ~~Directive~~ **Decision**.

8. ~~Member States~~ **Contracting Parties** shall provide the ~~Commission~~ **Secretariat** with a list of their competent authorities and of the competent authorities of all the international bodies in which they participate at the latest six months after the date mentioned in ~~Article 24~~ **paragraph 7**. For each competent authority the information set out in Annex I shall be provided.

9. Member States shall inform the Commission of any changes to the information provided according to paragraph 8 within three months of the change coming into effect.

Article 4

1. In making operational the programmes of measures specified in the river basin management plans:

(a) for surface waters

- (i) ~~Member States~~ **Contracting Parties** shall implement the necessary measures to prevent deterioration of the status of all bodies of surface water, subject to the application of paragraphs 6 and 7 and without prejudice to paragraph 8;
- (ii) ~~Member States~~ **Contracting Parties** shall protect, enhance and restore all bodies of surface water, subject to the application of subparagraph (iii) for artificial and heavily modified bodies of water, with the aim of achieving good surface water status at the latest 15 years⁶⁶ after the date of entry into force of this ~~Directive~~ **Decision**, in accordance with the provisions laid down in Annex V, subject to the application of ~~extensions determined in accordance with paragraph 4 and to the application of~~ paragraphs 5, 6 and 7 without prejudice to paragraph 8;
- (iii) ~~Member States~~ **Contracting Parties** shall protect and enhance all artificial and heavily modified bodies of water, with the aim of achieving good ecological potential and good surface water chemical status at the latest 15 years after the date of entry into force of this ~~Directive~~ **Decision**, in accordance with the provisions laid down in Annex V, subject to the application of ~~extensions determined in accordance with paragraph 4 and to the application of~~ paragraphs 5, 6 and 7 without prejudice to paragraph 8;
- (iv) ~~Member States~~ **Contracting Parties** shall implement the necessary measures in accordance with Article 16(1) and (8), with the aim of progressively reducing pollution from priority substances and ceasing or phasing out emissions, discharges and losses of priority hazardous substances without prejudice to the relevant international agreements referred to in Article 1 for the parties concerned;

(b) for groundwater

- (i) ~~Member States~~ **Contracting Parties** shall implement the measures necessary to prevent or limit the input of pollutants into groundwater and to prevent the deterioration of the status of all bodies of groundwater, subject to the application of paragraphs 6 and 7 and without prejudice to paragraph 8 of this Article and subject to the application of Article 11(3)(j);
- (ii) ~~Member States~~ **Contracting Parties** shall protect, enhance and restore all bodies of groundwater, ensure a balance between abstraction and recharge of groundwater, with the aim of achieving good groundwater status at the latest 15 years after the date of entry into force of this ~~Directive~~ **Decision**; in accordance with the provisions laid down in Annex V, subject to the application of ~~extensions determined in accordance with paragraph 4 and to the application of~~ paragraphs 5, 6 and 7 without prejudice to paragraph 8 of this Article and

⁶⁶ This may need adjusting in line with the River Basin Management Plan cycles.

subject to the application of Article 11(3)(j);

- (iii) ~~Member States~~ **Contracting Parties** shall implement the measures necessary to reverse any significant and sustained upward trend in the concentration of any pollutant resulting from the impact of human activity in order progressively to reduce pollution of groundwater.

Measures to achieve trend reversal shall be implemented in accordance with paragraphs 2, 4 and 5 of Article 17, taking into account the applicable standards set out in relevant Community legislation, subject to the application of paragraphs 6 and 7 and without prejudice to paragraph 8;

(c) for protected areas

Member States shall achieve compliance with any standards and objectives at the latest 15 years after the date of entry into force of this ~~Directive~~ **Decision**, unless otherwise specified in the **Energy** Community legislation under which the individual protected areas have been established.

~~As regards Mayotte as an outermost region within the meaning of Article 349 of the Treaty on the Functioning of the European Union (hereinafter 'Mayotte'), the time limit referred to in points (a)(ii), (a)(iii), (b)(ii) and (c) shall be 22 December 2021.~~

2. Where more than one of the objectives under paragraph 1 relates to a given body of water, the most stringent shall apply.

3. ~~Member States~~ **Contracting Parties** may designate a body of surface water as artificial or heavily modified, when:

(a) the changes to the hydromorphological characteristics of that body which would be necessary for achieving good ecological status would have significant adverse effects on:

- (i) the wider environment;
- (ii) navigation, including port facilities, or recreation;
- (iii) activities for the purposes of which water is stored, such as drinking-water supply, power generation or irrigation;
- (iv) water regulation, flood protection, land drainage, or
- (v) other equally important sustainable human development activities;

(b) the beneficial objectives served by the artificial or modified characteristics of the water body cannot, for reasons of technical feasibility or disproportionate costs, reasonably be achieved by other means, which are a significantly better environmental option.

Such designation and the reasons for it shall be specifically mentioned in the river basin management plans required under Article 13 and reviewed every six years.

5. ~~Member States~~ **Contracting Parties** may aim to achieve less stringent environmental objectives than those required under paragraph 1 for specific bodies of water when they are so affected by human activity, as determined in accordance with Article 5(1), or their natural condition is such that the achievement of these objectives would be infeasible or disproportionately expensive, and all the following conditions are met:

- (a) the environmental and socioeconomic needs served by such human activity cannot be achieved by other means, which are a significantly better environmental option not entailing disproportionate costs;
- (b) ~~Member States~~ **Contracting Parties** ensure,
 - for surface water, the highest ecological and chemical status possible is achieved, given impacts that could not reasonably have been avoided due to the nature of the human activity or pollution,
 - for groundwater, the least possible changes to good groundwater status, given impacts that could not reasonably have been avoided due to the nature of the human activity or pollution;
- (c) no further deterioration occurs in the status of the affected body of water;
- (d) the establishment of less stringent environmental objectives, and the reasons for it, are specifically mentioned in the river basin management plan required under Article 13 and those objectives are reviewed every six years.

6. Temporary deterioration in the status of bodies of water shall not be in breach of the requirements of this Directive if this is the result of circumstances of natural cause or force majeure which are exceptional or could not reasonably have been foreseen, in particular extreme floods and prolonged droughts, or the result of circumstances due to accidents which could not reasonably have been foreseen, when all of the following conditions have been met:

- (a) all practicable steps are taken to prevent further deterioration in status and in order not to compromise the achievement of the objectives of this Directive in other bodies of water not affected by those circumstances;
- (b) the conditions under which circumstances that are exceptional or that could not reasonably have been foreseen may be declared, including the adoption of the appropriate indicators, are stated in the river basin management plan;
- (c) the measures to be taken under such exceptional circumstances are included in the programme of measures and will not compromise the recovery of the quality of the body of water once the circumstances are over;
- (d) the effects of the circumstances that are exceptional or that could not reasonably have been foreseen are reviewed annually and, subject to the reasons set out in paragraph 4(a), all practicable measures are taken with the aim of restoring the body of water to its status prior to the effects of those circumstances as soon as reasonably practicable, and

(e) a summary of the effects of the circumstances and of such measures taken or to be taken in accordance with paragraphs (a) and (d) are included in the next update of the river basin management plan.

7. ~~Member States~~ **Contracting Parties** will not be in breach of this Directive when:

- failure to achieve good groundwater status, good ecological status or, where relevant, good ecological potential or to prevent deterioration in the status of a body of surface water or groundwater is the result of new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater, or
- failure to prevent deterioration from high status to good status of a body of surface water is the result of new sustainable human development activities

and all the following conditions are met:

- (a) all practicable steps are taken to mitigate the adverse impact on the status of the body of water;
- (b) the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 and the objectives are reviewed every six years;
- (c) the reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development, and
- (d) the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means, which are a significantly better environmental option.

8. When applying paragraphs 3, 4, 5, 6 and 7, a ~~Member State~~ **Contracting Party** shall ensure that the application does not permanently exclude or compromise the achievement of the objectives of this Directive in other bodies of water within the same river basin district and is consistent with the implementation of other Community environmental legislation.

9. Steps must be taken to ensure that the application of the new provisions, including the application of paragraphs 3, 4, 5, 6 and 7, guarantees at least the same level of protection as the existing **Energy-Community** legislation.

Article 5

1. Each Member State **Contracting Party** shall ensure that for each river basin district or for the portion of an international river basin district falling within its territory:

- an analysis of its characteristics,
- a review of the impact of human activity on the status of surface waters and on groundwater, and

— an economic analysis of water use

is undertaken according to the technical specifications set out in Annexes II and III and that it is completed at the latest four years after the date of entry into force of this Directive.

2. The analyses and reviews mentioned under paragraph 1 shall be reviewed, and if necessary updated at the latest at the latest **by the end of 2025** ~~13 years after the date of entry into force of this Directive~~ and every six years thereafter.

Article 6

1. ~~Member States~~ **Contracting Parties** shall ensure the establishment of a register or registers of all areas lying within each river basin district which have been designated as requiring special protection under specific **Energy** Community legislation for the protection of their surface water and groundwater or for the conservation of habitats and species directly depending on water. They shall ensure that the register is completed at the latest four years after the date of entry into force of this ~~Directive~~ **Decision**.

2. The register or registers shall include all bodies of water identified under Article 7(1) and all protected areas covered by Annex IV.

3. For each river basin district, the register or registers of protected areas shall be kept under review and up to date.

Article 8

1. ~~Member States~~ **Contracting Parties** shall ensure the establishment of programmes for the monitoring of water status in order to establish a coherent and comprehensive overview of water status within each river basin district:

— for surface waters such programmes shall cover:

(i) the volume and level or rate of flow to the extent relevant for ecological and chemical status and ecological potential, and

(ii) the ecological and chemical status and ecological potential;

— for groundwaters such programmes shall cover monitoring of the chemical and quantitative status,

— for protected areas the above programmes shall be supplemented by those specifications contained in **Energy** Community legislation ~~under which the individual protected areas have been established~~.

2. These programmes shall be operational at the latest ~~X~~⁶⁷ years after the date of entry into force of this Directive ~~Decision~~ unless otherwise specified in the legislation concerned ~~or in bilateral agreements with the EU~~. Such monitoring shall be in accordance with the requirements of Annex V.

Article 9

1. ~~Member States~~ **Contracting Parties** shall take account of the principle of recovery of the costs of water services, including environmental and resource costs, having regard to the economic analysis conducted according to Annex III, and in accordance in particular with the polluter pays principle.

~~Member States~~ **Contracting Parties** shall ensure ~~by 2010~~ **at the latest 10 years after the date of entry into force of this Decision**.

- that water-pricing policies provide adequate incentives for users to use water resources efficiently, and thereby contribute to the environmental objectives of this Directive,
- an adequate contribution of the different water uses, disaggregated into at least industry, households and agriculture, to the recovery of the costs of water services, based on the economic analysis conducted according to Annex III and taking account of the polluter pays principle.

~~Member States~~ **Contracting Parties** may in so doing have regard to the social, environmental and economic effects of the recovery as well as the geographic and climatic conditions of the region or regions affected.

2. ~~Member States~~ **Contracting Parties** shall report in the river basin management plans on the planned steps towards implementing paragraph 1 which will contribute to achieving the environmental objectives of this Directive and on the contribution made by the various water uses to the recovery of the costs of water services.

3. Nothing in this Article shall prevent the funding of particular preventive or remedial measures in order to achieve the objectives of this Directive.

4. Member States shall not be in breach of this Directive if they decide in accordance with established practices not to apply the provisions of paragraph 1, second sentence, and for that purpose the relevant provisions of paragraph 2, for a given water-use activity, where this does not compromise the purposes and the achievement of the objectives of this Directive. ~~Member States~~ **Contracting Parties** shall report the reasons for not fully applying paragraph 1, second sentence, in the river basin management plans.

Article 11

1. Each ~~Member State~~ **Contracting Party** shall ensure the establishment for each river basin district, or for the part of an international river basin district within its territory, of a programme of measures, taking account

⁶⁷ The EU Directive allows six years to set up these programmes. If the Energy Community countries are to draw up RBMPs by 2027, however, this deadline would need to be shortened. Considering that many of the countries have relevant Water Framework Directive obligations already, we see this as feasible.

of the results of the analyses required under Article 5, in order to achieve the objectives established under Article 4. Such programmes of measures may make reference to measures following from legislation adopted at national level and covering the whole of the territory of a ~~Member State~~ **Contracting Party**. Where appropriate, a ~~Member State~~ **Contracting Party** may adopt measures applicable to all river basin districts and/or the portions of international river basin districts falling within its territory.

2. Each programme of measures shall include the 'basic' measures specified in paragraph 3 and, where necessary, 'supplementary' measures.

3. 'Basic measures' are the minimum requirements to be complied with and shall consist of:

- (a) those measures required to implement Community legislation for the protection of water, including measures required under the legislation specified in Article 10 and in part A of Annex VI;
- (b) measures deemed appropriate for the purposes of Article 9;
- (c) measures to promote an efficient and sustainable water use in order to avoid compromising the achievement of the objectives specified in Article 4;
- (d) measures to meet the requirements of Article 7, including measures to safeguard water quality in order to reduce the level of purification treatment required for the production of drinking water;
- (e) controls over the abstraction of fresh surface water and groundwater, and impoundment of fresh surface water, including a register or registers of water abstractions and a requirement of prior authorisation for abstraction and impoundment. These controls shall be periodically reviewed and, where necessary, updated. ~~Member States~~ **Contracting Parties** can exempt from these controls, abstractions or impoundments which have no significant impact on water status;
- (f) controls, including a requirement for prior authorisation of artificial recharge or augmentation of groundwater bodies. The water used may be derived from any surface water or groundwater, provided that the use of the source does not compromise the achievement of the environmental objectives established for the source or the recharged or augmented body of groundwater. These controls shall be periodically reviewed and, where necessary, updated;
- (g) for point source discharges liable to cause pollution, a requirement for prior regulation, such as a prohibition on the entry of pollutants into water, or for prior authorisation, or registration based on general binding rules, laying down emission controls for the pollutants concerned, including controls in accordance with Articles 10 and 16. These controls shall be periodically reviewed and, where necessary, updated;
- (h) for diffuse sources liable to cause pollution, measures to prevent or control the input of pollutants. Controls may take the form of a requirement for prior regulation, such as a prohibition on the entry of pollutants into water, prior authorisation or registration based on general binding rules where such a requirement is not otherwise provided for under Community legislation. These controls

shall be periodically reviewed and, where necessary, updated;

(i) for any other significant adverse impacts on the status of water identified under Article 5 and Annex II, in particular measures to ensure that the hydromorphological conditions of the bodies of water are consistent with the achievement of the required ecological status or good ecological potential for bodies of water designated as artificial or heavily modified. Controls for this purpose may take the form of a requirement for prior authorisation or registration based on general binding rules where such a requirement is not otherwise provided for under Community legislation. Such controls shall be periodically reviewed and, where necessary, updated;

*(j) a prohibition of direct discharges of pollutants into groundwater subject to the following provisions: ~~Member States~~ **Contracting Parties** may authorise reinjection into the same aquifer of water used for geothermal purposes.*

They may also authorise, specifying the conditions for:

- injection of water containing substances resulting from the operations for exploration and extraction of hydrocarbons or mining activities, and injection of water for technical reasons, into geological formations from which hydrocarbons or other substances have been extracted or into geological formations which for natural reasons are permanently unsuitable for other purposes. Such injections shall not contain substances other than those resulting from the above operations,*
- reinjection of pumped groundwater from mines and quarries or associated with the construction or maintenance of civil engineering works,*
- injection of natural gas or liquefied petroleum gas (LPG) for storage purposes into geological formations which for natural reasons are permanently unsuitable for other purposes,*
- injection of carbon dioxide streams for storage purposes into geological formations which for natural reasons are permanently unsuitable for other purposes, provided that such injection is made in accordance with Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide or excluded from the scope of that Directive pursuant to its Article 2(2),*
- injection of natural gas or liquefied petroleum gas (LPG) for storage purposes into other geological formations where there is an overriding need for security of gas supply, and where the injection is such as to prevent any present or future danger of deterioration in the quality of any receiving groundwater,*
- construction, civil engineering and building works and similar activities on, or in the ground which come into contact with groundwater. For these purposes, ~~Member States~~ **Contracting Parties** may determine that such activities are to be treated as having been authorised provided that they are conducted in accordance with general binding rules developed by the ~~Member State~~ **Contracting Party** in respect of such activities,*

— discharges of small quantities of substances for scientific purposes for characterisation, protection or remediation of water bodies limited to the amount strictly necessary for the purposes concerned provided such discharges do not compromise the achievement of the environmental objectives established for that body of groundwater;

(k) in accordance with action taken pursuant to Article 16, measures to eliminate pollution of surface waters by those substances specified in the list of priority substances agreed pursuant to Article 16(2) and to progressively reduce pollution by other substances which would otherwise prevent ~~Member States~~ **Contracting Parties** from achieving the objectives for the bodies of surface waters as set out in Article 4;

(l) any measures required to prevent significant losses of pollutants from technical installations, and to prevent and/or to reduce the impact of accidental pollution incidents for example as a result of floods, including through systems to detect or give warning of such events including, in the case of accidents which could not reasonably have been foreseen, all appropriate measures to reduce the risk to aquatic ecosystems.

4. ‘Supplementary’ measures are those measures designed and implemented in addition to the basic measures, with the aim of achieving the objectives established pursuant to Article 4. Part B of Annex VI contains a non-exclusive list of such measures.

~~Member States~~ **Contracting Parties** may also adopt further supplementary measures in order to provide for additional protection or improvement of the waters covered by this Directive, including in implementation of the relevant international agreements referred to in Article 1.

5. Where monitoring or other data indicate that the objectives set under Article 4 for the body of water are unlikely to be achieved, the ~~Member State~~ **Contracting Party** shall ensure that:

- the causes of the possible failure are investigated,
- relevant permits and authorisations are examined and reviewed as appropriate,
- the monitoring programmes are reviewed and adjusted as appropriate, and
- additional measures as may be necessary in order to achieve those objectives are established,

including, as appropriate, the establishment of stricter environmental quality standards following the procedures laid down in Annex V.

Where those causes are the result of circumstances of natural cause or force majeure which are exceptional and could not reasonably have been foreseen, in particular extreme floods and prolonged droughts, the ~~Member State~~ **Contracting Party** may determine that additional measures are not practicable, subject to Article 4(6).

6. In implementing measures pursuant to paragraph 3, ~~Member States~~ **Contracting Parties** shall take all appropriate steps not to increase pollution of marine waters. Without prejudice to existing legislation, the application of measures taken pursuant to paragraph 3 may on no account lead, either directly or indirectly

to increased pollution of surface waters. This requirement shall not apply where it would result in increased pollution of the environment as a whole.

7. The programmes of measures shall be established **by the end of 2027** at the latest ~~nine years after the date of entry into force of this Directive~~ and all the measures shall be made operational at the latest **by 2030** ~~12 years after that date~~.

~~As regards Mayotte, the time limits referred to in the first subparagraph shall be 22 December 2015 and 22 December 2018, respectively.~~

8. The programmes of measures shall be reviewed, and if necessary updated at the latest **by 2033** ~~15 years after the date of entry into force of this Directive~~ and every six years thereafter. Any new or revised measures established under an updated programme shall be made operational within three years of their establishment.

~~As regards Mayotte, the time limit referred to in the first subparagraph shall be 22 December 2021.~~

Article 13

1. ~~Member States~~ **Contracting Parties** shall ensure that a river basin management plan is produced for each river basin district lying entirely within their territory.

2. In the case of an international river basin district falling entirely within the **Energy** Community, ~~Member States~~ **Contracting Parties** shall ensure coordination with the aim of producing a single international river basin management plan. Where such an international river basin management plan is not produced, ~~Member States~~ **Contracting Parties** shall produce river basin management plans covering at least those parts of the international river basin district falling within their territory to achieve the objectives of this Directive.

3. In the case of an international river basin district extending beyond the boundaries of the **Energy** Community, ~~Member States~~ **Contracting Parties** shall endeavour to produce a single river basin management plan, and, where this is not possible, the plan shall at least cover the portion of the international river basin district lying within the territory of the ~~Member State~~ **Contracting Parties** concerned.

4. The river basin management plan shall include the information detailed in Annex VII.

5. River basin management plans may be supplemented by the production of more detailed programmes and management plans for sub-basin, sector, issue, or water type, to deal with particular aspects of water management. Implementation of these measures shall not exempt ~~Member States~~ **Contracting Parties** from any of their obligations under the rest of this Directive.

6. River basin management plans shall be published at the latest **by end 2027** ~~after the date of entry into force of this Directive.~~

7. River basin management plans shall be reviewed and updated ~~at the latest 15 years after the date of entry into force of this Directive and~~ every six years thereafter.

~~As regards Mayotte, the time limit referred to in the first subparagraph shall be 22 December 2021.~~

Article 14

1. ~~Member States~~ **Contracting Parties** shall encourage the active involvement of all interested parties in the implementation of this Directive, in particular in the production, review and updating of the river basin management plans. ~~Member States~~ **Contracting Parties** shall ensure that, for each river basin district, they publish and make available for comments to the public, including users:

- (a) a timetable and work programme for the production of the plan, including a statement of the consultation measures to be taken, at least three years before the beginning of the period to which the plan refers;
- (b) an interim overview of the significant water management issues identified in the river basin, at least two years before the beginning of the period to which the plan refers;
- (c) draft copies of the river basin management plan, at least one year before the beginning of the period to which the plan refers.

On request, access shall be given to background documents and information used for the development of the draft river basin management plan.

2. ~~Member States~~ **Contracting Parties** shall allow at least six months to comment in writing on those documents in order to allow active involvement and consultation.

3. Paragraphs 1 and 2 shall apply equally to updated river basin management plans.

Annex 1 - Extracts from the European Commission's Enlargement Reports 2020 on compliance with the Water Framework Directive.

*Albania: 'A legal package is in preparation for increasing transposition. Having been set up in 2018 under the Prime Minister's Office, the Water Resource Management Agency (AMBU) recruited staff in 2019, but needs rapidly to build its administrative capacities for river basin management and implementing the EU water acquis. In February 2020, the National Water Council endorsed the Drini-Buna and Seman river basin management plans and started the procedure for their adoption by the Council of Ministers. Albania should proceed with the completion and adoption of the remaining river basin management plans, including the transboundary consultations. The water quality monitoring and reporting system and the licensing system should be further enhanced and aligned with the acquis requirements. The water monitoring network is extended to rivers, lakes, coastal area and lagoons.'*⁶⁸

*Bosnia and Herzegovina: 'On water quality, the country still lacks a consistent and harmonised countrywide strategy and investment plans on water management that would include implementing legislation and monitoring. There is no water policy for Bosnia and Herzegovina. A consistent legal framework needs to be in place addressing water services to provide for sustainable investments. Regarding the growing development of hydropower investments, Bosnia and Herzegovina as a matter of urgency has to better enforce SEA, EIA, nature protection and water-related provisions of the EU acquis in order to adequately address growing environmental concerns. A 'Roof report on river basin management plans' needs to be adopted for Bosnia and Herzegovina. An action plan for flood protection and river management in Bosnia and Herzegovina for 2014-2021 is being implemented.'*⁶⁹

*Kosovo: 'Kosovo has a 2017-2036 water strategy, but the level of alignment with EU legislation remains very low. More needs to be done to ensure the implementation of the Law on water. Water resource monitoring networks are still incomplete, in particular for groundwater, and water protection zones are not being monitored or properly managed. Urgent efforts are required to ensure that the river basin district authority becomes operational. No progress was achieved in preparing management plans for all river basins. There was some progress on cooperation with neighbouring countries on integrated water management and flood protection.'*⁷⁰

Montenegro: 'Alignment on water quality remains limited. Water management plans for the Danube and Adriatic basins remain to be finalised. The network of hydrological surface stations for monitoring the quantity of surface waters and a network of stations for groundwater monitoring were established, and software for processing the collected hydrological data was acquired. Investments in hydropower need to

⁶⁸ [Albania 2020 Report](#), European Commission, Brussels, 6.10.2020 SWD(2020) 354 final.

⁶⁹ [Bosnia and Herzegovina 2020 Report](#), European Commission, Brussels, 6.10.2020 SWD(2020) 350 final.

⁷⁰ [Kosovo 2020 Report](#), European Commission, Brussels, 6.10.2020 SWD(2020) 356 final.

*comply with national and international nature protection and water management obligations, ensure public participation and consultation, and guarantee high quality EIA reports that include cumulative impacts on nature and biodiversity.*⁷¹

*North Macedonia: ‘Finalisation and implementation of river basin management plans shall be a priority. A system for monitoring the quality and quantity of surface and groundwater is needed and more efforts are required to reduce non-revenue water. The country needs to make significant efforts to implement the EU acquis in this area. Administrative capacity and inter-institutional coordination need to be strengthened.’*⁷²

*Serbia: ‘The level of alignment with the EU acquis on water quality is moderate. Work on an action plan for implementing the water management strategy has not progressed. Untreated sewage and wastewaters are still the main source of water pollution. Non-compliance with water quality standards remains a big concern in some areas, such as that on arsenic. Serbia needs to make significant efforts to align further its legislation with the EU acquis, and to strengthen administrative capacity, in particular for monitoring, enforcement and inter-institutional coordination. Work on the river basin management plan is progressing slowly. Improving local governance, in particular for operating and maintaining water and wastewater facilities, remains a priority. Work on adequate water fees and tariffs is at an early stage.’*⁷³



This briefing has been produced with the financial assistance of the European Union. The content of this briefing is the sole responsibility of CEE Bankwatch Network and can under no circumstances be regarded as reflecting the position of the European Union.

⁷¹ [Montenegro 2020 Report](#), European Commission, Brussels, 6.10.2020, SWD(2020) 353 final.

⁷² [North Macedonia 2020 Report](#), European Commission, Brussels, 6.10.2020 SWD(2020) 351 final.

⁷³ [Serbia 2020 Report](#), European Commission, Brussels, 6.10.2020 SWD(2020) 352 final.